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

12 In the Matter of the Accusation Against:

Case No. 4586

13 **RICHARD C. HWANG**

14 18405 S. Vermont Ave., #101
Gardena, CA 90248

A C C U S A T I O N

15 Pharmacy Technician Registration No. TCH
85004

16 Respondent.

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.

22 2. On or about September 10, 2008, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 85004 to Richard C. Hwang ("Respondent"). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought
25 herein and will expire on October 31, 2013, unless renewed.

26 **JURISDICTION AND STATUTORY PROVISIONS**

27 3. This Accusation is brought before the Board of Pharmacy ("Board"), Department of
28 Consumer Affairs, under the authority of the following laws. All section references are to the

1 Business and Professions Code ("Code") unless otherwise indicated.

2 4. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
3 surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
4 disciplinary action during the period within which the license may be renewed, restored, reissued
5 or reinstated.

6 5. Section 490 of the Code states, in pertinent part:

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

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

17 (c) A conviction within the meaning of this section means a plea or
18 verdict of guilty or a conviction following a plea of nolo contendere. Any action that
19 a board is permitted to take following the establishment of a conviction may be taken
20 when the time for appeal has elapsed, or the judgment of conviction has been
21 affirmed on appeal, or when an order granting probation is made suspending the
22 imposition of sentence, irrespective of a subsequent order under the provisions of
23 Section 1203.4 of the Penal Code."

24 6. Section 493 of the Code states:

25 "Notwithstanding any other provision of law, in a proceeding conducted
26 by a board within the department pursuant to law to deny an application for a license
27 or to suspend or revoke a license or otherwise take disciplinary action against a
28 person who holds a license, upon the ground that the applicant or the licensee has
29 been convicted of a crime substantially related to the qualifications, functions, and
30 duties of the licensee in question, the record of conviction of the crime shall be
31 conclusive evidence of the fact that the conviction occurred, but only of that fact, and
32 the board may inquire into the circumstances surrounding the commission of the
33 crime in order to fix the degree of discipline or to determine if the conviction is
34 substantially related to the qualifications, functions, and duties of the licensee in
35 question.

36 As used in this section, 'license' includes 'certificate,' 'permit,'
37 'authority,' and 'registration.'"

38 7. Section 4301 of the Code states in pertinent part:

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

1
2 (f) The commission of any act involving moral turpitude, dishonesty,
3 fraud, deceit, or corruption, whether the act is committed in the course of relations as
4 a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

5
6 (l) The conviction of a crime substantially related to the qualifications,
7 functions, and duties of a licensee under this chapter. The record of conviction of a
8 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
9 States Code regulating controlled substances or of a violation of the statutes of this
10 state regulating controlled substances or dangerous drugs shall be conclusive
11 evidence of unprofessional conduct. In all other cases, the record of conviction shall
12 be conclusive evidence only of the fact that the conviction occurred. The board may
13 inquire into the circumstances surrounding the commission of the crime, in order to
14 fix the degree of discipline or, in the case of a conviction not involving controlled
15 substances or dangerous drugs, to determine if the conviction is of an offense
16 substantially related to the qualifications, functions, and duties of a licensee under this
17 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
18 contendere is deemed to be a conviction within the meaning of this provision. The
19 board may take action when the time for appeal has elapsed, or the judgment of
20 conviction has been affirmed on appeal or when an order granting probation is made
21 suspending the imposition of sentence, irrespective of a subsequent order under
22 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
23 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
24 dismissing the accusation, information, or indictment.

25
26 (o) Violating or attempting to violate, directly or indirectly, or assisting in
27 or abetting the violation of or conspiring to violate any provision or term of this
28 chapter or of the applicable federal and state laws and regulations governing
pharmacy, including regulations established by the board or by any other state or
federal regulatory agency.”

REGULATORY PROVISION

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

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

COST RECOVERY

9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
administrative law judge to direct a licentiate found to have committed a violation or violations of
the licensing act to pay a sum not to exceed the reasonable costs of the investigation and

1 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
2 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
3 included in a stipulated settlement.

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Substantially Related Criminal Conviction)**

6 10. Respondent is subject to disciplinary action under section 490 and section 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 in that Respondent was convicted of a
9 substantially related crime, as follows:

10 11. On or about May 24, 2012, Respondent pled nolo contendere to and was convicted of
11 one misdemeanor count of violating Penal Code section 484(a) [theft] in the criminal proceeding
12 entitled *People of the State of California v. Richard C. Hwang* (Super. Ct. of California, County
13 of Los Angeles, 2012, Case No. 2SY02764). The court placed Respondent on probation for a
14 period of three (3) years, with terms and conditions. The circumstances underlying the criminal
15 conviction are, as follows:

16 12. On or about January 29, 2012, Redondo Beach Police Department Officers
17 (“Officers”) responded to a theft in progress at an Albertsons in Redondo Beach, California.
18 Officers made contact with Respondent and Respondent told the Officers that he had stolen
19 Rogaine from Albertsons. Officers observed two bulges in Respondent’s pants and removed two
20 (2) bottles of Rogaine. Respondent admitted to having several bottles of stolen Head and
21 Shoulders shampoo which he stole from an Albertsons in Gardena. Officers searched
22 Respondent’s vehicle and recovered ten (10) bottles of Head & Shoulders shampoo in the back
23 seat passenger side floorboard. While searching Respondent’s vehicle, Officers also located tin
24 foil and rolled piece of stock paper, with black tar residue which resembled Heroin, on the
25 driver’s side floorboard. Respondent admitted that he is addicted to Heroin and that he smokes
26 Heroin.

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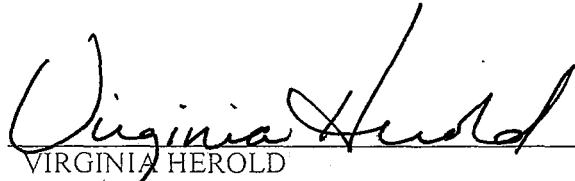
PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 85004, issued to Richard C. Hwang;
2. Ordering Richard C. Hwang to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: _____

6/10/13



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

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