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BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **DANIEL PALOS** 607 N. Lamarr Avenue Rialto, CA 92376 Pharmacy Technician Registration No. TCH 66304 Respondent.	Case No. 5335 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about November 23, 2005, the Board issued Pharmacy Technician Registration No. TCH 66304 to Daniel Palos (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and expired on May 31, 2015, the license was cancelled on September 1, 2015.

JURISDICTION

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

STATUTORY PROVISIONS

4. Section 490 states, in pertinent part:

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the 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.

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

"(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken 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."

5. Section 4300 provides in pertinent part, that every license issued by the Boards is subject to discipline, including suspension or revocation.

6. Section 4300.1 states:

"The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a 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."

7. Section 4301 states, in pertinent part:

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

. . . .

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

. . . .

"(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a 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.

. . . .

"(p) Actions or conduct that would have warranted denial of a license."

REGULATORY PROVISIONS

8. 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."

COST RECOVERY

9. Section 125.3 states, 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.

FIRST CAUSE FOR DISCIPLINE

(Conviction of a Substantially Related Crime)

10. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and 490, in conjunction with California Code of Regulations, title 16, section 1770, in that, Respondent was convicted of a crime substantially related to the qualifications, functions or duties of a pharmacy technician as follows:

a. On or about June 16, 2015, after pleading guilty, Respondent was convicted of one felony count of violating Vehicle Code section 10851, subdivision (a) [taking a vehicle without consent] in the criminal proceeding entitled *The People of the State of California v. Daniel Palos* (Super. Ct. San Bernardino County, 2015, No. FSB1501523). The Court sentenced Respondent to serve 180 days in jail and placed him on 36 months probation, with terms and conditions.

b. The circumstances surrounding the conviction are that on or about May 5, 2015, the Respondent was in possession of a stolen vehicle.

c. On or about August 13, 2014, after pleading guilty, Respondent was convicted of one felony count of violating Penal Code section 487, subdivision (c) [grand theft from person] in the criminal proceeding entitled *The People of the State of California v. Daniel Palos* (Super. Ct. San Bernardino County, 2014, No. FWV1403042). The Court sentenced Respondent to serve 6 months in San Bernardino County Jail and placed him on 36 months probation, with terms and conditions.

d. The circumstances surrounding the conviction are that on or about August 1, 2014, Respondent entered a Sears store in Rancho Cucamonga, CA, selected several items and ran out the door. A Loss Prevention Agent attempted to stop Respondent outside of the store. Respondent became aggressive and raised his fist in an attempt to strike the agent. The agent backed away and Respondent entered the vehicle that was waiting for him and fled the scene. Respondent was later detained by the Rialto Police Department. When asked if he knew why he was being detained, Respondent believed it was because he had stolen items from the Sears store in Rancho Cucamonga earlier that evening. During the interview, Respondent admitted to stealing items from a different Sears store the day before and returning them to this Sears store for a gift card to purchase another item at this location and also steal other items.

SECOND CAUSE FOR DISCIPLINE

(Acts Involving Dishonesty, Fraud, or Deceit)

11. Respondent is subject to disciplinary action under section 4301, subdivision (f), in that on or about August 13, 2014 and May 5, 2015, Respondent committed acts involving dishonesty, fraud, or deceit with the intent to substantially benefit himself, or substantially injure another. Complainant refers to, and by reference incorporates, the allegations set forth above in paragraph 10, as though set forth fully.

THIRD CAUSE FOR DISCIPLINE

(Commission of an Act that is Ground for Denial of License)

12. Respondent is subject to disciplinary action under section 4301, subdivision (p), in that, Respondent committed acts that would have warranted denial of his license. Complainant refers to and by this reference incorporates the allegations set forth above in paragraph 10, subparagraph, as though set forth fully.

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PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration No. TCH 66304, issued to Daniel Palos;

2. Ordering Daniel Palos to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and

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

DATED: 8/31/16

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

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