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

10 In the Matter of the Accusation Against:

Case No. 4852

11 **CARMEN LEVON GRAHAM**

A C C U S A T I O N

12 2215 E. Sunrise Lane, Apt. A
13 San Bernardino, CA 92404

14 Pharmacy Technician Registration No. TCH
15 112960

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 July 13, 2011, the Board of Pharmacy ("Board") issued Pharmacy
23 Technician Registration Number TCH 112960 to Carmen Levon Graham ("Respondent"). The
24 Pharmacy Technician Registration was cancelled on February 3, 2013, pursuant to Business and
25 Professions Code section 4402, subdivision (e).

26 **JURISDICTION AND STATUTORY PROVISIONS**

27 3. This Accusation is brought before the Board under the authority of the following laws.
28 All section references are to the Business and Professions Code ("Code") unless otherwise

1 indicated.

2 4. Section 4300 of the Code provides in pertinent part, that every license issued by the
3 Boards is subject to discipline, including suspension or revocation.

4 5. Section 4300.1 of the Code states:

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

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

15 7. Section 490 of the Code states, in pertinent part:

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

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

26 (c) A conviction within the meaning of this section means a plea or
27 verdict of guilty or a conviction following a plea of nolo contendere. Any action that a
28 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."

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

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

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

6 ...

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

10 ...

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

13 ...

14 (l) The conviction of a crime substantially related to the qualifications,
15 functions, and duties of a licensee under this chapter. The record of conviction of a
16 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
17 States Code regulating controlled substances or of a violation of the statutes of this
18 state regulating controlled substances or dangerous drugs shall be conclusive evidence
19 of unprofessional conduct. In all other cases, the record of conviction shall be
20 conclusive evidence only of the fact that the conviction occurred. The board may
21 inquire into the circumstances surrounding the commission of the crime, in order to fix
22 the degree of discipline or, in the case of a conviction not involving controlled
23 substances or dangerous drugs, to determine if the conviction is of an offense
24 substantially related to the qualifications, functions, and duties of a licensee under this
25 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
26 contendere is deemed to be a conviction within the meaning of this provision. The
27 board may take action when the time for appeal has elapsed, or the judgment of
28 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.”

9 10. Section 4060 of the Code states:

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

1 Nothing in this section authorizes a certified nurse-midwife, a nurse
practitioner, a physician assistant, or a naturopathic doctor, to order his or her own
2 stock of dangerous drugs and devices.”

3 11. Health and Safety Code section 11350 states:

4 “(a) Except as otherwise provided in this division, every person who
possesses (1) any controlled substance specified in subdivision (b) or (c), or paragraph
5 (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of
subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section
6 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled
substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the
7 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
8 Section 1170 of the Penal Code.

9 (b) Except as otherwise provided in this division, every person who
possesses any controlled substance specified in subdivision (e) of Section 11054 shall
10 be punished by imprisonment in a county jail for not more than one year or pursuant to
subdivision (h) of Section 1170 of the Penal Code.

11 (c) Except as otherwise provided in this division, whenever a person who
possesses any of the controlled substances specified in subdivision (a) or (b), the judge
12 may, in addition to any punishment provided for pursuant to subdivision (a) or (b),
assess against that person a fine not to exceed seventy dollars (\$70) with proceeds of
13 this fine to be used in accordance with Section 1463.23 of the Penal Code. The court
shall, however, take into consideration the defendant's ability to pay, and no defendant
14 shall be denied probation because of his or her inability to pay the fine permitted under
this subdivision.

15 (d) Except in unusual cases in which it would not serve the interest of
16 justice to do so, whenever a court grants probation pursuant to a felony conviction
under this section, in addition to any other conditions of probation which may be
17 imposed, the following conditions of probation shall be ordered:

18 (1) For a first offense under this section, a fine of at least one thousand
dollars (\$1,000) or community service.

19 (2) For a second or subsequent offense under this section, a fine of at least
20 two thousand dollars (\$2,000) or community service.

21 (3) If a defendant does not have the ability to pay the minimum fines
22 specified in paragraphs (1) and (2), community service shall be ordered in lieu of the
fine.”

23 12. Health and Safety Code section 11351 states:

24 “Except as otherwise provided in this division, every person who
possesses for sale or purchases for purposes of sale (1) any controlled substance
25 specified in subdivision (b), (c), or (e) of Section 11054, specified in paragraph (14),
(15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c)
26 of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any
controlled substance classified in Schedule III, IV, or V which is a narcotic drug, shall
27 be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal
Code for two, three, or four years.”
28

1 **REGULATORY PROVISIONS**

2 13. California Code of Regulations, title 16, section 1704, states:

3 "Each person holding a certificate, license, permit, registration or
4 exemption to practice or engage in any activity in the State of California under any and
5 all laws administered by the Board shall file a proper and current residence address
6 with the Board at its office in Sacramento and shall within 30 days notify the Board at
7 its said office of any and all changes of residence address, giving both the old and new
8 address."

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

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

17 **COST RECOVERY**

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

22 **CONTROLLED SUBSTANCES/DANGEROUS DRUGS**

23 16. Norco is a Schedule III Controlled Substance pursuant to Health and Safety Code
24 section 11056, subdivision (e)(4) and is categorized as a dangerous drug pursuant to Business and
25 Professions Code section 4022.

26 17. Vicodin is a Schedule III Controlled Substance pursuant to Health and Safety Code
27 section 11056, subdivision (e)(4) and is categorized as a dangerous drug pursuant to Business and
28 Professions Code section 4022.

18 18. Xanax is a Schedule IV Controlled Substance pursuant to Health and Safety Code
19 section 11057, subdivision (d)(1) and is categorized as a dangerous drug pursuant to Business and
20 Professions Code section 4022.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Substantially Related Criminal Convictions)**

3 19. Respondent is subject to disciplinary action pursuant to section 4301, subdivision (l)
4 and section 490 of the Code in conjunction with California Code of Regulations, title 16, section
5 1770, in that Respondent was convicted of crimes substantially related to the qualifications,
6 functions or duties of a pharmacy technician, as follows:

7 20. On or about April 22, 2013, Respondent was convicted (upon a plea of guilty) of one
8 misdemeanor count of violating Vehicle Code section 23152(a) [driving under the influence of
9 alcohol or drugs] and one misdemeanor count of violating Vehicle Code section 23152,
10 subdivision (b) [driving while having 0.08% or more, by weight, of alcohol in her blood] in the
11 criminal proceeding entitled *The People of the State of California v. Carmen Levon Graham*
12 (Super. Ct. Riverside County, 2013, No. INM1301088). The Court sentenced Respondent to
13 serve one day in Riverside County Jail and placed her on 36 months probation, with terms and
14 conditions. The circumstances underlying the criminal conviction are that on or about January 6,
15 2013, California Highway Patrol Officers responded to a call regarding a traffic collision with
16 property damage. California Highway Patrol Officers observed Respondent display the objective
17 signs and symptoms of being under the influence. Respondent admitted to the California Highway
18 Patrol Officers that she had consumed two "Jeager Shots" prior to driving. After being placed
19 under arrest, Respondent took a breath test and the results were a 0.10% Blood Alcohol
20 Concentration ("BAC") and a 0.09% BAC.

21 21. On or about May 25, 2012, Respondent was convicted (upon a plea of guilty) of one
22 felony count of violating Penal Code section 487 (a) [grand theft by embezzlement] in the criminal
23 proceeding entitled *The People of the State of California v. Carmen Graham* (Super. Ct. San
24 Bernardino County, 2012, No. FSB1201529). The Court sentenced Respondent to serve 90 days
25 in San Bernardino County Jail and placed her on three years felony probation. The circumstances
26 underlying the conviction are that on or about March 15, 2012, while working as a pharmacy
27 technician at CVS, in Highland, California, Respondent was arrested by San Bernardino Sheriff's
28 Department Deputies after she was observed taking and concealing medication from the pharmacy.

1 The loss prevention manager at CVS detained Respondent and recovered a bottle of 100 pills of
2 Hydrocodone. Respondent told San Bernardino Sheriff's Department Deputies that she previously
3 stole Norco, Xanax and Vicodin from the pharmacy, that she took drugs from the pharmacy
4 approximately three to four times a week and that she sold the medications to three or four
5 different buyers.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Acts Involving Dishonesty, Fraud, or Deceit)**

8 22. Respondent is subject to disciplinary action under section 4301, subdivision (f) of the
9 Code in that, while employed as a pharmacy technician at CVS, in Highland, CA, Respondent
10 committed acts involving dishonesty, fraud, or deceit with the intent to substantially benefit herself,
11 or substantially injure another when she took medications from the pharmacy to sell. The conduct
12 is described in more particularity in paragraph 21 above, inclusive and hereby incorporated by
13 reference.

14 **THIRD CAUSE FOR DISCIPLINE**

15 **(Illegally Obtained or Possessed Controlled Substances)**

16 23. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the
17 Code, in conjunction with section 4060 of the Code and Health and Safety Code section 11350 in
18 that Respondent violated California statutes regulating controlled substances and dangerous drugs
19 when she illegally possessed Norco, Xanax and Vicodin. The conduct is described in more
20 particularity in paragraph 21 above, inclusive and hereby incorporated by reference.

21 **FOURTH CAUSE FOR DISCIPLINE**

22 **(Furnished Dangerous Drugs without a Valid Prescription)**

23 24. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the
24 Code, in conjunction with section 4059, subdivision (a) of the Code in that Respondent violated
25 California statutes regulating controlled substances and dangerous drugs when she furnished
26 dangerous drugs to buyers. The conduct is described in more particularity in paragraph 21 above,
27 inclusive and hereby incorporated by reference.

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FIFTH CAUSE FOR DISCIPLINE

(Possession for Sale or Giving Away of Controlled Substance)

25. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the Code, in conjunction with Health and Safety Code section 11351 in that Respondent possessed a narcotic Controlled Substance (Norco, Vicodin and Xanax) for sale. The conduct is described in more particularity in paragraph 21 above, inclusive and hereby incorporated by reference.

SIXTH CAUSE FOR DISCIPLINE

(Dangerous Use of Alcohol)

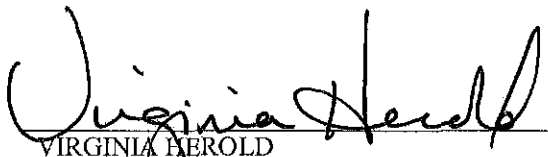
26. Respondent is subject to disciplinary action under section 4301, subdivision (h) of the Code on the grounds of unprofessional conduct in that Respondent used alcohol to an extent or in a manner dangerous or injurious to herself or others when she drove a vehicle while under the influence of alcohol. The conduct is described in more particularity in paragraph 20 above, inclusive and hereby incorporated by reference.

PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration No. TCH 112960, issued to Respondent;
2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 3/27/14


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

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