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

12 In the Matter of the Accusation Against:

Case No. 5435

13 **OSCAR O. SANDOVAL HERNANDEZ**
1765 S. Ninth St.
14 **Anaheim, CA 92802**

A C C U S A T I O N

15 **Pharmacy Technician Registration No. TCH**
16 **115834**

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 2. On or about December 2, 2011, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 115834 to Oscar O. Sandoval Hernandez (Respondent). The
24 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges
25 brought herein and will expire on April 30, 2017, unless renewed.

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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 of the Code states:

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

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

10 "(1) Suspending judgment.

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

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

13 "(4) Revoking his or her license.

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

16 "...

17 "(e) The proceedings under this article shall be conducted in accordance with Chapter 5
18 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board
19 shall have all the powers granted therein. The action shall be final, except that the propriety of the
20 action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil
21 Procedure."

22 5. Section 4300.1 of the Code states:

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

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1 **STATUTORY PROVISIONS**

2 6. Section 480 of the Code states:

3 "(a) A board may deny a license regulated by this code on the grounds that the applicant has
4 one of the following:

5 "...

6 "(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially
7 benefit himself or herself or another, or substantially injure another.

8 "[3](B) The board may deny a license pursuant to this subdivision only if the crime or act is
9 substantially related to the qualifications, functions, or duties of the business or profession for
10 which application is made.

11 "..."

12 7. Section 482 of the Code states:

13 "Each board under the provisions of this code shall develop criteria to evaluate the
14 rehabilitation of a person when:

15 "(a) Considering the denial of a license by the board under Section 480; or

16 "(b) Considering suspension or revocation of a license under Section 490.

17 "Each board shall take into account all competent evidence of rehabilitation furnished by
18 the applicant or licensee."

19 8. Section 490 of the Code provides, in pertinent part, that a board may suspend or
20 revoke a license on the ground that the licensee has been convicted of a crime substantially related
21 to the qualifications, functions, or duties of the business or profession for which the license was
22 issued.

23 9. Section 493 of the Code states:

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

1 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
2 and the board may inquire into the circumstances surrounding the commission of the crime in
3 order to fix the degree of discipline or to determine if the conviction is substantially related to the
4 qualifications, functions, and duties of the licensee in question.

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

6 10. Section 4301 of the Code states:

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

10 "...

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

14 "...

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

20 "...

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

23 "...

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

1 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
2 The board may inquire into the circumstances surrounding the commission of the crime, in order
3 to fix the degree of discipline or, in the case of a conviction not involving controlled substances or
4 dangerous drugs, to determine if the conviction is of an offense substantially related to the
5 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
6 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
7 of this provision. The board may take action when the time for appeal has elapsed, or the
8 judgment of conviction has been affirmed on appeal or when an order granting probation is made
9 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
10 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
11 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
12 indictment.

13 "...

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

15 "...."

16 11. Section 4060 of the Code states:

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

28

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

4 **REGULATORY PROVISIONS**

5 12. California Code of Regulations, title 16, section 1769, states:

6 "...

7 "(b) When considering the suspension or revocation of a facility or a personal license on the
8 ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating
9 the rehabilitation of such person and his present eligibility for a license will consider the
10 following criteria:

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

12 "(2) Total criminal record.

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

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

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

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

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

24 **COSTS**

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

1 **DRUGS**

2 15. Phenergan with Codeine, the brand name for Promethazine with Codeine Syrup, is a
3 Schedule V controlled substance under Health and Safety Code section 11058, subdivision (c)(1)
4 and a dangerous drug under Code section 4022.

5 **FIRST CAUSE FOR DISCIPLINE**

6 **(September 25, 2014, Criminal Conviction for Petty Theft on August 12, 2014)**

7 16. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision
8 (l) of the Code in that he was convicted of a crime substantially related to the qualifications,
9 functions, and duties of a licensee in the following respect:

10 17. On or about September 25, 2014, in a criminal proceeding entitled *People v.*
11 *Hernandez*, in California Superior Court, Orange County, case number 14NM09264, Respondent
12 was convicted on his plea of guilty of violating Penal Code sections 484, subdivision (a)-488,
13 petty theft, a misdemeanor. As a result of a plea agreement, one count of violating Code section
14 4060, possession of a controlled substance without a prescription, a misdemeanor, was dismissed.

15 18. As a result of the conviction, Respondent was sentenced to three years informal
16 probation and ordered to pay fines and fees.

17 19. The facts that led to the conviction are that on or about August 12, 2014, Respondent
18 worked as pharmacy technician at a CVS Pharmacy in Anaheim. On that day, he stole one bottle
19 (473 ml) of promethazine with codeine. Once he stole the bottle from CVS, he unlawfully used
20 the medication for his personal use.

21 **SECOND CAUSE FOR DISCIPLINE**

22 **(Unprofessional Conduct-Use of a Controlled Substance in a Dangerous Manner)**

23 20. Complainant re-alleges and incorporates by reference the allegations set forth above
24 in paragraphs 16-19.

25 21. Respondent is subject to disciplinary action under Code section 4301, subdivision (h)
26 in that Respondent administered to himself, of any controlled substance, or used any dangerous
27 drug to the extent or in a manner as to be dangerous or injurious to himself, to a person holding a
28

1 license under this chapter, or to any other person or to the public, or to the extent that the use
2 impaired his ability to conduct with safety to the public the practice authorized by the license.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct-Violation of Laws Regulating**
5 **Controlled Substances and Dangerous Drugs)**

6 22. Complainant re-alleges and incorporates by reference the allegations set forth above
7 in paragraphs 16-21.

8 23. Respondent is subject to disciplinary action under Code sections 4301, subdivision (j)
9 in that Respondent violated Code section 4060, a law regulating controlled substances and
10 dangerous drugs.

11 **FOURTH CAUSE FOR DISCIPLINE**

12 **(Unprofessional Conduct-Act Warranting Denial of Licensure)**

13 24. Complainant re-alleges and incorporates by reference the allegations set forth above
14 in paragraphs 16-23.

15 25. Respondent is subject to disciplinary action under section 4301, subdivision (p), in
16 that he committed an act that would have warranted denial of a license by stealing the controlled
17 substance promethazine with codeine, an act enumerated in Code section 480, subdivision (a)(2),
18 which is cause for denial of a license to an applicant who committed an act of dishonesty with the
19 intent to substantially benefit himself or another.

20 **FIFTH CAUSE FOR DISCIPLINE**

21 **(Unprofessional Conduct-Act of Moral Turpitude or Dishonesty)**

22 26. Complainant re-alleges and incorporates by reference the allegations set forth above
23 in paragraphs 16-25.

24 27. Respondent is subject to disciplinary action under Code section 4301, subdivision (f)
25 in that Respondent committed theft, an act of moral turpitude, dishonesty, fraud, deceit, or
26 corruption.

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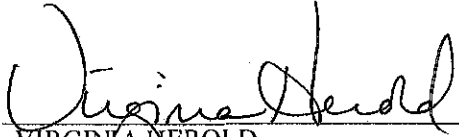
PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 115834, issued to Oscar O. Sandoval Hernandez;
2. Ordering Oscar O. Sandoval Hernandez to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: _____

5/28/15



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

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