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

11 In the Matter of the Accusation Against:

Case No. 4770

12 **DEBRA KAYE SILVA**
13 **9534 N. Third Street**
14 **Dehli, California 91352**

ACCUSATION

15 **Pharmacy Technician Registration No. TCH**
16 **2475**

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 14, 1992, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 2475 to Debra Kaye Silva (Respondent). The Pharmacy Technician
24 Registration was in full force and effect at all times relevant to the charges brought herein and
25 will expire on January 31, 2014, unless renewed.

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1 **JURISDICTION**

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

5 4. Section 4300 of the Code states, in pertinent part:

6 "(a) Every license issued may be suspended or revoked. . . ."

7 5. Section 4300.1 of the Code states:

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

13 **STATUTORY PROVISIONS**

14 6. Section 490 of the Code provides, in pertinent part, that a board may suspend or
15 revoke a license on the ground that the licensee has been convicted of a crime substantially related
16 to the qualifications, functions, or duties of the business or profession for which the license was
17 issued.

18 7. Section 4022 of the Code states:

19 "'Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in
20 humans or animals, and includes the following:

21 (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without
22 prescription," "Rx only," or words of similar import.

23 (b) Any device that bears the statement: "Caution: federal law restricts this device to sale
24 by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled in
25 with the designation of the practitioner licensed to use or order use of the device.

26 (c) Any other drug or device that by federal or state law can be lawfully dispensed only on
27 prescription or furnished pursuant to Section 4006."

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1 8. Section 4060 of the Code states, in pertinent part:

2 "No person shall possess any controlled substance, except that furnished to a person upon
3 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
4 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse
5 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
6 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
7 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
8 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. . . ."

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

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

13 ". . .

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

17 ". . .

18 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous
19 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
20 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
21 to the extent that the use impairs the ability of the person to conduct with safety to the public the
22 practice authorized by the license.

23 ". . .

24 "(j) The violation of any of the statutes of this state, or any other state, or of the United
25 States regulating controlled substances and dangerous drugs.

26 ". . .

27 "(l) The conviction of a crime substantially related to the qualifications, functions, and
28 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13

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

16 "...

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

21 HEALTH AND SAFETY CODE

22 10. California Health and Safety Code section 11056 states, in pertinent part:

23 “(a) The controlled substances listed in this section are included in Schedule III.

24 “... ”

25 “(e) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any
26 material, compound, mixture, or preparation containing any of the following narcotic drugs, or
27 their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth
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“ . . .

(4) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts. Additionally, oral liquid preparations of dihydrocodeinone containing the above specified amounts may not contain as its nonnarcotic ingredients two or more antihistamines in combination with each other. . . .”

11. California Health and Safety Code section 11350 states, in pertinent part:

“(a) Except as otherwise provided in this division, every person who possesses . . . (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code. . . .”

12. California Health and Safety Code section 11377 states, in pertinent part:

“(a) Except as authorized by law and as otherwise provided in subdivision (b) or Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses any controlled substance which is (1) classified in Schedule III, IV, or V, and which is not a narcotic drug . . . unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in a county jail for a period of not more than one year or pursuant to subdivision (h) of Section 1170 of the Penal Code. . . .”

REGULATIONS

13. 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.”

1 14. Title 21 of the United States Code, section 829 states, in pertinent part:

2 “(b) Schedule III and IV substances. Except when dispensed directly by a practitioner,
3 other than a pharmacist, to an ultimate user, no controlled substance in schedule III or IV, which
4 is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act [21 USCS
5 § § 301 et seq.], may be dispensed without a written or oral prescription in conformity with section
6 503(b) of that Act [21 USCS § 353(b)]”

7 **COST RECOVERY**

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

12 **FIRST CAUSE FOR DISCIPLINE**

13 **(Unprofessional Conduct—Conviction of a Crime Substantially Related to Qualifications,
14 Functions, and Duties of Licensee)**

15 16. Respondent is subject to disciplinary action under sections 490 and 4301(*I*) of the
16 Code in that Respondent has been convicted of a crime that is substantially related to her
17 qualifications, functions, and duties as a pharmacy technician. The facts and circumstances of
18 this conviction are as follows:

19 17. On or about June 21, 2013, in *People of the State of California v. Debra Silva*,
20 Superior Court of California, County of Merced, case no. CRL008935, Respondent pled nolo
21 contendere to: (1) a felony charge of embezzlement (a violation of Penal Code section 508); and
22 (2) a felony charge of grand theft (a violation of Penal Code section 487(b)(3)). The facts and
23 circumstances of these convictions are as follows:

24 a. On or about September 12, 2012, during an internal investigation into missing
25 hydrocodone pills at a Wal-Mart pharmacy in Los Banos, California, Respondent admitted that
26 since March 9, 2012, she had regularly stolen large amounts of hydrocodone pills from the
27 pharmacy. Wal-Mart’s internal investigation included the use of closed circuit security cameras
28 which revealed that: (1) on or about August 27, 2012, Respondent took 100 hydrocodone pills

1 out of the container and placed them in her pocket, and Respondent took a bottle of 500
2 hydrocodone pills and placed it in her apron before returning the empty bottles on the shelf; and
3 (2) on or about August 30, 2012, Respondent dumped several pills out of her hand into her apron
4 pocket, and took another 100 hydrocodone pills and placed them in her apron pocket before
5 disposing of the bottle. Wal-Mart's internal investigation also revealed that according to their
6 computer system's log of missing pills, Respondent had stolen 3,942 hydrocodone pills, at an in-
7 store price of \$4.00 each, for a total value of \$15,768.00. Following Wal-Mart's internal
8 investigation, the Los Banos police department was contacted, and after completing their own
9 investigation, determined that Respondent stole 3,942 hydrocodone pills and an unknown number
10 of phentermine prescription pills while employed at Wal-Mart. Respondent was arrested and
11 subsequently charged with embezzlement and grand theft.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Corrupt Acts)**

14 18. Respondent is subject to disciplinary action under sections 475(a)(3) and 4301(f) of
15 the Code in that from on or about March 19 through September 12, 2012, Respondent committed
16 acts involving dishonesty, fraud, or deceit with the intent to substantially benefit herself. The
17 facts and circumstances are set forth in more particularity in paragraph 17(a) and as follows:

18 a. During a January 15, 2013 interview with a Board investigator, Respondent admitted
19 to stealing approximately 200 tablets of hydrocodone/acetaminophen 10/325 mg and an unknown
20 quantity of phentermine from Wal-Mart by pouring the loose pills from the stock container and
21 into the pocket of her smock. Respondent admitted she did not have a valid prescription for
22 phentermine. Respondent stated that all stolen drugs were for self-use.

23 **THIRD CAUSE FOR DISCIPLINE**

24 **(Unlawful Possession of Controlled Substances)**

25 19. Respondent is subject to disciplinary action under sections 4060 and 4301(j) and (o)
26 of the Code, and section 11350(a) of the California Health and Safety Code, in that she violated
27 section 4060 of the Code, and California Health and Safety Code sections 11350(a) and 11377(a)

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1 by illegally possessing a controlled substance. The facts and circumstances are set forth in more
2 particularity in paragraphs 17 and 18, and their subparts.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Unlawful Self-Administration of Controlled Substances)**

5 20. Respondent is subject to disciplinary action under section 4301(h) of the Code, and
6 title 21 of the United States Code, section 829(a), in that she unlawfully self-administered
7 controlled substances. The facts and circumstances are set forth in more particularity in paragraph
8 18(a) and as follows:

9 a. On or about September 12, 2012, after Wal-Mart's internal investigation verified that
10 Respondent had been stealing hydrocodone, Respondent authored and signed a statement that she
11 stole pain medication from Wal-Mart because she was desperate and could not afford to have her
12 pain medication prescriptions filled. Additionally, during a January 15, 2013 interview with a
13 Board investigator, Respondent admitted that after stealing phentermine from Wal-Mart, she
14 would use one tablet and discard the remaining tablets in the toilet while at work. Respondent
15 further admitted that sometimes she needed more hydrocodone than what she was prescribed.

16 **PRAYER**

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

19 1. Revoking or suspending Pharmacy Technician Registration Number TCH 2475,
20 issued to Debra Kaye Silva;

21
22 2. Ordering Debra Kaye Silva to pay the Board of Pharmacy the reasonable costs of the
23 investigation and enforcement of this case, pursuant to Business and Professions Code section
24 125.3; and

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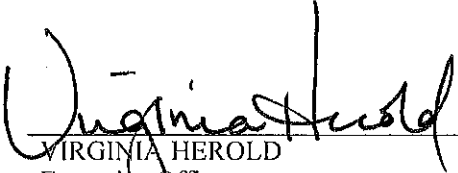
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3. Taking such other and further action as deemed necessary and proper.

DATED: 2/19/14



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

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