

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 State Bar No. 101336
AMANDA DODDS
4 Senior Legal Analyst
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2141
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 5039

13 **AUDREY TRUJILLO**
2505 Crown Way
14 Fullerton, CA 92833

A C C U S A T I O N

15 **Pharmacy Technician Registration**
16 **No. TCH 98651**

17 Respondent.

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 February 18, 2010, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 98651 to Audrey Trujillo (Respondent). The Pharmacy Technician
24 Registration expired on March 31, 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 (Code) unless otherwise indicated.

1 4. Section 4300, subdivision (a) of the Code states "Every license issued may be
2 suspended or revoked."

3 5. Section 4300.1 of the Code states:

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

8 STATUTORY REFERENCES

9 6. Section 482 of the Code states:

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

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

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

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

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

20 8. Section 493 of the Code states:

21 Notwithstanding any other provision of law, in a proceeding conducted by a board
22 within the department pursuant to law to deny an application for a license or to suspend
23 or revoke a license or otherwise take disciplinary action against a person who holds a
24 license, upon the ground that the applicant or the licensee has been convicted of a crime
25 substantially related to the qualifications, functions, and duties of the licensee in
26 question, the record of conviction of the crime shall be conclusive evidence of the fact
27 that the conviction occurred, but only of that fact, and the board may inquire into the
28 circumstances surrounding the commission of the crime in order to fix the degree of
discipline or to determine if the conviction is substantially related to the qualifications,
functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and
"registration."

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1 9. Section 4022 of the Code states

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

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

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

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

12 10. Section 4059 of the Code provides, in pertinent part, that a person may not furnish
13 any dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,
14 veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any
15 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist,
16 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

17 11. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
18 controlled substance, except that furnished to a person upon the prescription of a physician,
19 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

20 12. Section 4301 of the Code states:

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

25

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

29

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

32

33 (l) The conviction of a crime substantially related to the qualifications, functions,
34 and duties of a licensee under this chapter. The record of conviction of a violation of
35 Chapter 13 (commencing with Section 801) of Title 21 of the United States Code

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

9

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

13

14 (q) Engaging in any conduct that subverts or attempts to subvert an investigation
15 of the board.

15

16 13. Health and Safety Code section 11350, subdivision (a) states:

17 Except as otherwise provided in this division, every person who possesses (1) any
18 controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision
19 (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of
20 Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in
21 subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule
22 III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician,
23 dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by
24 imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code.

22 14. Health and Safety Code section 11351 states:

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

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1 15. United States Code, title 21, section 843, subdivision (a)(3) states "It shall be
2 unlawful for any person knowingly or intentionally – to acquire or obtain possession of a
3 controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge."

4 **REGULATORY PROVISIONS**

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

6

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

11 (1) Nature and severity of the act(s) or offense(s).

12 (2) Total criminal record.

13 (3) The time that has elapsed since commission of the act(s) or offense(s).

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

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

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

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

25 **COSTS**

26 18. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
27 administrative law judge to direct a licentiate found to have committed a violation or violations of
28 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 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs
may be included in a stipulated settlement.

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1 **DRUG**

2 19. Hydrocodone bitartate with acetaminophen (hydrocodone/APAP), sold commercially
3 under various brand names such as Vicodin and Norco, is a Schedule III controlled substance as
4 designated by Health and Safety Code section 11056(e)(4), and is a dangerous drug pursuant to
5 Business and Professions Code section 4022.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(July 29, 2013 Criminal Conviction for Grand Theft by Embezzlement)**

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

11 a. On or about July 29, 2013, in a criminal proceeding entitled *People of the State*
12 *of California v. Audrey Trujillo*, in Los Angeles County Superior Court, case number VA127096,
13 Respondent was convicted on her plea of no contest to violating Penal Code section 487,
14 subdivision (a), grand theft by embezzlement, a felony.

15 b. As a result of the conviction, on or about November 1, 2013, Respondent was
16 granted three years formal probation, and sentenced to serve one day in jail, with credit for one
17 day. Respondent was further ordered to pay fees and fines, plus restitution to CVS Pharmacy,
18 and comply with felony probation terms.

19 c. The facts that led to the conviction are that on or about July 2, 2012, a CVS
20 Pharmacy Loss Prevention Manager contacted the Los Angeles County Sheriff's Department to
21 report employee theft of hydrocodone/APAP from their La Mirada pharmacy. The pharmacy had
22 identified losses of hydrocodone/APAP in previous months' audits going back to November
23 2011. After installing covert cameras, Respondent was observed on video surveillance stealing a
24 bottle of hydrocodone/APAP 10-325 from their pharmacy while on duty. When confronted by
25 loss prevention at the start of her July 2, 2013 shift, Respondent admitted she had been stealing
26 bottles of hydrocodone/APAP for the previous six months. Respondent stated that during her
27 shift, she would put new and used bottles of hydrocodone/APAP in a designated container for
28 recycled medications, then take the container to the restroom, retrieve the bottles, and place them

1 in her lab coat pocket. Respondent stated she stole the medications to pay for her daughter's day
2 care. Respondent estimated stealing approximately 16 bottles of 500 count hydrocodone/APAP.
3 CVS estimated that Respondent removed a total of 8,000 tablets of hydrocodone/APAP from the
4 pharmacy at a cost of \$5,396.48. Respondent was arrested and charged with grand theft. In a
5 subsequent investigation by the Board, Respondent refused to respond to the investigator's
6 written requests mailed to Respondent's address of record, dated April 12, 2013 and August 5,
7 2013, to either conduct an interview, or to provide answers to a questionnaire.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Commission of Acts Involving Dishonesty, Fraud, Deceit & Corruption)**

10 21. Respondent has subjected her registration to discipline under section 4301,
11 subdivision (f) of the Code for unprofessional conduct in that on or between November 1, 2011
12 and July 2, 2012, Respondent stole controlled substances and dangerous drugs from her
13 employer/pharmacy using fraud, deceit, and dishonesty, as described in paragraph 20, above.

14 **THIRD CAUSE FOR DISCIPLINE**

15 **(Violation of California Statutes Regulating Controlled Substances)**

16 22. Respondent has subjected her registration to discipline under section 4301,
17 subdivision (j) of the Code for unprofessional conduct in that on or between November 1, 2011
18 and July 2, 2012, Respondent knowingly violated Business and Professions Code sections 4059
19 and 4060; and Health and Safety Code sections 11350 and 11351, as described in paragraph 20,
20 above.

21 **FOURTH CAUSE FOR DISCIPLINE**

22 **(Violating Federal & State Laws & Regulations Governing Pharmacy)**

23 23. Respondent has subjected her registration to discipline under section 4301,
24 subdivision (o) of the Code for unprofessional conduct in that on or between November 1, 2010
25 and July 2, 2012, Respondent violated Title 21 U.S.C. section 843, subdivision (a)(3), Board of
26 Pharmacy Regulations (California Code of Regulations, Title 16, Section 1700, et seq.), and the
27 California Uniform Controlled Substances Act (Health and Safety Code 11000, et seq.), when she
28 obtained controlled substances using fraud and deceit, as described in paragraph 20, above.

1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Attempting to Subvert an Investigation of the Board)**

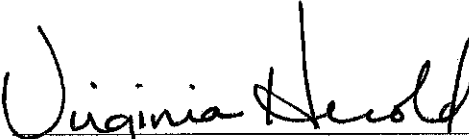
3 24. Respondent has subjected her registration to discipline under section 4301,
4 subdivision (q) of the Code for unprofessional conduct in that Respondent failed to respond to
5 two written inquiries made by a Board investigator, on or about April 12, 2013 and August 5,
6 2013, as described in paragraph 20, above.

7 **PRAYER**

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

- 10 1. Revoking or suspending Pharmacy Technician Registration Number TCH 98651,
11 issued to Audrey Trujillo;
- 12 2. Ordering Audrey Trujillo to pay the Board of Pharmacy the reasonable costs of the
13 investigation and enforcement of this case, pursuant to Business and Professions Code section
14 125.3;
- 15 3. Taking such other and further action as deemed necessary and proper.
- 16
- 17

18 DATED: 4/8/14



19 VIRGINIA HEROLD
20 Executive Officer
21 Board of Pharmacy
22 Department of Consumer Affairs
23 State of California
24 *Complainant*

25 SD2013706379

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