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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. 5276

12 **DARIUS DONTE MANUAL**  
15001 Chadron Avenue, K-11  
13 Gardena, CA 90249

**A C C U S A T I O N**

14 Pharmacy Technician Registration No. TCH 111690

15 Respondent.

16  
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, Department of Consumer Affairs (Board).

23 2. On or about March 15, 2011, the Board issued Pharmacy Technician Registration No.  
24 TCH 111690 to Darius Donte Manual (Respondent). The Pharmacy Technician Registration was  
25 cancelled on August 31, 2014, and has not been renewed.

26 **JURISDICTION**

27 2. This Accusation is brought before the Board, under the authority of the following  
28 laws. All section references are to the Business and Professions Code unless otherwise indicated.

1           3.     Section 4300, subdivision (a), states that “[e]very license issued may be suspended or  
2     revoked.”

3           4.     Section 4300.1 states:

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

9   STATUTORY PROVISIONS

10          5.     Section 4301 states, in pertinent part:

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

14          .....

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

18          .....

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

24          .....

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

27          .....

28          "(l)    The conviction of a crime substantially related to the qualifications, functions, and

1 duties of a licensee under this chapter.

2 . . . .

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

7 **PHARMACY LAW**

8 6. Section 4059, subdivision (a), states:

9 "A person may not furnish any dangerous drug, except upon the prescription of a physician,  
10 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A  
11 person may not furnish any dangerous device, except upon the prescription of a physician, dentist,  
12 podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7."

13 7. Section 4060 states:

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

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

28 8. Section 4327 states that "[a]ny person who, while on duty, sells, dispenses or

1 compounds any drug while under the influence of any dangerous drug or alcoholic beverages  
2 shall be guilty of a misdemeanor.”

3 **DRUG STATUTES**

4 9. Health and Safety Code section 11170 states that “[n]o person shall prescribe,  
5 administer, or furnish a controlled substance for himself.”

6 10. Health and Safety Code section 11173, subdivision (a), states that “[n]o person shall  
7 obtain or attempt to obtain controlled substances, or procure or attempt to procure the  
8 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,  
9 or subterfuge; or (2) by the concealment of a material fact.”

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

11 “Except as otherwise provided in this division, every person who possesses (1) any  
12 controlled substance specified in subdivision (b), (c), (e), or paragraph (1) of subdivision (f) of  
13 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or  
14 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section  
15 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic  
16 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian  
17 licensed to practice in this state, shall be punished by imprisonment in a county jail for not more  
18 than one year, except that such person shall instead be punished pursuant to subdivision (h) of  
19 Section 1170 of the Penal Code if that person has one or more prior convictions for an offense  
20 specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of  
21 the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290  
22 of the Penal Code.”

23 12. United States Code Service, title 21, section 844 states, in pertinent part:

24 “(a) Unlawful acts; penalties. It shall be unlawful for any person knowingly or  
25 intentionally to possess a controlled substance unless such substance was obtained directly, or  
26 pursuant to a valid prescription . . .

27 “(c) "Drug, narcotic, or chemical offense" defined. As used in this section, the term "  
28 drug, narcotic, or chemical offense" means any offense which proscribes the possession,

1 distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess,  
2 distribute, manufacture, cultivate, sell or transfer any substance the possession of which is  
3 prohibited under this title.”

4 **REGULATORY PROVISION**

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

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

12 **COST RECOVERY**

13 14. Section 125.3 provides that the Board may request the administrative law judge to  
14 direct a licentiate found to have committed a violation or violations of the licensing act to pay a  
15 sum not to exceed the reasonable costs of the investigation and enforcement of the case.

16 **CONTROLLED SUBSTANCES / DANGEROUS DRUGS**

17 15. Hydrocodone, with a trade name of Vicodin, is a Schedule III controlled substance  
18 pursuant to Health and Safety Code section 11056(e)(4), and is categorized as a dangerous drug  
19 pursuant to section 4022.

20 **FIRST CAUSE FOR DISCIPLINE**

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

22 16. Respondent is subject to disciplinary action under sections 4300 and 4301,  
23 subdivision (l); in conjunction with California Code of Regulations, title 16, section 1770, on the  
24 grounds of unprofessional conduct, in that Respondent committed a crime substantially related to  
25 the qualifications, functions or duties of a licensee or registrant which to a substantial degree  
26 evidences his present or potential unfitness to perform the functions authorized by his license or  
27 registration in a manner consistent with the public health, safety, or welfare. The circumstances  
28 are as follows:

1 a. On or about April 18, 2013, after pleading nolo contendere, Respondent was  
2 convicted of one misdemeanor count of violating Vehicle Code section 14601.1(a) [driving when  
3 privilege suspended or revoked] in the criminal proceeding entitled *The People of the State of*  
4 *California v. Darius Donte Manual* (Super. Ct. L.A. County, 2013, No. 2SY04972). The Court  
5 placed Respondent on three years probation, and ordered him to complete 150 hours of  
6 community service.

7 b. The circumstances underlying the conviction are that on or about May 17, 2012,  
8 Respondent drove a vehicle without a rear license plate, and admittedly, drove a vehicle when his  
9 license was suspended from a previous incident. Respondent's vehicle was towed with a 30 day  
10 hold.

11 **SECOND CAUSE FOR DISCIPLINE**

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

13 17. Respondent is subject to disciplinary action under sections 4300 and 4301,  
14 subdivision (f), on the grounds of unprofessional conduct, in that Respondent committed acts  
15 involving moral turpitude, dishonesty, fraud, deceit, or corruption. The circumstances are as  
16 follows:

17 a. On or about December 8, 2013, and December 9, 2013, Respondent involved himself  
18 in a scheme with others while he was employed and on duty as a pharmacy technician at the CVS  
19 on Sepulveda in Los Angeles, California. Respondent sold \$44,235.00 of Visa gift cards, 104  
20 cards at \$450 each, to two individuals who used various credit cards until each credit card stopped  
21 accepting transactions. Respondent was paid \$250.00 cash for each day he sold the Visa gift  
22 cards.

23 b. On or about December 10, 2013, Respondent's employer CVS investigated the large  
24 amount of pre-paid gift card purchases made by Respondent, and prior to each transaction,  
25 Respondent was videoed on his telephone, and working with two other individuals, separately for  
26 each date, December 8, 2013, and December 9, 2013.

27 c. On or about December 12, 2013, during the investigation, Respondent admitted, in  
28 addition to his involvement in the \$44,235.00 of Visa pre-paid gift card sales, that for the prior six

1 months, he stole 350 tablets of Vicodin, valued at \$183.11, and approximately \$30.00 of food and  
2 drink, and approximately \$50.00 of other items, dog shirts, sweat pants, cards and cigarettes, from  
3 his employer CVS.

4 d. Further, on or about December 12, 2013, Respondent admitted that while on duty as a  
5 pharmacy technician and without a valid prescription, he would administer to himself 7.5/750gm  
6 Vicodin taken from pharmacy inventory without payment. Respondent claimed that he needed  
7 and used the Vicodin in able to complete the duties of a Pharmacy Technician. In addition,  
8 Respondent admitted that it was medically necessary for him to use the Vicodin at a cost of  
9 approximately \$1,000.00 per month.

10 e. Subsequently, on or about July 21, 2014, in a criminal action entitled *The People of*  
11 *the State of California v. Darius Donte Manual* (Super. Ct. L.A. County, No. SA087293) the  
12 Court dismissed the complaint due to delay – action not brought to court in time. The complaint  
13 filed on or about May 8, 2014, alleged felony violations of Penal Code section 487(a) [grand theft  
14 by embezzlement], and 484H(a) [fraudulently furnished goods, or services on access card].

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(Drug Statute Violation)**

17 18. Respondent is subject to disciplinary action under section 4300, 4301, subdivision (j),  
18 for violating Health and Safety Code sections 11170, 11173, subdivision (a), and 11350,  
19 subdivision (a), and United States Code Service, title 21, section 844, on the grounds of  
20 unprofessional conduct, in that in or about June 2013 through December 12, 2013, while on duty  
21 as a Pharmacy technician, Respondent furnished himself Vicodin, was in possession of Vicodin  
22 without a valid prescriptions, and obtained or procured Vicodin by fraud, deceit,  
23 misrepresentation, or subterfuge; or by the concealment of a material fact. Complainant refers to  
24 and by this reference incorporates the allegations set forth above in paragraph 17, subparagraphs a  
25 through e, inclusive, as though set forth fully.

26 **FOURTH CAUSE FOR DISCIPLINE**

27 **(Pharmacy Law Violations)**

28 19. Respondent is subject to disciplinary action under section 4300, 4301,

1 subdivision (o), for violating section 4059 and 4060, on the grounds of unprofessional conduct, in  
2 that in or about June 2013 through December 12, 2013, while on duty as a Pharmacy technician,  
3 Respondent was in possession of Vicodin, a controlled substance and dangerous drug, without a  
4 valid prescriptions. Complainant refers to and by this reference incorporates the allegations set  
5 forth above in paragraph 17 and 18, inclusive, as though set forth fully.

6 **FIFTH CAUSE FOR DISCIPLINE**

7 **(Dangerous Use of a Controlled Substance)**

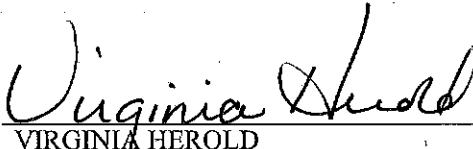
8 20. Respondent is subject to disciplinary action under section 4300, and 4301,  
9 subdivision (h), on the grounds of unprofessional conduct, in that in or about June 2013 through  
10 December 12, 2013, while on duty as a Pharmacy technician, Respondent used Vicodin, a  
11 controlled substance, to the extent or in a manner as to be dangerous or injurious to himself or  
12 others. Complainant refers to and by this reference incorporates the allegations set forth above in  
13 paragraph 17 through 19, inclusive, as though set forth fully.

14 **PRAYER**

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

- 17 1. Revoking or suspending Pharmacy Technician Registration No. TCH 111690, issued  
18 to Darius Donte Manual
- 19 2. Ordering Darius Donte Manual to pay the Board the reasonable costs of the  
20 investigation and enforcement of this case, pursuant to section 125.3; and
- 21 3. Taking such other and further action as deemed necessary and proper.

22  
23  
24 DATED: 5/21/15

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

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