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

11 In the Matter of the Accusation Against:

Case No. 5109

12 **JANETH J. BALIAN-MACHAIN**  
13 **184 Palm Avenue, # 108**  
14 **Marina, CA 93933**

**ACCUSATION**

15 **Pharmacy Technician Registration No. TCH**  
16 **66212**

Respondent.

17  
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 December 19, 2005, the Board of Pharmacy issued Pharmacy Technician  
23 Registration Number TCH 66212 to Janeth J. Balian-Machain (Respondent). The Pharmacy  
24 Technician 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 unless otherwise indicated.

1           4. Section 4011 of the Code provides that the Board shall administer and enforce both  
2 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances  
3 Act [Health & Safety Code, § 11000 et seq.].

4           5. Section 4300 of the Code states, in relevant part:

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

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

9           "(1) Suspending judgment.

10           "(2) Placing him or her upon probation.

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

12           "(4) Revoking his or her license.

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

15           ...

16           "(e) The proceedings under this article shall be conducted in accordance with Chapter 5  
17 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board  
18 shall have all the powers granted therein. The action shall be final, except that the propriety of the  
19 action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil  
20 Procedure."

21           6. Section 4300.1 of the Code states:

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

27           ///

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1 STATUTORY PROVISIONS

2 7. Section 4301 of the Code states, in relevant part:

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

6 ...

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

10 ...

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

16 ...

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

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

23 8. Section 4059 of the Code states, in relevant part:

24 "(a) A person may not furnish any dangerous drug, except upon the prescription of a  
25 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section  
26 3640.7. A person may not furnish any dangerous device, except upon the prescription of a  
27 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section  
28 3640.7."

1           9.     Section 4060 of the Code states:

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

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

16           10.    Section 4115, subdivision (e), of the Code states:

17            "(e) No person shall act as a pharmacy technician without first being licensed by the board as  
18 a pharmacy technician."

19           11.    Section 4022 of the Code states

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

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

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

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

1 DRUG STATUTES

2 12. Hydrocodone/Acetaminophen is a Schedule III controlled substance as designated by  
3 Health and Safety Code section 11056, subdivision (e)(4), and a dangerous drug as designated by  
4 Business and Professions Code section 4022. Hydrocodone is a pain medication and is combined  
5 with Acetaminophen. Norco is a brand name of the controlled substance, Hydrocodone.

6 COST RECOVERY

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

13 FACTUAL BACKGROUND

14 14. Respondent worked as a pharmacy technician at various Safeway Pharmacies from on  
15 or about October 1, 2012, until on or about May 20, 2013. On May 3, 2013, Respondent stole 58  
16 dosage units of hydrocodone/acetaminophen 10/325 mg from Safeway Pharmacy # 761 in Pacific  
17 Grove, California while she was working as a pharmacy technician.

18 15. On or about May 7, 2013, Pacific Grove Safeway Pharmacy conducted an annual  
19 audit of controlled inventory. The audit revealed 58 dosages of hydrocodone/acetaminophen  
20 10/325 mg were missing. A review of security video taken on May 3, 2014 at the pharmacy led  
21 Safeway officials to suspect that Respondent took the missing pills. On May 14, 2013, a Safeway  
22 loss prevention investigator and another Safeway employee interviewed Respondent at a Safeway  
23 Pharmacy in Santa Cruz<sup>1</sup> regarding the missing drugs. At that time, Respondent admitted to  
24 stealing an unknown amount of generic Norco 10/325 mg from a bottle at the Safeway pharmacy  
25 in Pacific Grove. Respondent wrote and signed a statement in which she admitted to taking the  
26 pills and explained that she took the pills because she suffered an injury while working a second

27 \_\_\_\_\_  
28 <sup>1</sup> Respondent was working at the Safeway Pharmacy in Santa Cruz on May 14, 2013.

1 job and did not have medical insurance. In the statement, she further explained she used the pills  
2 for her injury and for her father who is suffering from kidney failure and Hepatitis C. Respondent  
3 also signed a promissory note on May 14, 2013, in which she promised to pay Safeway \$36.49,  
4 the costs of the missing medication. Respondent paid the \$36.49 that same day. Respondent was  
5 terminated from Safeway on May 20, 2013.

6 **FIRST CAUSE FOR DISCIPLINE**  
7 **(Unprofessional Conduct--Act of Dishonesty, Fraud, or Deceit)**  
8 **(Bus & Prof. Code § 4301, subd. (f))**

9 16. Respondent has subjected her Pharmacy Technician Registration to disciplinary  
10 action under Code section 4301, subdivision (f), in that she stole prescription drugs from Safeway  
11 Pharmacy, her employer. The circumstances are explained more fully in paragraphs 14 and 15,  
12 above.

13 **SECOND CAUSE FOR DISCIPLINE**  
14 **(Possession of Controlled Substance without a Prescription)**  
15 **(Bus. & Prof. Code, §§ 4301, subd. (j))**

16 17. Respondent has subjected her Pharmacy Technician Registration to disciplinary  
17 action under Code section 4301, subdivision (j), in that she illegally possessed a controlled  
18 substance without a prescription. By doing so, she violated numerous state and federal statutes  
19 regarding controlled substances including Business and Professions Code section 4060. The  
20 circumstances are explained more fully in paragraphs 14 and 15, above.

21 **THIRD CAUSE FOR DISCIPLINE**  
22 **(Furnishing Dangerous Drugs without a Prescription)**  
23 **(Bus. & Prof Code, §§ 4301, subd. (o), & 4059, subd. (a))**

24 18. Respondent has subjected her Pharmacy Technician Registration to disciplinary  
25 action under Code section 4301, subdivision (o), in that she violated section 4059, subdivision  
26 (a), when she furnished controlled substances and dangerous drugs to a person, her father, without  
27 a prescription. The circumstances are explained in paragraphs 14 and 15, above.

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1 **FOURTH CAUSE FOR DISCIPLINE**  
2 **(Self-Administration of Controlled Substance)**  
3 **(Bus. & Prof. Code, § 4301, subd. (h))**

4 19. Respondent has subjected her Pharmacy Technician Registration to disciplinary  
5 action under Code section 4301, subdivision (h), in that she administered a controlled substance  
6 to herself without a prescription in May of 2013. The circumstances are explained in paragraphs  
7 14 and 15, above.

8 **FIFTH CAUSE FOR DISCIPLINE**  
9 **(Working as a Pharmacy Technician without a License)**  
10 **(Bus. & Prof. Code, §§ 4301, subd. (o), & 4115, subd. (e))**

11 20. Respondent has subjected her Pharmacy Technician Registration to disciplinary  
12 action under Code section 4301, subdivision (o), in that she violated section 4115, subdivision  
13 (e), when she worked as a pharmacy technician at various Safeway Pharmacies from April 1,  
14 2013, to May 14, 2013. Respondent's pharmacy technician registration expired on March 31,  
15 2013.

16 **PRAYER**

17 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this  
18 Accusation, and that following the hearing, the Board of Pharmacy issue a decision:

- 19 1. Revoking or suspending Pharmacy Technician Registration Number TCH 66212,  
20 issued to Janeth J. Balian-Machain;
- 21 2. Ordering Janeth J. Balian-Machain to pay the Board of Pharmacy the reasonable costs  
22 of the investigation and enforcement of this case, pursuant to Business and Professions Code  
23 section 125.3;
- 24 3. Taking such other and further action as deemed necessary and proper.

25 DATED: 5/21/15

26 *Virginia Herold*  
27 VIRGINIA HEROLD  
28 Executive Officer  
Board of Pharmacy  
Department of Consumer Affairs  
State of California  
Complainant

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