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

12 In the Matter of the Accusation Against:

Case No. 4931

13 **CARLY RENEE CASTLEBERRY**
14 **4134 Kimberly Lane**
Oceanside, CA 92056

A C C U S A T I O N

15 **Pharmacy Technician Registration No. TCH 77091**

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Virginia Herold (Complainant) brings this Accusation solely in her official
21 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

22 2. On July 30, 2007, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 77091 to Carly Renee Castleberry (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 December 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, subdivision (a), of the Code provides that every license issued by the
6 Board 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
9 license by operation of law or by order or decision of the board or a court of law,
10 the placement of a license on a retired status, or the voluntary surrender of a
11 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.

12 **STATUTORY PROVISIONS**

13 6. Section 482 of the Code states:

14 Each board under the provisions of this code shall develop criteria to
15 evaluate the rehabilitation of a person when:

16 (a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

17 Each board shall take into account all competent evidence of rehabilitation
18 furnished by the applicant or licensee.

19 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or
20 revoke a license on the ground that the licensee has been convicted of a crime substantially
21 related to the qualifications, functions, or duties of the business or profession for which the
22 license was issued.

23 8. Section 4301 of the Code states:

24 The board shall take action against any holder of a license who is guilty of
25 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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27 (f) The commission of any act involving moral turpitude, dishonesty,
28 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.

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

....

(l) 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.

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REGULATORY PROVISIONS

9. California Code of Regulations, title 16, section 1769, states:

....

(b) When considering the suspension or revocation of a facility or a personal license on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).

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1 (4) Whether the licensee has complied with all terms of parole,
2 probation, restitution or any other sanctions lawfully imposed against the licensee.

3 (5) Evidence, if any, of rehabilitation submitted by the licensee.

4 10. California Code of Regulations, title 16, section 1770, states:

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

12 **COST RECOVERY**

13 11. Section 125.3 of the Code provides, in pertinent part, that the Board may request
14 the administrative law judge to direct a licentiate found to have committed a violation or
15 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
16 and enforcement of the case, with failure of the licentiate to comply subjecting the license to not
17 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs
18 may be included in a stipulated settlement.

19 **DRUGS AT ISSUE**

20 12. Carisoprodol has been reclassified on December 12, 2011, when the Drug
21 Enforcement Agency ruled under the Controlled Substances Act that it is a Schedule IV
22 controlled substance effective January 12, 2012, and has since been defined as a dangerous drug
23 under Code section 4022.

24 13. Lorazepam is a Scheduled IV controlled substance as designated by Health and
25 Safety Code (HSC) section 11057, subdivision (d)(16) and is a dangerous drug under Code
26 section 4022.

27 14. Meprobamate is a Schedule IV controlled substance under HSC section 11057,
28 subdivision (d)(18) and is a dangerous drug as designated by Code section 4022.

15. Oxycodone is a Schedule II controlled substance as designated by Health and
Safety Code Section 11055(b)(1)(M) and is a dangerous drug pursuant to Code section 4022.

1 16. Trazodone is a dangerous drug pursuant to Code section 4022.

2 17. Zolpidem, is a Schedule IV controlled substance as designated by HSC section
3 11507(d)(32), and is a dangerous drug pursuant to Code section 4022.

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Unprofessional Conduct – Commission of Acts Involving Moral Turpitude, Dishonesty,
6 Fraud, Deceit, and Corruption)**

7 18. Respondent is subject to disciplinary action under Code section 4301, subdivision
8 (f) in that Respondent unlawfully stole, misappropriated, and fraudulently took the property and
9 labor of a merchant, an act involving moral turpitude, dishonesty, fraud, deceit, and corruption.

10 The circumstances are as follows:

11 a. On April 25, 2012, at a Walmart Department Store in Oceanside,
12 California, Respondent took items on display worth \$195.85 and did not pay for them. A store's
13 loss prevention officer made a citizen's arrest and contacted the Oceanside Police Department.
14 Respondent admitted to shoplifting the items to the responding police officer.

15 b. As a result of the shoplifting incident, a citation was issued against
16 Respondent. On July 16, 2012, in a criminal proceeding entitled *The People of the State of*
17 *California vs. Carly Renee Castleberry*, in San Diego County Superior Court, North County
18 Division, North County Regional Center, Case Number CN306932, Respondent pled guilty to
19 violating Penal Code (PC) sections 484 and 490.5, petty theft of retail merchandise, a
20 misdemeanor and PC section 490.1, an infraction, and deferred entry of judgment was granted
21 for 90 days subject to terms and conditions.

22 c. As a result of her completion of a ten-day Prader-Willi Syndrome and
23 Shoplifting Program, on February 11, 2013, Respondent was ordered to pay fines, fees, and
24 restitution. Respondent was also allowed to withdraw her guilty plea to the first count and the
25 charge for violating PC sections 484 and 490.5, was dismissed pursuant to a plea bargain.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(May 23, 2013 Criminal Conviction for Reckless Driving on January 27, 2013)**

3 19. Respondent has subjected her pharmacy technician registration to discipline under
4 Code sections 490 and 4301, subdivision (l), in that she was convicted of a crime that is
5 substantially related to the qualifications, functions, and duties of a registered pharmacy
6 technician. The circumstances are as follows:

7 a. On May 23, 2013, in a criminal proceeding entitled *The People of the*
8 *State of California vs. Carly Renee Castleberry*, in San Diego County Superior Court, North
9 County Division, North County Regional Center, Case Number CN316306, Respondent was
10 convicted on her plea of guilty of violating Vehicle Code (VC) 23103, subdivision (a), per VC
11 23103.5, reckless driving, a misdemeanor. A charge for violating VC section 23152, subdivision
12 (a), driving under the influence of alcohol (DUI), a misdemeanor, was dismissed pursuant to a
13 plea bargain.

14 b. As a result of the conviction, on May 23, 2013, Respondent was sentenced
15 to three years summary probation subject to standard alcohol terms and conditions and ordered to
16 pay a fine, fees, and penalty assessments. Respondent was ordered to attend and satisfactorily
17 complete the education component of a first offender alcohol and other drug education and
18 counseling program. Respondent was also ordered to render one day service under the Public
19 Service Program, with credit for one day actually served.

20 c. The facts that led to the conviction are that on January 27, 2013,
21 Respondent was driving a motor vehicle in Vista, California when her car hit a light post. A
22 responding officer from the San Diego County Sheriff's Department Vista Station immediately
23 noticed Respondent's bloodshot and watery eyes. Respondent denied having consumed any
24 alcoholic beverage but admitted to having taken prescription medication. Found in Respondent's
25 vehicle were her empty prescription bottles for oxycodone, trazodone, lorazepam, and zolpidem.
26 Respondent failed the series of field sobriety tests and was transported to the Vista Detention
27 Facility, where she consented to a blood draw. Respondent's blood test results indicated a BAC
28 of 0.00 percent but positive for benzodiazepines. An analyst at Bio-Tox Laboratories reported

1 that Respondent's blood test detected the presence of 52 ng per mL of lorazepam, 22.4 mg per L
2 of meprobamate, 103 ng per mL of oxycodone, 73 ng per mL of trazodone, and less than 0.5 mg
3 per L of carisoprodol. Respondent tested negative for zolpidem.

4 **THIRD CAUSE FOR DISCIPLINE**

5 **(Unprofessional Conduct - Dangerous Use of Alcohol)**

6 20. Respondent subjected her pharmacy technician registration to discipline under
7 Code section 4301, subdivision (h) in that on January 27, 2013, she used controlled substances
8 and dangerous drugs to the extent and in a manner that was dangerous and injurious to herself
9 and to the public, as detailed in paragraph 19, above.

10 **PRAYER**

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

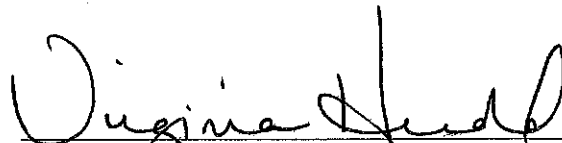
13 1. Revoking or suspending Pharmacy Technician Registration Number TCH 77091,
14 issued to Carly Renee Castleberry;

15 2. Ordering Carly Renee Castleberry to pay the Board of Pharmacy the reasonable
16 costs of the investigation and enforcement of this case, pursuant to Business and Professions
17 Code section 125.3;

18 3. Taking such other and further action as deemed necessary and proper.
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22 DATED: _____

3/15/14



23 VIRGINIA HEROLD
24 Executive Officer
25 Board of Pharmacy
26 Department of Consumer Affairs
27 State of California
28 Complainant

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