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8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:
12 **ELIZABETH LUCILE SILVA**
13 **a.k.a. ELIZABETH LUCILLE SILVA**
14 **a.k.a. ELIZABETH LUCILE SCHINDLER**
7407 Sherwood Road
Joshua Tree, CA 92252
15 Pharmacy Technician Registration
No. TCH 60348
16 Respondent.

Case No. 4302

A C C U S A T I O N

17
18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold ("Complainant") brings this Accusation solely in her official capacity
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs ("Board").
22 2. On or about January 11, 2005, the Board issued Pharmacy Technician Registration
23 No. TCH 60348 to Elizabeth Lucile Silva, also known as Elizabeth Lucille Silva, and Elizabeth
24 Lucile Schindler ("Respondent"). The Pharmacy Technician Registration was in full force and
25 effect at all times relevant to the charges brought herein and expired on July 31, 2012, and has not
26 been renewed.

27 **JURISDICTION**

- 28 3. This Accusation is brought before the Board, under the authority of the following

1 laws. All section references are to the Business and Professions Code ("Code") unless otherwise
2 indicated.

3 4. Section 4011 of the Code provides:

4 "The board shall administer and enforce this chapter [Pharmacy Law, (Business and
5 Professions Code, Sec 4000 et esq.)] and the Uniform Controlled Substances Act (Division 10
6 commencing with Section 11000) of the Health and Safety Code)."

7 5. Section 4300 of the Code permits the Board to take disciplinary action to suspend or
8 revoke a license issued by the Board.

9 6. Section 4300.1 of the Code states, "the expiration, cancellation, forfeiture, or
10 suspension of a board-issued license by operation of law or by order or decision of the board or a
11 court of law, the placement of a license on a retired status, or the voluntary surrender of a license
12 by a licensee shall not deprive the board of jurisdiction to commence or proceed with any
13 investigation of, or action or disciplinary proceeding against, the licensee or to render a decision
14 suspending or revoking the license."

15 STATUTORY PROVISIONS

16 7. Section 490 of the Code states, in pertinent part:

17 "(a) In addition to any other action that a board is permitted to take against a licensee, a
18 board may suspend or revoke a license on the ground that the licensee has been convicted of a
19 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
20 or profession for which the license was issued.

21 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
22 discipline a licensee for conviction of a crime that is independent of the authority granted under
23 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
24 of the business or profession for which the licensee's license was issued.

25 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
26 conviction following a plea of nolo contendere. Any action that a board is permitted to take
27 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
28 the judgment of conviction has been affirmed on appeal, or when an order granting probation is

1 made suspending the imposition of sentence, irrespective of a subsequent order under the
2 provisions of Section 1203.4 of the Penal Code."

3 8. Section 493 of the Code states:

4 "Notwithstanding any other provision of law, in a proceeding conducted by a
5 board within the department pursuant to law to deny an application for a license or to
6 suspend or revoke a license or otherwise take disciplinary action against a person who
7 holds a license, upon the ground that the applicant or the licensee has been convicted
8 of a crime substantially related to the qualifications, functions, and duties of the
9 licensee in question, the record of conviction of the crime shall be conclusive
10 evidence of the fact that the conviction occurred, but only of that fact, and the board
11 may inquire into the circumstances surrounding the commission of the crime in order
12 to fix the degree of discipline or to determine if the conviction is substantially related
13 to the qualifications, functions, and duties of the licensee in question."

14 As used in this section, "license" includes "certificate," "permit," "authority," and
15 "registration."

16 9. Section 4301 of the Code states, in pertinent part:

17 "The board shall take action against any holder of a license who is guilty of unprofessional
18 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
19 Unprofessional conduct shall include, but is not limited to, any of the following:

20

21 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
22 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
23 whether the act is a felony or misdemeanor or not.

24

25 "(l) The conviction of a crime substantially related to the qualifications, functions, and
26 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
27 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
28 substances or of a violation of the statutes of this state regulating controlled substances or

1 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
2 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
3 The board may inquire into the circumstances surrounding the commission of the crime, in order
4 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
5 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
6 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
7 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
8 of this provision. The board may take action when the time for appeal has elapsed, or the
9 judgment of conviction has been affirmed on appeal or when an order granting probation is made
10 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
11 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
12 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
13 indictment.

14

15 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
16 violation of or conspiring to violate any provision or term of this chapter or of the applicable
17 federal and state laws and regulations governing pharmacy, including regulations established by
18 the board or by any other state or federal regulatory agency."

19 **REGULATORY PROVISION**

20 10. California Code of Regulations, title 16, section 1770, states:

21 "For the purpose of denial, suspension, or revocation of a personal or facility license
22 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
23 crime or act shall be considered substantially related to the qualifications, functions or duties of a
24 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
25 licensee or registrant to perform the functions authorized by his license or registration in a manner
26 consistent with the public health, safety, or welfare."

27 **COST RECOVERY**

28 11. Section 125.3 of the Code states, in pertinent part, that the Board may request the

1 administrative law judge to direct a licentiate found to have committed a violation or violations of
2 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
3 enforcement of the case.

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Conviction of a Substantially-Related Crime)**

6 12. Respondent is subject to disciplinary action under sections 490, 4300 and 4301,
7 subdivision (l) of the Code, in conjunction with California Code of Regulations, title 16, section
8 1770, on the grounds of unprofessional conduct as Respondent was convicted of a crime
9 substantially related to the qualifications, functions, or duties of a registered pharmacy technician.

10 a. On or about November 15, 2011, after pleading *guilty*, Respondent was convicted of
11 one felony count of violating Penal Code section 459 [second degree: commercial burglary], in
12 the criminal proceeding entitled *The People of the State of California v. Elizabeth Lucille Silva*
13 (Super. Ct. San Bernardino County, 2011, No. FMB1100579). The court sentenced Respondent
14 to serve 120 days in jail, placed her on probation for a period of 36 months, and ordered her to
15 pay fines, fees, and restitution.

16 b. The circumstances surrounding the conviction are that on or about October 19, 2011,
17 a San Bernardino Sheriff's Department Deputy was dispatched to Hi-Desert Medical Center
18 Continuing Care Facility, in San Bernardino, California, to investigate a report of credit card
19 fraud. On October 27, 2011, the Respondent admitted to the Deputy that she and her boyfriend
20 took the victim's credit card from his bedroom and made several purchases at Wal-Mart, a
21 Psychic in Florida, and Jack-in-the-Box. The Respondent admitted she was under the influence of
22 methamphetamine and opiates during the time that the theft occurred and that she was using
23 methamphetamine and opiates three to four times a week. The Respondent admitted to stealing
24 other property from the victim's residence to support her drug habit. She admitted she needed
25 help with her drug addiction. The Respondent was subsequently arrested for violation of Penal
26 Code sections 459, 470(a), and 530.5(a).

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SECOND CAUSE FOR DISCIPLINE

(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)

13. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (f), on the grounds of unprofessional conduct as Respondent committed an act involving moral turpitude, dishonesty, fraud, deceit and corruption, whether the act was committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 12 as though set forth fully.

THIRD CAUSE FOR DISCIPLINE

(Violation of Pharmacy Act)

14. Respondent is subject to disciplinary action under section 4301, subdivision (o), on the grounds of unprofessional conduct, in that Respondent was convicted of a crime and committed an act that was in violation of the Pharmacy Act. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 12 through 13, inclusive, as though set forth fully.

DISCIPLINE CONSIDERATIONS

15. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges the following:

- a. On or about July 27, 2009, Respondent was convicted of violating Penal Code Section 484(a)/490.5 [petty theft] in the criminal proceeding entitled *The People of the State of California v. Elizabeth Lucile Silva* (Super. Ct. San Bernardino, 2009, Case No. MMB900296). The court placed Respondent on 36 months probation and ordered Respondent to pay fines and fees, in addition to abide by terms and conditions. On or about April 29, 2011, pursuant to Penal Code Section 1203.4, the conviction was set aside and the case was dismissed.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

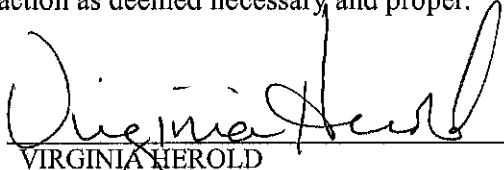
- 1. Revoking or suspending Pharmacy Technician Registration No. TCH 60348, issued

1 to Elizabeth Lucile Silva, also known as Elizabeth Lucille Silva, and Elizabeth Lucile Schindler;

2 2. Ordering Elizabeth Lucile Silva, also known as Elizabeth Lucille Silva, and Elizabeth
3 Lucile Schindler to pay the Board the reasonable costs of the investigation and enforcement of
4 this case, pursuant to section 125.3 of the Code; and

5 3. Taking such other and further action as deemed necessary and proper.

6
7 DATED: 8/14/13



VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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