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

11
12 In the Matter of the Accusation Against:

Case No. 5181

13 **LUCERO MICHEL RAMOS**
14 **4162 Chamoune Avenue**
San Diego, CA 92105

A C C U S A T I O N

15 **Pharmacy Technician Registration No. TCH**
16 **125641**

17 Respondent.

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
23 2. On or about August 23, 2012, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 125641 to Lucero Michel Ramos (Respondent). The Pharmacy
25 Technician Registration was in full force and effect at all times relevant to the charges brought
26 herein and will expire on August 31, 2014, unless renewed.
27
28

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 unless otherwise indicated.

5 4. Section 4300, subdivision (a) of the Code states that "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
9 license by operation of law or by order or decision of the board or a court of law,
10 the placement of a license on a retired status, or the voluntary surrender of a
11 license by a licensee shall not deprive the board of jurisdiction to commence or
12 proceed with any investigation of, or action or disciplinary proceeding against, the
13 licensee or to render a decision suspending or revoking the license.

12 **STATUTORY PROVISIONS**

13 6. Section 4301 of the Code 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
17 is not limited to, any of the following:

18
19 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
20 deceit, or corruption, whether the act is committed in the course of relations as a
21 licensee or otherwise, and whether the act is a felony or misdemeanor or not.

22
23 (l) The conviction of a crime substantially related to the qualifications,
24 functions, and duties of a licensee under this chapter. The record of conviction of
25 a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
26 States Code regulating controlled substances or of a violation of the statutes of this
27 state regulating controlled substances or dangerous drugs shall be conclusive
28 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

1 subsequent order under Section 1203.4 of the Penal Code allowing the person to
2 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.

....

3 7. Section 490 of the Code states:

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

8 (b) Notwithstanding any other provision of law, a board may exercise any
9 authority to discipline a licensee for conviction of a crime that is independent of
10 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.

11 (c) A conviction within the meaning of this section means a plea or verdict
12 of guilty or a conviction following a plea of nolo contendere. Any action that a
13 board is permitted to take following the establishment of a conviction may be
14 taken when the time for appeal has elapsed, or the judgment of conviction has been
15 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.

16 (d) The Legislature hereby finds and declares that the application of this
17 section has been made unclear by the holding in *Petropoulos v. Department of*
18 *Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has
19 placed a significant number of statutes and regulations in question, resulting in
20 potential harm to the consumers of California from licensees who have been
21 convicted of crimes. Therefore, the Legislature finds and declares that this section
establishes an independent basis for a board to impose discipline upon a licensee,
and that the amendments to this section made by Senate Bill 797 of the 2007 -08
Regular Session do not constitute a change to, but rather are declaratory of,
existing law.

22 8. Section 493 of the Code states:

23 Notwithstanding any other provision of law, in a proceeding conducted by
24 a board within the department pursuant to law to deny an application for a license
25 or to suspend or revoke a license or otherwise take disciplinary action against a
26 person who holds a license, upon the ground that the applicant or the licensee has
27 been convicted of a crime substantially related to the qualifications, functions, and
28 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 discipline or to determine if the conviction is

1 substantially related to the qualifications, functions, and duties of the licensee in
2 question.

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

5 REGULATORY PROVISIONS

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

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

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

15

16 (c) When considering the suspension or revocation of a facility or a
17 personal license on the ground that the licensee or the registrant has been
18 convicted of a crime, the board, in evaluating the rehabilitation of such person and
19 his present eligibility for a license will consider the following criteria:

20 (1) Nature and severity of the act(s) or offense(s).

21 (2) Total criminal record.

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

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

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

26 COST RECOVERY

27 11. Section 125.3 of the Code states, in pertinent part, that the Board may request the
28 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.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(December 10, 2013 Criminal Conviction for**
3 **Presenting a False Insurance Claim on January 4, 2012)**

4 12. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision
5 (1), of the Code in that she was convicted of a crime that is substantially related to the
6 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

7 a. On or about February 4, 2014, in a criminal proceeding entitled *The People of*
8 *the State of California v. Lucero Michel Ramos*, in San Diego County Superior Court, case
9 number SC248612, Respondent was convicted on her plea of guilty to violating Penal Code
10 section 550, subdivision (A)(4), Insurance – Present False Info Supporting Claim, a felony
11 reduced to a misdemeanor as part of a plea agreement.

12 b. As a result of the conviction on February 4, 2014, Respondent was sentenced to
13 three years summary probation, ordered to work 15 days in the Public Service Program, and pay
14 restitution of \$13,973.50 to the victim of this crime.

15 c. The facts that led to the conviction are that on or about January 4, 2012,
16 Respondent reported her vehicle stolen to the San Diego Police Department. She filed a police
17 report stating that her vehicle had been taken from the front of her house at some time after
18 arriving home from work on January 3, 2014, at approximately 10:00 P.M. Shortly thereafter,
19 Respondent filed a claim with her insurance carrier and was paid \$2,338.23 on May 2, 2012 based
20 on that claim.

21 d. A subsequent investigation revealed that Respondent's vehicle had been found
22 in Mexico by the Tijuana Police Department at 8:00 P.M. on January 3, 2014, a time when
23 Respondent claimed to have been in possession of the vehicle. The vehicle had been found beside
24 a road and burned. This investigation also revealed that Respondent's boyfriend, and a third co-
25 defendant, had made a trip to Tijuana just before the vehicle was found and returned to the United
26 States soon after the car was found. Further, cell phone records showed Respondent was in
27 contact with her boyfriend during the time the car was burned and abandoned. The investigation
28 of this case determined that Respondent had conspired with her boyfriend and a third co-

1 defendant to destroy her car and make a false claim on her insurance policy for the loss of her
2 vehicle.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct – Commission of Acts Involving Moral Turpitude,**
5 **Dishonesty, Fraud, Deceit & Corruption)**

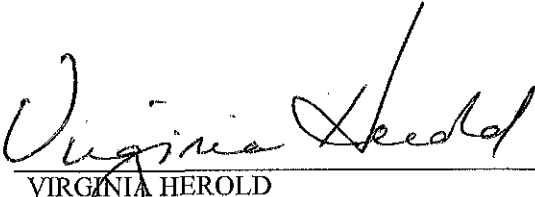
6 13. Respondent is subject to disciplinary action under section 4301 of the Code in that on
7 or about January 4, 2012, Respondent falsely reported to the San Diego Police Department that
8 her vehicle had been stolen and subsequently filed a false insurance claim based on that police
9 report with her insurance carrier, as detailed in paragraph 12, above.

10
11 **PRAYER**

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

- 14 1. Revoking or suspending Pharmacy Technician Registration Number TCH 125641,
15 issued to Lucero Michel Ramos
16
17 2. Ordering Lucero Michel Ramos to pay the Board of Pharmacy the reasonable costs of
18 the investigation and enforcement of this case, pursuant to Business and Professions Code section
19 125.3;
20 3. Taking such other and further action as deemed necessary and proper.

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22
23 DATED: 7/11/14


24 VIRGINIA HEROLD
25 Executive Officer
26 Board of Pharmacy
27 Department of Consumer Affairs
28 State of California
Complainant

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