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

12 In the Matter of the Accusation Against:

Case No. 5101

13 **SELENA A. ALMAGUER**
14 **9188 Walker Court**
15 **Reedley, California 93654**

ACCUSATION

16 **Pharmacy Technician Registration No. TCH 18352**

Respondent.

17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about February 1, 1996, the Board issued Pharmacy Technician Registration
22 Number TCH 18352 to Selena A. Almaguer ("Respondent"). The pharmacy technician
23 registration expired on October 31, 2013 and was canceled on February 2, 2014.

24 **JURISDICTION**

25 3. This Accusation is brought before the Board under the authority of the following
26 laws. All section references are to the Business and Professions Code unless otherwise indicated.

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1 STATUTORY PROVISIONS

2 4. Code section 4300 states, in pertinent part:

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

4 (b) The board shall discipline the holder of any license issued by the
5 board, whose default has been entered or whose case has been heard by the board and
6 found guilty, by any of the following methods:

7 (1) Suspending judgment.

8 (2) Placing him or her upon probation.

9 (3) Suspending his or her right to practice for a period not exceeding one
10 year.

11 (4) Revoking his or her license.

12 (5) Taking any other action in relation to disciplining him or her as the
13 board in its discretion may deem proper . . .

14 5. Code section 4300.1 states:

15 The expiration, cancellation, forfeiture, or suspension of a board-issued
16 license by operation of law or by order or decision of the board or a court of law, the
17 placement of a license on a retired status, or the voluntary surrender of a license by a
18 licensee shall not deprive the board of jurisdiction to commence or proceed with any
19 investigation of, or action or disciplinary proceeding against, the licensee or to render
20 a decision suspending or revoking the license.

21 6. Code section 4301 states, in pertinent part:

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

26

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
29 a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

30

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

36

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

2

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

6 7. Code section 4060 states, in pertinent part:

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

12 8. Health and Safety Code section 11170 states that "[n]o person shall prescribe,
13 administer, or furnish a controlled substance for himself."

14 9. Health and Safety Code section 11173, subdivision (a), states, in pertinent part, that
15 "[n]o person shall obtain or attempt to obtain controlled substances, or procure or attempt to
16 procure the administration of or prescription for controlled substances, (1) by fraud, deceit,
17 misrepresentation, or subterfuge . . ."

18 10. Health and Safety Code section 11350, subdivision (a), states:

19 Except as otherwise provided in this division, every person who possesses
20 (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of
subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of
21 subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section
11055, or specified in subdivision (h) of Section 11056, or (2) any controlled
22 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
23 practice in this state, shall be punished by imprisonment pursuant to subdivision (h)
of Section 1170 of the Penal Code.

24 **COST RECOVERY**

25 11. Code section 125.3 provides, in pertinent part, that a Board may request the
26 administrative law judge to direct a licentiate found to have committed a violation or violations of
27 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
28 enforcement of the case.

1 **CONTROLLED SUBSTANCE**

2 12. "Norco" is a compound consisting of 7.5 mg hydrocodone bitartrate and 325 mg
3 acetaminophen per tablet. At the time of the incidents described below, Norco was classified as a
4 Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision
5 (e)(4).¹

6 **BACKGROUND**

7 13. At all times relevant to the charges brought herein, Respondent was employed as a
8 pharmacy technician at CVS/Pharmacy #9377 located on West Manning Avenue in Reedley,
9 California.

10 14. On or about February 15, 2013, J. J., Regional Loss Prevention Manager for CVS,
11 notified the Board that he conducted an investigation at Store #9377 after receiving an exception
12 based report indicating a potential discrepancy of hydrocodone/APAP 7.5-325. An audit was
13 conducted at the pharmacy for the period of April 30, 2011, to the current inventory, revealing a
14 loss of 1,004 tablets of hydrocodone/APAP 7.5-325 mg. An additional audit was conducted on
15 December 27, 2012, indicating an additional loss of 138 tablets. On or about January 16, 2013,
16 J. J. conducted interviews of pharmacy personnel, including Respondent. J. J. provided the Board
17 with a copy of a statement, signed by Respondent, admitting that from mid October through mid
18 December 2012, she took or stole hydrocodone 7.5-325 mg from the pharmacy. Respondent
19 would grab the hydrocodone off of the shelf, open the bottle, and put the medication (tablets) into
20 her pocket. Respondent estimated that she took a total of 300 tablets of hydrocodone over the
21 above period of time. Respondent also admitted that she took the hydrocodone for her own
22 personal use to help relieve job stress, and did not have a prescription for the medication.

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27 ¹ Hydrocodone has been rescheduled by the United States Drug Enforcement
28 Administration from a Schedule III to Schedule II controlled substance via the Controlled
Substances Act (21 CFR Part 1308 § 1308.12; 21 U.S.C. 812 (c).

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

3 15. Respondent is subject to disciplinary action pursuant to Code section 4301,
4 subdivision (f), for unprofessional conduct, in that while on duty as a pharmacy technician at
5 CVS/Pharmacy #9377, Respondent committed acts involving moral turpitude, dishonesty, fraud,
6 deceit, or corruption, as follows: In and between October 2012 and December 2012, Respondent
7 stole or diverted over 300 tablets of the controlled substance Norco from the pharmacy for self-
8 administration, as set forth in paragraph 14 above.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Self-Administration of a Controlled Substance)**

11 16. Respondent is subject to disciplinary action pursuant to Code section 4301,
12 subdivision (h), for unprofessional conduct, in that in and between October 2012 and December
13 2012, while employed and/or on duty as a pharmacy technician at CVS/Pharmacy #9377,
14 Respondent self-administered the controlled substance Norco without a valid or lawful
15 prescription for the medication, as set forth in paragraph 14 above.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Violations of State Laws Regulating Controlled Substances)**

18 17. Respondent is subject to disciplinary action pursuant to Code section 4301,
19 subdivision (j), for unprofessional conduct, in that in and between October 2012 and December
20 2012, while on duty as a pharmacy technician at CVS/Pharmacy #9377, Respondent possessed
21 the controlled substance Norco without a valid or lawful prescription for the medication, as set
22 forth in paragraph 14 above, in violation of Code section 4060 and/or Health and Safety Code
23 section 11350, subdivision (a).

24 **FOURTH CAUSE FOR DENIAL**

25 **(Violations of the Pharmacy Law)**

26 18. Respondent is subject to disciplinary action pursuant to Code section 4301,
27 subdivision (o), for unprofessional conduct, in that in and between October 2012 and December
28 2012, while employed and/or on duty as a pharmacy technician at CVS/Pharmacy #9377,

1 Respondent violated or attempted to violate, directly or indirectly, a provision or term of the
2 Pharmacy Law (Bus. & Prof. Code § 4300, et seq.), specifically, Code section 4060, as set forth
3 above.

4 **PRAYER**

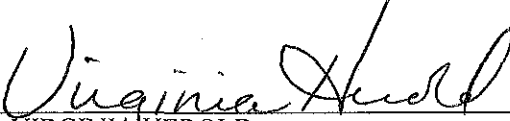
5 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
6 and that following the hearing, the Board of Pharmacy issue a decision:

7 1. Revoking or suspending Pharmacy Technician Registration Number TCH 18352,
8 issued to Selena A. Almaguer;

9 2. Ordering Selena A. Almaguer to pay the Board of Pharmacy the reasonable costs of
10 the investigation and enforcement of this case, pursuant to Business and Professions Code section
11 125.3;

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

13
14 DATED: 11/30/15


15 VIRGINIA HEROLD
16 Executive Officer
17 Board of Pharmacy
18 Department of Consumer Affairs
19 State of California
20 Complainant

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