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

11 In the Matter of the Accusation Against:

Case No. 5169

12 **CELENA CHENG**
13 5029 Matney Ave.
14 Long Beach, CA 90807

A C C U S A T I O N

15 Pharmacy Technician Registration
16 No. TCH 127782

Respondent.

17
18
19 Complainant alleges:

20 **PARTIES**

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

23 2. On November 8, 2012, the Board issued Pharmacy Technician Registration No. TCH
24 127782 to Celena Cheng (Respondent). The Pharmacy Technician Registration was in full force
25 and effect at all times relevant to the charges brought herein, expired on July 31, 2014, and has
26 not been renewed.

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JURISDICTION

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2 3. This Accusation is brought before the Board under the authority of the following
3 laws.

4 4. Business and Professions Code section 118, subdivision (b),¹ provides, in pertinent
5 part, that the expiration of a license shall not deprive the Board jurisdiction to proceed with a
6 disciplinary action during the period within which the license may be renewed, restored, reissued
7 or reinstated.

8 5. Section 4300 that every license issued by the Board is subject to discipline, including
9 suspension or revocation.

10 6. Section 4300.1 states:

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

STATUTORY PROVISIONS

15
16 7. Section 490 states, in pertinent part:

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

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

23 (c) A conviction within the meaning of this section means a plea or
24 verdict of guilty or a conviction following a plea of nolo contendere. Any action that a
25 board is permitted to take following the establishment of a conviction may be taken
26 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 the provisions of Section 1203.4 of
the Penal Code.

27 ¹ All further statutory references are to the Business and Professions Code unless
28 otherwise indicated.

1 8. Section 493 states:

2 Notwithstanding any other provision of law, in a proceeding conducted by
3 a board within the department pursuant to law to deny an application for a license or
4 to suspend or revoke a license or otherwise take disciplinary action against a person
5 who holds a license, upon the ground that the applicant or the licensee has been
6 convicted of a crime substantially related to the qualifications, functions, and duties of
7 the licensee in question, the record of conviction of the crime shall be conclusive
8 evidence of the fact that the conviction occurred, but only of that fact, and the board
9 may inquire into the circumstances surrounding the commission of the crime in order
10 to fix the degree of discipline or to determine if the conviction is substantially related
11 to the qualifications, functions, and duties of the licensee in question. As used in this
12 section, "license" includes "certificate," "permit," "authority," and "registration."

13 9. Section 4301 states:

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

18 ...

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

22 ...

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

25 ...

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

...

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

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

9 REGULATORY PROVISION

10 11. California Code of Regulations, title 16, section 1770, states, in pertinent part:

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

18 COST RECOVERY

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

23 CONTROLLED SUBSTANCES

24 13. Norco is the brand name for hydrocodone/acetaminophen. It is a Schedule III
25 controlled substance as designated by Health and Safety Code section 11056, subdivision (e)(7),
26 and is categorized as a dangerous drug pursuant to section 4022.

27 14. Phenergan with Codeine is the brand name for promethazine with codeine. It is a
28 Schedule V controlled substance as designated by Health and Safety Code section 11058,
subdivision (c)(1), and is categorized as a dangerous drug pursuant to section 4022.

15. Xanax is the brand name for alprazolam. It is a Schedule V controlled substance as
designated by Health and Safety Code section 11057, subdivision (d)(1), and is categorized as a
dangerous drug pursuant to section 4022.

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1 **FIRST CAUSE FOR DISCIPLINE**

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

3 16. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision
4 (l), in conjunction with California Code of Regulations, title 16, section 1770, in that on February
5 17, 2015, in *People v. Celena Cheng* (Super. Ct., Bellflower Courthouse, L.A. County, 2015, No.
6 4BF02299), Respondent was convicted of one count of petty theft (Pen. Code, § 484, subd. (a)), a
7 misdemeanor. The Court sentenced Respondent to 30 days jail and 36 months of summary
8 probation with standard terms and conditions of probation, and ordered Respondent to stay out of
9 J.C. Penney. The circumstances leading to the conviction are that on or about February 15, 2014,
10 Respondent committed a theft of makeup from J.C. Penney. Respondent admitted to a Los
11 Angeles County Sheriff's Deputy that she concealed the makeup in her purse and walked out of
12 the store without paying for it.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Dishonest Acts)**

15 17. Respondent is subject to disciplinary action under section 4301, subdivisions (f), in
16 that on or about February 15, 2014, Respondent committed an act involving moral turpitude,
17 dishonesty, fraud, deceit, or corruption. Complainant refers to, and by this reference incorporates,
18 the allegations set forth in paragraph 16, above.

19 18. Additionally, Respondent is subject to disciplinary action under section 4301,
20 subdivisions (f), in or about March 2013 through June 2013, while working as a pharmacy
21 technician at CVS Pharmacy in Los Angeles, Respondent committed acts involving moral
22 turpitude, dishonesty, fraud, deceit, or corruption, when she stole controlled substances. During a
23 June 12, 2013 interview with the CVS Regional Loss Prevention Manager and the CVS Pharmacy
24 Manager, Respondent admitted to stealing hydrocodone, alprazolam, and promethazine with
25 codeine.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Obtaining or Possessing a Controlled Substance in Violation of Law)**

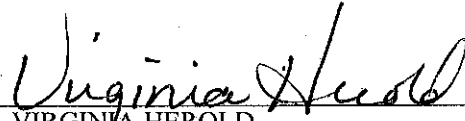
3 19. Respondent is subject to disciplinary action under section 4301, subdivisions (j) and
4 (o), as defined in section 4060, in that in or about March 2013 through June 2013, while working
5 as a pharmacy technician at CVS Pharmacy in Los Angeles, Respondent obtained or possessed
6 controlled substances in violation of law. Complainant refers to, and by this reference
7 incorporates, the allegations set forth in paragraph 18, above.

8 **PRAYER**

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

- 11 1. Revoking or suspending Pharmacy Technician Registration No. TCH 127782, issued
12 to Celena Cheng;
- 13 2. Ordering Celena Cheng to pay the Board the reasonable costs of the investigation and
14 enforcement of this case, pursuant to section 125.3; and
- 15 3. Taking such other and further action as deemed necessary and proper.

16
17 DATED: 5/21/15


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

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