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8	BEFORE THE	
9	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA	
10	STATE OF CAI	LIFORNIA
11	In the Matter of the Accusation Against:	ase No. 4720
12		CCUSATION
13	14222 Filmore Street Arleta, CA 91331	
14	Pharmacy Technician Registration	
15	No. TCH 122982	
16	Respondent.	
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18	Complainant alleges:	
19	<u>PARTIES</u>	
20	1. Virginia Herold (Complainant) brings th	nis 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 May 29, 2012, the Board of Pharmacy issued Pharmacy Technician	
23	Registration No. TCH 122982 to Drahnier Del Rosario Schmidt (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 September 30, 2015, unless renewed.	
26	<u>JURISDICTION</u>	
27	3. This Accusation is brought before the Board under the authority of the following	
28	laws. All section references are to the Business and Professions Code unless otherwise indicated.	

#### STATUTORY PROVISIONS

- 4. Section 490 states, in pertinent part:
- "(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.
- "(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.
- "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken 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 the provisions of Section 1203.4 of the Penal Code."
- 5. Section 4300 provides, in pertinent part, that every license issued by the Board is subject to discipline, including suspension or revocation.
  - 6. Section 4300.1 states:

"The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license."

7. Section 4301 states, in pertinent part:

"The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

Unprofessional conduct shall include, but is not limited to, any of the following:

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- "(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.
- "(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.
- The conviction of a crime substantially related to the qualifications, functions, and "(I) 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.

"(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this 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 PROVISIONS**

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

"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 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 enforcement of the case.

#### FIRST CAUSE FOR DISCIPLINE

#### (Conviction of a Substantially Related Crime)

- 10. Respondent is subject to disciplinary action under Sections 4301, subdivision (l) and 490, in conjunction with California Code of Regulations, title 16, Section 1770, in that Respondent was convicted of a crime substantially related to the qualifications, functions or duties of a pharmacy technician, as follows:
- a. On or about January 4, 2013, after pleading nolo contendere, Respondent was convicted of one misdemeanor count of violating Penal Code section 470, subdivision (d) [false check/record/certificate] and one misdemeanor count of Penal Code section 484G, subdivision (a) [theft by fraudulent use of forged/invalid access card] in the criminal proceeding entitled *The People of the State of California v. Drahnier Del Rosario Schmidt* (Super Ct. Los Angeles County, 2013, No. 2WA23576.) The Court placed Respondent on 24 months probation and ordered him to make restitution to the victim, among other terms and conditions.

b. The circumstances surrounding the conviction are that, on or about May 17, 2012, Respondent used credit cards belonging to the victim (his sister's co-worker), without the victim's permission, to make several purchases, including but not limited to gas for a vehicle, a Nintendo game console from Target.com and an Apple I-Pad from the Target store in Northridge, totaling approximately \$1,804.44.

# SECOND CAUSE FOR DISCIPLINE

# (Acts Involving Dishonesty, Fraud, or Deceit)

11. Respondent is subject to disciplinary action under Section 4301, subdivision (f), in that on or about May 17, 2012, Respondent committed acts involving dishonesty, fraud, or deceit with the intent to substantially benefit himself, or substantially injure another. Complainant refers to, and by reference incorporates, the allegations set forth above in Paragraph 10, subparagraph (b), as though set forth fully.

#### THIRD CAUSE FOR DISCIPLINE

# (Knowingly Making a False Statement of Fact)

12. Respondent is subject to disciplinary action under Section 4301, subdivision (g), on the grounds of unprofessional conduct, in that Respondent knowingly made or signed a document and/or documents that falsely represented the existence or nonexistence of a state of facts in order to use a credit card that did not belong to him. Complainant refers to, and by reference incorporates, the allegations set forth above in Paragraph 10, subparagraph (b), as though set forth fully.

## FOURTH CAUSE FOR DISCIPLINE

# (Unprofessional Conduct/ Violation of Licensing Chapter)

13. Respondent is subject to disciplinary action under Section 4301, (o), in that Respondent committed acts of unprofessional conduct and/ or violated provisions of the licensing chapter. Complainant refers to, and by this reference incorporates, the allegations set forth above in Paragraphs 10 through 12, inclusive, as though set forth fully.

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