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

12 In the Matter of the Accusation Against:

Case No. 5387

13 **MELISSA ACOSTA**  
8625 Alburdis Ave.  
Whittier, CA 90606

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

14 Pharmacy Technician Registration  
15 No. TCH 121953

16 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 March 15, 2012, the Board of Pharmacy ("Board") issued Pharmacy  
23 Technician Registration Number TCH 121953 to Melissa Acosta ("Respondent"). The Pharmacy  
24 Technician Registration was in full force and effect at all times relevant to the charges brought  
25 herein and will expire on March 31, 2016, unless renewed.

26 **JURISDICTION**

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

1 4. Section 4300.1 of the Code states:

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

7 5. Section 4300 of the Code states, in pertinent part:

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

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

12 "(1) Suspending judgment.

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

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

15 "(4) Revoking his or her license.

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

18 **STATUTES**

19 6. Section 4060 of the Code states, in pertinent part:

20 "No person shall possess any controlled substance, except that furnished to a person upon  
21 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor  
22 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified  
23 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a  
24 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,  
25 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of  
26 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply  
27 to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,  
28 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified

1 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly  
2 labeled with the name and address of the supplier or producer."

3 7. Section 4301 of the Code states, in pertinent part:

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

7 . . . .

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

11 . . . .

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

14 . . . .

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

19 8. Section 4323 of the Code states:

20 "Every person who, in order to obtain any drug, falsely represents himself or herself to be a  
21 physician or other person who can lawfully prescribe the drug, or falsely represents that he or she  
22 is acting on behalf of a person who can lawfully prescribe the drug, in a telephone or electronic  
23 communication with a pharmacist, shall be punished by imprisonment in the county jail for not  
24 more than one year."

25 9. Section 4324, subdivision (a) of the Code states: "(a) Every person who signs the  
26 name of another, or of a fictitious person, or falsely makes, alters, forges, utters, publishes, passes,  
27 or attempts to pass, as genuine, any prescription for any drugs is guilty of forgery and upon  
28

1 conviction thereof shall be punished by imprisonment in the state prison, or by imprisonment in the  
2 county jail for not more than one year."

3 10. Health and Safety Code section 11173, subdivision (a) states, "No person shall obtain  
4 or attempt to obtain controlled substances, or procure or attempt to procure the administration of  
5 or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or  
6 (2) by the concealment of a material fact."

7 **COST RECOVERY**

8 11. Section 125.3 of the Code states, in pertinent part, that the Board may request the  
9 administrative law judge to direct a licentiate found to have committed a violation or violations of  
10 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
11 enforcement of the case.

12 **CONTROLLED SUBSTANCES**

13 12. Phenergan with codeine, the brand name for promethazine with codeine, is a Schedule  
14 V controlled substance pursuant to Health and Safety Code section 11058, subdivision (c)(1) and  
15 is a dangerous drug pursuant to Code section 4022.

16 13. Xanax, the brand name for alprazolam, is a Schedule IV controlled substance pursuant  
17 to Health and Safety Code section 11057, subdivision (d)(1) and is a dangerous drug pursuant to  
18 Code section 4022.

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(Unprofessional Conduct: Dishonest/Fraudulent Acts)**

21 14. Respondent is subject to disciplinary action under Code section 4301, subdivision (f)  
22 on the grounds of unprofessional conduct in that Respondent committed acts of moral turpitude,  
23 dishonesty, fraud, deceit, or corruption in that between June 2013 and March 2014, Respondent  
24 conspired with an employee who worked at the medical office of Dr. F.B. to obtain prescriptions  
25 for Phenergan/promethazine with codeine and Xanax that were not authorized by the physician.

26 The circumstances are as follows:

27 15. CVS Pharmacy hired Respondent on September 7, 2013 as a pharmacy technician and  
28 assigned her to work at CVS store #9735.

16. On or about March 10, 2014, "Nancy" from Dr. F.B.'s office allegedly telephoned in a prescription for Respondent for Phenergan with codeine to CVS store #9852. On or about March 13, 2014, the pharmacist at CVS store #9852 was in the midst of processing the prescription when he became suspicious of the prescription and called Dr. F.B.'s office to confirm the validity of the prescription. The pharmacist learned that the prescription was not legitimate: Respondent was not currently under Dr. F.B.'s care and "Nancy" had not worked at Dr. F.B.'s office for several years.

17. Further investigation revealed that Respondent had filled or attempted to fill other prescriptions for Phenergan/promethazine with codeine and Xanax alleged prescribed by Dr. F.B. "Candy," a friend of Respondent's who worked at Dr. F.B.'s office, had allegedly authorized the prescriptions. However Respondent had not seen Dr. F.B. for any evaluation and/or treatment.

The prescriptions identified as fraudulent are as follows:

| Drug                      | Date                           | RX#    | Authorized By   | CVS Store # |
|---------------------------|--------------------------------|--------|---|-------------|
| Promethazine with Codeine | 3/13/2014<br>(not filled)      | 606326 | Nancy   | 9852        |
| Promethazine with Codeine | 2/18/2014                      | 603356 | Electronic refill request allegedly electronically signed by Dr. F.B. | 9852        |
| Alprazolam 2 mg           | 2/12/2014<br>(never picked up) | 315656 | Telephone prescription authorized by Candy                            | 9735        |
| Promethazine with Codeine | 1/24/2014                      | 582476 | Refill verbally authorized by Candy                                   | 9852        |
| Promethazine with Codeine | 12/16/2013                     | 582476 | Refill verbally authorized by Candy                                   | 9852        |
| Promethazine with Codeine | 8/18/2013                      | 576866 | Refill verbally authorized by Candy                                   | 9852        |
| Promethazine with Codeine | 6/24/2013                      | 569114 | Original RX allegedly signed by Dr. F.B.                              | 9852        |
| Promethazine with Codeine | 6/10/2013                      | 569114 | Original RX allegedly signed by Dr. F.B.                              | 9852        |

18. Respondent was terminated from her employment with CVS on March 21, 2014.

**SECOND CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct: Violating Drug Statutes)**

19. Respondent is subject to disciplinary action under Code section 4301, subdivision (j), in conjunction with Health and Safety Code section 11173, on the grounds of unprofessional conduct in that between June 2013 and March 2014, Respondent obtained and/or attempted to

1 obtain controlled substances, and/or procured or attempted to procure prescriptions for controlled  
2 substances by fraud, deceit, misrepresentation, subterfuge, or the concealment of material facts.  
3 Complainant incorporates by reference Paragraphs 15 through 18, inclusive, as though fully set  
4 forth herein.

5 **THIRD CAUSE FOR DISCIPLINE**

6 **(Unprofessional Conduct: Conspiring to Obtain Drugs by Representing Oneself as Acting**  
7 **on Behalf of an Authorized Prescriber)**

8 20. Respondent is subject to disciplinary action under Code section 4301, subdivision (o),  
9 in conjunction with Code section 4323, on the grounds of unprofessional conduct in that between  
10 June 2013 and March 2014, Respondent aided and abetted and conspired with her friend "Candy"  
11 to obtain controlled substances by falsely representing, in a telephone or electronic communication  
12 with a pharmacist, that they were acting on behalf of a person (Dr. F.B.) who can lawfully  
13 prescribe controlled substances. Complainant incorporates by reference Paragraphs 15 through  
14 18, inclusive, as though fully set forth herein.

15 **FOURTH CAUSE FOR DISCIPLINE**

16 **(Unprofessional Conduct: Obtaining Drugs Through Forged Prescriptions)**

17 21. Respondent is subject to disciplinary action under Code section 4301, subdivision (o),  
18 in conjunction with Code section 4324, on the grounds of unprofessional conduct in that between  
19 June 2013 and March 2014, Respondent aided and abetted and conspired with her friend "Candy"  
20 to obtain controlled substances by forging, publishing, passing, or attempting to pass as genuine  
21 false prescriptions for controlled substances, to wit: Phenergan/promethazine with codeine and  
22 Xanax. Complainant incorporates by reference Paragraphs 15 through 18, inclusive, as though  
23 fully set forth herein.

24 **FIFTH CAUSE FOR DISCIPLINE**

25 **(Unprofessional Conduct: Unlawful Possession of a Controlled Substance)**

26 22. Respondent is subject to disciplinary action under Code section 4301, subdivision (o).  
27 in conjunction with Code section 4060, on the grounds of unprofessional conduct in that between  
28 June 2013 and March 2014, Respondent unlawfully possessed a controlled substance, to wit:

1 promethazine with codeine. Complainant incorporates by reference Paragraphs 15 through 18,  
2 inclusive, as though fully set forth herein.

3 **PRAYER**

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

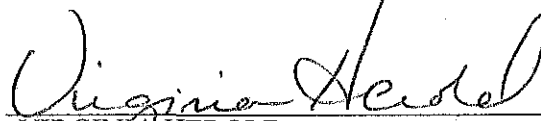
6 1. Revoking or suspending Pharmacy Technician Registration Number TCH 121953,  
7 issued to Melissa Acosta;

8 2. Ordering Melissa Acosta to pay the Board of Pharmacy the reasonable costs of the  
9 investigation and enforcement of this case, pursuant to Business and Professions Code section  
10 125.3; and

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

12  
13 DATED: \_\_\_\_\_

5/28/15



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

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