1	KAMALA D. HARRIS		
2	Attorney General of California DIANN SOKOLOFF		
3	Supervising Deputy Attorney General KIM M. SETTLES		
4	Deputy Attorney General State Bar No. 116945		
5	1515 Clay Street, 20th Floor P.O. Box 70550		
6	Oakland, CA 94612-0550 Telephone: (510) 622-2138		
7	Facsimile: (510) 622-2270 Attorneys for Complainant		
8	BEFORE THE		
9	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS		
10	STATE OF C	CALIFORNIA	
11	In the Matter of the Accusation Against:	Case No. 4617	
12	EFRAIN RODRIGUEZ	ACCUSATION	
13	1411 Mt. Whitney Drive San Jose, CA 95127		
14 15	Pharmacy Technician Registration No. TCH 94671		
16	Respondent.		
17			
18	Complainant alleges:		
10		TIES	
19	PAR	TIES s this Accusation solely in her official capacity	
	PAR	s this Accusation solely in her official capacity	
19	PAR  1. Virginia Herold (Complainant) bring as the Executive Officer of the Board of Pharma	s this Accusation solely in her official capacity	
19 20	PAR  1. Virginia Herold (Complainant) bring as the Executive Officer of the Board of Pharma	es this Accusation solely in her official capacity cy, Department of Consumer Affairs.  oard of Pharmacy issued Pharmacy Technician	
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4. Section 118, subdivision (b), of the Code provides that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

## STATUTORY/REGULATORY PROVISIONS

- 5. Section 4300 of the Code states:
- "(a) Every license issued may be suspended or revoked. . ."
- 6. Section 4301 of the Code states:

"The board shall take action against any holder of a license who is guilty of unprofessional conduct. . . Unprofessional conduct shall include, but is not limited to, any of the following:

. . .

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

. . . .

"(I) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of

the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

- 6. Section 490 of the Code provides, in pertinent part, that a Board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.
  - 7. Title 16, California Code of Regulations, 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

8. Section 125.3 of the Code states, 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 enforcement of the case.

## FIRST CAUSE FOR DISCIPLINE

## (Unprofessional Conduct - Conviction of a Substantially Related Crime)

- 9. Respondent has subjected his license to disciplinary action under Code sections 4301, subdivision (I) and 490 in that he was convicted of a crime substantially related to the qualifications, functions, and duties of a pharmacy technician, as defined in title 16, California Code of Regulations section 1770. The circumstances are set forth in paragraph 10, below.
- 10. On or about December 27, 2012, in *People v. Rodriguez, Efrain Bautista Jr.*, Stanislaus County Superior Court case number 1451043, Respondent pled nolo contendere to violating Penal Code section 508 (embezzlement by servant). Respondent was sentenced to

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1	ninety (90) days in jail, payment of fines and fees, and three years probation under terms which	
2	included, but were not limited to, restitution, a stay away order from Walgreens located at 840	
3	Oakdale Road, in Modesto, California. The factual circumstances of the conviction are that	
4	between on or about September 1, 2012, and October 3, 2012, while employed as a pharmacy	
5	technician at Walgreens in Modesto, California, Respondent admitted to providing free	
6	merchandise to friends and family when he acted as a cashier.	
7	SECOND CAUSE FOR DISCIPLINE	
8	(Unprofessional Conduct - Commission of an Act Involving Dishonesty)	
9	11. Respondent has subjected his license to disciplinary action under Code section 4301,	
10	subdivision (f) in that he engaged in unprofessional conduct by committing acts of dishonesty,	
11	namely embezzlement. The circumstances are set forth in paragraph 10, above.	
12	PRAYER	
13	WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this	
14	Accusation, and that following the hearing, the Board of Pharmacy issue a decision:	
15	1. Revoking or suspending Pharmacy Technician Registration Number TCH 94671,	
16	issued to Efrain Rodriguez;	
17	2. Ordering Efrain Rodriguez to pay the Board of Pharmacy the reasonable costs of the	
18	investigation and enforcement of this case, pursuant to Business and Professions Code section	
19	125.3;	
20	3. Taking such other and further action as deemed necessary and proper.	
21	DATED: 6/27/13 ligition fleeld VIRGINIA HEROLD	
22	Executive Officer	
23	Board of Pharmacy Department of Consumer Affairs State of California	
24	Complainant	
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