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

11 In the Matter of the Accusation Against:

Case No. 4738

12 **MICHELLE J. CALDERA**
13 **16400 Gala Ave.**
14 **Fontana, CA 92337**

A C C U S A T I O N

15 **Pharmacy Technician Registration No. TCH**
116452

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 December 2, 2011, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 116452 to Michelle J. Caldera (Respondent). The Pharmacy
24 Technician Registration expired on June 30, 2013, and has not been renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
27 Consumer Affairs, under the authority of the following laws. All section references are to the
28 Business and Professions Code unless otherwise indicated.

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

4 ...

5 “(h) The administering to oneself, of any controlled substance, or the use of any
6 dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or
7 injurious to oneself, to a person holding a license under this chapter, or to any other person
8 or to the public, or to the extent that the use impairs the ability of the person to conduct with
9 safety to the public the practice authorized by the license.

10 ...

11 “(j) The violation of any of the statutes of this state, or any other state, or of
12 the United States regulating controlled substances and dangerous drugs.

13 ...

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

32

33 “(o) Violating or attempting to violate, directly or indirectly, or assisting in or
34 abetting the violation of or conspiring to violate any provision or term of this chapter
35 or of the applicable federal and state laws and regulations governing pharmacy,
36 including regulations established by the board or by any other state or federal
37 regulatory agency.

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39 “(p) Actions or conduct that would have warranted denial of a license.”

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1 8. Section 4059 of the Code states, in pertinent part, that a person may not furnish any
2 dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,
3 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

4 9. Section 4060 of the Code states:

5 No person shall possess any controlled substance, except that furnished to a
6 person upon the prescription of a physician, dentist, podiatrist, optometrist,
7 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
8 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
9 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant
10 pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a
11 pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
12 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section
13 shall not apply to the possession of any controlled substance by a manufacturer,
14 wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist,
15 veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or
16 physician assistant, when in stock in containers correctly labeled with the name and
17 address of the supplier or producer.

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19 10. Health and Safety Code section 11170 states “[n]o person shall prescribe, administer,
20 or furnish a controlled substance for himself.”

21 REGULATORY PROVISIONS

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

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

COST RECOVERY

 12. 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
enforcement of the case, with failure of the licentiate to comply subjecting the license to not being

1 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
2 included in a stipulated settlement.

3 **DRUGS**

4 13. Norco, a brand name for Hydrocodone/APAP 5/325 and Hydrocodone/APAP 10/325,
5 which is a Schedule III controlled substance, a dangerous drug pursuant to Code section 4022, and
6 is used to treat moderate to severe pain.

7 14. Vicodin and Vicodin ES, a brand name for Hydrocodone/APAP 5/500 and
8 Hydrocodone/APAP 7.5/750, which is a Schedule III controlled substance, a dangerous drug
9 pursuant to Code section 4022, and is used to treat moderate to severe pain.

10 **FIRST CAUSE FOR DISCIPLINE**

11 **(Conviction of a Substantially Related Crime)**

12 15. Respondent is subject to disciplinary action under sections 4300, 4301,
13 subdivision (I), and 490, in conjunction with California Code of Regulations, title 16, section
14 1770, in that Respondent was convicted of a crime substantially related to the qualifications,
15 functions, and duties of a pharmacy technician.

16 a. On or about July 23, 2012, after pleading guilty, Respondent was convicted of one
17 felony count of violating Penal Code section 484(A), misdemeanor [theft of personal property] in
18 the criminal proceeding entitled *The People of the State of California vs. Michelle Caldera* ,
19 (Super. Ct. San Bernardino County, No. MVA1201093). The court sentenced Respondent to a 36
20 month probation and she was required to serve 68 days in San Bernardino Co jail and pay a fine
21 including victim restitution. Respondent was also ordered to stay away from Rite Aid-15331
22 Baseline Ave Fontana CA 92335.

23 b. The circumstances surrounding the conviction are that between July 2011 and April
24 11, 2012, while working as a pharmacy technician at Rite Aid# 6482, Respondent diverted
25 prescription drugs from the pharmacy, including Hydrocodone/APAP, for self use. An audit of
26 the pharmacy, during the relevant time period, revealed a loss of the following:
27 Hydrocodone/APAP 10/325 (2050 tablets); Hydrocodone/ APAP 5/500 (1302 tablets);
28 Hydrocodone/ APAP 5/325 346 tablets; and Hydrocodone/APAP 7.5/750 (149 tablets).

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct- Possession of Controlled Substance without a Prescription)**

3 16. Respondent is subject to disciplinary action under Business and Professions
4 Code sections 4301 (f) and (j) in that while she was working as a pharmacy technician at Rite Aid
5 # 6482 (PHY 48336), located at 15331 Baseline Avenue, Fontana, California, Respondent
6 engaged in unprofessional conduct in that she engaged in acts that constitute dishonesty and/or
7 corruption, that are in violation of any statutes regulating controlled substances and dangerous
8 drugs. The circumstances are set forth above in paragraph 15(b) and incorporated herein as
9 though set forth fully herein.

10 **THIRD CAUSE FOR DISCIPLINE**

11 **(Unprofessional Conduct- Dispensing or Compounding**
12 **While Under the Influence of Drugs)**

13 17. Respondent is subject to disciplinary action under Business and Professions Code
14 section 4301 (h) in that while she was working as a pharmacy technician at Rite Aid # 6482,
15 Respondent administered to herself controlled substances without a lawful prescription for self
16 use, to the extent that the use impaired her ability to conduct with safety to the public the practice
17 authorized by the license. The circumstances are set forth above in paragraph 15(b) and
18 incorporated herein as though set forth fully herein.

19 **FOURTH CAUSE FOR DISCIPLINE**

20 **(Unprofessional Conduct- Actions or Conduct that Warrant Denial of a License)**

21 18. Respondent is subject to disciplinary action under Business and Professions Code
22 section 4301 (p) in that while she was working as a pharmacy technician at Rite Aid # 6482
23 Respondent diverted and/or administered to herself controlled substances, which actions or
24 conduct would have warranted denial of a license. The circumstances are set forth above in
25 paragraph 15(b) and incorporated herein as though set forth fully herein.

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FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct- Attempt to Unlawfully Possess a Controlled Substance)

19. Respondent is subject to disciplinary action under Business and Professions Code section 4301 (o) in that while she was working as a pharmacy technician at Rite Aid # 6482, Respondent engaged in unprofessional conduct by violating or attempting to violate, directly or indirectly, any provision of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the Board, when she diverted and/or administered to herself controlled substances from the pharmacy for self use. The circumstances are set forth above in paragraph 15(b) and incorporated herein as though set forth fully herein.

SIXTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct- Unlawful Possession and Administration of a Controlled Substance)

20. Respondent is subject to disciplinary action under Health and Safety Code section 11170 and Business and Professions Code section 4060 in that while she was working as a pharmacy technician at Rite Aid # 6482, Respondent diverted and/or administered to herself controlled substances without a lawful prescription for self use. The circumstances are set forth above in paragraph 15(b) and incorporated herein as though set forth fully herein.

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:

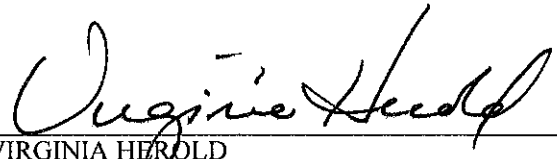
1. Revoking or suspending Pharmacy Technician Registration Number TCH 116452, issued to Michelle J. Caldera;
2. Ordering Michelle J. Caldera to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 5/9/14



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

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