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

12 In the Matter of the Accusation Against:

Case No. 5103

13 **MARIA T. FIERRO**
723 Estancia
14 Irvine, CA 92602

A C C U S A T I O N

15 **Pharmacy Technician Registration No.**
16 **TCH 36961**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about May 2, 2001, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 36961 to Maria T. Fierro (Respondent). The Pharmacy Technician
25 Registration was in full force and effect at all times relevant to the charges brought herein. The
26 license expired on November 30, 2014, and has not been 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 (Code) unless otherwise indicated.

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

7 5. Section 4300.1 of the Code states:

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

14 **STATUTORY PROVISIONS**

15 6. Section 482 of the Code states:

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

- 18 (a) Considering the denial of a license by the board under Section 480; or
- 19 (b) Considering suspension or revocation of a license under Section 490.

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

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

26 8. Section 493 of the Code states:

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

1 discipline or to determine if the conviction is substantially related to the qualifications,
2 functions, and duties of the licensee in question.

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

5 9. Section 4301 of the Code states:

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

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

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

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18 (l) The conviction of a crime substantially related to the qualifications, functions,
19 and duties of a licensee under this chapter. The record of conviction of a violation of
20 Chapter 13 (commencing with Section 801) of Title 21 of the United States Code
21 regulating controlled substances or of a violation of the statutes of this state regulating
22 controlled substances or dangerous drugs shall be conclusive evidence of unprofessional
23 conduct. In all other cases, the record of conviction shall be conclusive evidence only of
24 the fact that the conviction occurred. The board may inquire into the circumstances
25 surrounding the commission of the crime, in order to fix the degree of discipline or, in the
26 case of a conviction not involving controlled substances or dangerous drugs, to determine
27 if the conviction is of an offense substantially related to the qualifications, functions, and
28 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.

. . . .

10. Section 4022 of the Code states

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

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing

1 without prescription, " Rx only," or words of similar import.

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

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

8 11. Section 4060 of the Code states:

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

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

25 12. United States Code, title 21, section 843 states, in pertinent part:

26 (a) It shall be unlawful for any person knowingly or intentionally --

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28 (3) to acquire or obtain possession of a controlled substance by
misrepresentation, fraud, forgery, deception, or subterfuge;

. . . .

REGULATORY PROVISIONS

13. 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.

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

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

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

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

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

COSTS

15. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of 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.

DRUG

16. Hydrocodone bitartate/acetaminophen (APAP), sold under the brand name Norco, is a Schedule III controlled substance as designated by Health and Safety Code section 11056, subdivision (e)(4), and is a dangerous drug pursuant to Business and Professions Code section 4022.

FIRST CAUSE FOR DISCIPLINE

(May 1, 2015 Criminal Conviction for Prescription Drug Fraud)

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

- a. On or about May 1, 2015, in a criminal proceeding entitled *People of the State of California v. Maria Fierro*, in Riverside County Superior Court, case number RIM1309748,

1 Respondent was convicted on her plea of guilty to violating Health and Safety Code section
2 11173, subdivision (a), obtain and attempt to obtain, and procure and attempt to procure, the
3 administration of and prescription for a controlled substance, to wit: Hydrocodone. After a bench
4 warrant for failure to appear on or about April 9, 2015, Respondent entered into a plea agreement
5 whereby the court dismissed the additional count of Penal Code section 1320, subdivision (a) for
6 failing to appear.

7 b. As a result of the conviction, Respondent was granted summary probation for 36
8 months. She was further ordered to be committed to the custody of the Riverside County Sheriff
9 for 10 days, serve an additional 10 day in the work release program, pay fees, fines and restitution,
10 and comply with the terms of probation, which included submission to immediate search.

11 c. The facts and circumstances surrounding the conviction are as follows:

12 Respondent, while employed at Rite Aid as a Pharmacy Technician, diverted
13 hydrocodone/APAP 10-325 from her employer, on or between September 2012 and January 2013.
14 Respondent willfully and unlawfully obtained and attempted to obtain, and procured and attempted
15 to procure the administration of and prescription for the controlled substance hydrocodone, by
16 fraud, deceit, misrepresentation, and subterfuge, and by the concealment of a material fact.

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Commission of Acts Involving Dishonesty, Fraud and Deceit)**

19 18. Respondent has subjected her registration to discipline under section 4301, subdivision
20 (f) of the Code for unprofessional conduct, in that on or between September 2012 and January
21 2013, Respondent committed acts involving dishonesty, fraud, and deceit, when she stole
22 hydrocodone pills from her employer, Rite Aide Pharmacy, while employed as a pharmacy
23 technician, as set forth in paragraph 17 above, which is hereby incorporated by reference.

24 **PRAYER**

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

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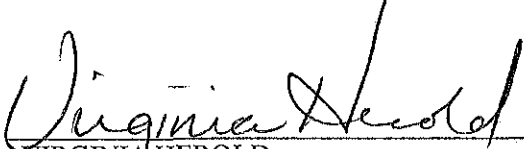
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1. Revoking or suspending Pharmacy Technician Registration Number TCH 36961, issued to Maria T. Fierro;

2. Ordering Maria T. Fierro to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 11/30/15


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

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