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7 *Attorneys for Complainant*

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

11 In the Matter of the First Amended Accusation
Against:

12 **NOEMI ACEVEDO**
13 14900 Arrow Blvd., #1
Fontana, CA 92335

14 Pharmacy Technician Registration No. TCH 81339
15 Respondent.

Case No. 5099

**FIRST AMENDED
ACCUSATION**

17 Complainant alleges:

18 **PARTIES**

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

22 2. On or about March 20, 2008, the Board issued Pharmacy Technician Registration No.
23 TCH 81339 to Noemi Acevedo (Respondent). The Pharmacy Technician Registration was in full
24 force and effect at all times relevant to the charges brought herein and will expire on September
25 30, 2015, unless renewed.

26 **JURISDICTION**

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 unless otherwise indicated.

1 **STATUTORY PROVISIONS**

2 4. Section 490 states, in pertinent part:

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

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

11 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
12 conviction following a plea of nolo contendere. Any action that a board is permitted to take
13 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
14 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
15 made suspending the imposition of sentence, irrespective of a subsequent order under the
16 provisions of Section 1203.4 of the Penal Code."

17 5. Section 4060 provides in pertinent part, that no person shall possess any controlled
18 substance, except that furnished to a person upon the prescription of a physician, dentist,
19 podiatrist, optometrist, veterinarian, or other authorized prescriber.

20 6. Section 4300 provides in pertinent part, that every license issued by the Boards is
21 subject to discipline, including suspension or revocation.

22 7. Section 4300.1 states:

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

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1 8. Section 4301 states, in pertinent part:

2 "The board shall take action against any holder of a license who is guilty of unprofessional
3 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

4 Unprofessional conduct shall include, but is not limited to, any of the following:

5

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

9

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

12

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

1 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
2 indictment.”

3

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

8 **REGULATORY PROVISIONS**

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

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

16 **COST RECOVERY**

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

21 **CONTROLLED SUBSTANCES/DANGEROUS DRUGS**

22 11. "Hydrocodone", with trade names of Lortab, Norco and Vicodin, are Schedule III
23 controlled substances pursuant to Health and Safety Code section 11056(e)(4), and are
24 categorized as dangerous drugs pursuant to section 4022.

25 12. "Methamphetamine" is a Schedule II controlled substance as designated by the Health
26 and Safety Code section 11055, subdivision (d)(2) and is categorized as a dangerous drug
27 pursuant to section 4022.

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1 **FIRST CAUSE FOR DISCIPLINE**

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

3 13. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and
4 490, in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent
5 was convicted of a crime substantially related to the qualifications, functions or duties of a
6 pharmacy technician. On or about May 6, 2015, after pleading nolo contendere, Respondent was
7 convicted of one misdemeanor count of violating Penal Code section 487, subdivision (a) [grand
8 theft of personal property, in the criminal proceeding entitled *The People of the State of California*
9 *v. Noemi Acevedo Guerra aka Noemi Acevedo* (Super. Ct. San Bernardino County, 2015, No.
10 FWV1404971). The Court sentenced Respondent to serve fifteen (15) days in San Bernardino
11 County Jail, with one (1) day credit for time already served, and placed her on three (3) years'
12 probation, with terms and conditions. The circumstances surrounding the conviction are that
13 between October 31, 2014 and November 5, 2014, Respondent stole approximately fourteen
14 thousand (14,000) Norco (Hydrocodone/APAP 10-325) tablets from St. Mina Pharmacy in
15 Fontana, CA, while employed there as a pharmacy technician.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Illegal Possession of a Controlled Substance)**

18 14. Respondent is subject to disciplinary action under section 4301, subdivisions (j) and
19 (o), for violating section 4060, in that Respondent was found to be in illegal possession of a
20 controlled substance, as follows:

21 a. On or about August 22, 2013, the Fontana Police Department was conducting
22 narcotics surveillance on a residence suspected of being involved in narcotics trafficking. The
23 officer observed a male suspect exit the residence and drive to the parking lot of a Carl's Jr.
24 restaurant. A few minutes later, Respondent arrived and parked next to the male suspect's vehicle.
25 The officer then observed Respondent handing money to the male suspect and in return, the male
26 suspect handed Respondent a small white plastic bindle. Once the male subject left the location,
27 Respondent was contacted by the officer. When asked if she had anything illegal in her vehicle,
28 Respondent admitted that she had just purchased Methamphetamine. Respondent then reached

1 into the center console of her vehicle and subsequently handed the officer a white plastic bindle.
2 The bindle contained a white crystalline substance consistent with the appearance of
3 Methamphetamine. The arresting officer later tested the substance, which was confirmed to be
4 consistent with Amphetamine.

5 **THIRD CAUSE FOR DISCIPLINE**

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

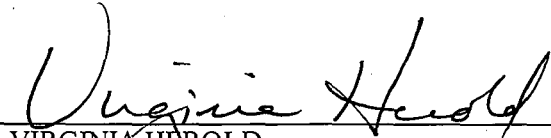
7 15. Respondent is subject to disciplinary action under section 4301, subdivision (f), in that
8 Respondent committed acts involving dishonesty, fraud, or deceit. Complainant refers to, and by
9 reference incorporates, the allegations set forth above in paragraph 13 as though set forth fully.

10 **PRAYER**

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

- 13 1. Revoking or suspending Pharmacy Technician Registration No. TCH 81339, issued to
14 Noemi Acevedo;
- 15 2. Ordering Noemi Acevedo to pay the Board the reasonable costs of the investigation
16 and enforcement of this case, pursuant to section 125.3; and
- 17 3. Taking such other and further action as deemed necessary and proper.

18
19 DATED: 6/10/15


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

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2 GREGORY J. SALUTE
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12 **NOEMI ACEVEDO**
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13 Fontana, CA 92335

A C C U S A T I O N

14 Pharmacy Technician Registration
15 No. TCH 81339

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

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21 the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board).

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5 4. Section 4060 provides in pertinent part, that no person shall possess any controlled
6 substance, except that furnished to a person upon the prescription of a physician, dentist,
7 podiatrist, optometrist, veterinarian, or other authorized prescriber.

8 5. Section 4300 provides in pertinent part, that every license issued by the Boards is
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12 of law or by order or decision of the board or a court of law, the placement of a license on a
13 retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of
14 jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding
15 against, the licensee or to render a decision suspending or revoking the license."

16 7. Section 4301 states, in pertinent part:

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

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

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

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

9 **COST RECOVERY**

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

14 **CONTROLLED SUBSTANCE/DANGEROUS DRUG**

15 10. "Methamphetamine," is a Schedule II controlled substance as designated by the Health
16 and Safety Code section 11055, subdivision (d)(2) and is categorized as a dangerous drug
17 pursuant to section 4022.

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(Illegal Possession of a Controlled Substance)**

20 10. Respondent is subject to disciplinary action under section 4301, subdivision (j) for
21 violating section 4060, in that Respondent was found to be in illegal possession of a controlled
22 substance, as follows:

23 a. On or about August 22, 2013, the Fontana Police Department was conducting
24 narcotics surveillance on a residence suspected of being involved in narcotics trafficking. The
25 officer observed a male suspect exit the residence and drive to the parking lot of a Carl's Jr.
26 restaurant. A few minutes later, Respondent arrived and parked next to the male suspect's vehicle.
27 The officer then observed Respondent handing money to the male suspect and in return, the male
28 suspect handed Respondent a small white plastic bindle. Once the male subject left the location,

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4 The bindle contained a white crystalline substance consistent with the appearance of
5 Methamphetamine. The arresting officer later tested the substance, which was confirmed to be
6 consistent with Amphetamine.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Unprofessional Conduct/ Violation of Licensing Chapter)**

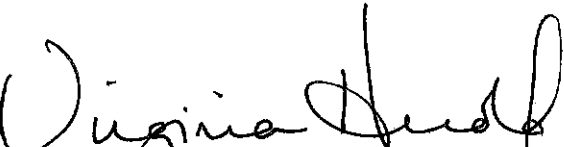
9 11. Respondent is subject to disciplinary action under section 4301, subdivision (o), in that
10 Respondent committed acts of unprofessional conduct and/or violated provisions of the licensing
11 chapter. Complainant refers to, and by this reference incorporates, the allegations set forth above
12 in paragraph 10, as though set forth fully.

13 **PRAYER**

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

- 16 1. Revoking or suspending Pharmacy Technician Registration No. TCH 81339, issued to
17 Noemi Acevedo;
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21
22
23 DATED: 6/14/14



VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
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State of California
Complainant

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