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8	BEFORE THE BOARD OF PHARMACY
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA
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11	In the Matter of the First Amended Accusation Case No. 5450 Against:
12	FIRST AMENDED ACCUSATION
13	4220 N. Lakewood Blvd Long Beach, CA 90808
14	Pharmacy Technician Registration
15	No. TCH 138520
16	Respondent.
17	Complainant alleges:
18	PARTIES
19	1. Virginia Herold (Complainant) brings this First Amended Accusation solely in her
20	official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer
21	Affairs (Board).
22	2. On or about January 28, 2014, the Board issued Pharmacy Technician Registration
23	No. TCH 138520 to Evelyn Lissette Guillen (Respondent). The Pharmacy Technician
24	Registration expired on May 31, 2015, and has not been renewed.
25	JURISDICTION
26	3. This First Amended Accusation is brought before the Board, under the authority of
27	the following laws. All section references are to the Business and Professions Code unless
28	otherwise indicated.
	(EVELYN LISSETTE GUILLEN) FIRST AMENDED ACCUSATION, Case No. 5450

## STATUTORY PROVISIONS 1 Section 492 states: 4. 2 "Notwithstanding any other provision of law, successful completion of any diversion 3 program under the Penal Code, or successful completion of an alcohol and drug problem 4 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of 5 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 6 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that 7 division, from taking disciplinary action against a licensee or from denying a license for 8 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a Q record pertaining to an arrest. 10 This section shall not be construed to apply to any drug diversion program operated by any 11 agency established under Division 2 (commencing with Section 500) of this code, or any initiative 12 act referred to in that division." 13 5. Section 493 states: 14 "Notwithstanding any other provision of law, in a proceeding conducted by a board within 15 the department pursuant to law to deny an application for a license or to suspend or revoke a 16 license or otherwise take disciplinary action against a person who holds a license, upon the 17 ground that the applicant or the licensee has been convicted of a crime substantially related to the 18 qualifications, functions, and duties of the licensee in question, the record of conviction of the 19 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, 20 and the board may inquire into the circumstances surrounding the commission of the crime in 21 order to fix the degree of discipline or to determine if the conviction is substantially related to the 22 qualifications, functions, and duties of the licensee in question. 23 As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'" 24 Section 4300, subdivision (a), states that "[e]very license issued may be suspended or 6. 25 revoked." 26 111 2728 2 (EVELYN LISSETTE GUILLEN) FIRST AMENDED ACCUSATION, Case No. 5450

1	7. Section 4300.1 states:
2	"The expiration, cancellation, forfeiture, or suspension of a board-issued license by
3	operation of law or by order or decision of the board or a court of law, the placement of a license
4	on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
5	of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
6	proceeding against, the licensee or to render a decision suspending or revoking the license."
7	8. Section 4301 states, in pertinent part:
8	"The board shall take action against any holder of a license who is guilty of unprofessional
9	conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
10	Unprofessional conduct shall include, but is not limited to, any of the following:
11	
12	(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
13	corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
14	whether the act is a felony or misdemeanor or not.
15	
16	(j) The violation of any of the statutes of this state, or any other state, or of the United
17	States regulating controlled substances and dangerous drugs.
18	
19	(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
20	violation of or conspiring to violate any provision or term of this chapter or of the applicable
21	federal and state laws and regulations governing pharmacy, including regulations established by
22	the board or by any other state or federal regulatory agency"
23	PHARMACY LAW
24	9. Section 4060 states:
25	"No person shall possess any controlled substance, except that furnished to a person upon
26	the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
27	pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
28	nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
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l	(EVELYN LISSETTE GUILLEN) FIRST AMENDED ACCUSATION, Case No. 5450

1	physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
2	or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
3	subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
4	apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
5	pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
6	nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
7	labeled with the name and address of the supplier or producer.
8	"Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a
9	physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and
10	devices."
11	DRUG STATUTES
12	10. Health and Safety Code section 11007 states:
13	"Controlled substance," unless otherwise specified, means a drug, substance, or immediate
14	precursor which is listed in any schedule in Section 11054, 11055, 11056, 11057, or 11058."
15	11. Health and Safety Code section 11173, subdivision (a), provides that it is illegal to
16	possess a controlled substance without a valid prescription.
17	12. United Stated States Code Service, title 21, section 844 states, in pertinent part:
18	"(a) Unlawful acts; penalties. It shall be unlawful for any person knowingly or
19	intentionally to possess a controlled substance unless such substance was obtained directly, or
20	pursuant to a valid prescription.
21	•••
22	(c) "Drug, narcotic, or chemical offense" defined. As used in this section, the term " drug,
23	narcotic, or chemical offense" means any offense which proscribes the possession, distribution,
24	manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute,
25	manufacture, cultivate, sell or transfer any substance the possession of which is prohibited under
26	this title."
27	///
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	(EVELYN LISSETTE GUILLEN) FIRST AMENDED ACCUSATION, Case No. 5450

5       pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions         6       crime or act shall be considered substantially related to the qualifications, functions or du         7       licensee or registrant if to a substantial degree it evidences present or potential unfitness of         8       licensee or registrant to perform the functions authorized by his license or registration in         9       consistent with the public health, safety, or welfare."         10       COST RECOVERY         11       14. Section 125.3 states, in pertinent part, that the Board may request the adminiti         12       law judge to direct a licentiate found to have committed a violation or violations of the li         13       act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of         14       case.         15       CONTROLLED SUBSTANCE / DANGEROUS DRUG         16       15. Alprazolam is a Schedule IV controlled substance under Health and Safety C         18       for Xanax, Invirase, Crixivan, Serzone and Alprazolam Intensol.         19       16. Cocaine is a Schedule II controlled substance under as designated in Health at         20       Safety Code section 11055(b)(6) and a dangerous drug pursuant to section 4022.         21       17. Heroin, a semisynthetic drug derived from morphine is a Schedule I controlled         22       substance as designated by H		
3       13. California Code of Regulations, title 16, section 1770, states:         4       "For the purpose of denial, suspension, or revocation of a personal or facility license         5       pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions         6       erime or act shall be considered substantially related to the qualifications, functions or du         7       licensee or registrant if to a substantial degree it evidences present or potential unfitness of         8       licensee or registrant to perform the functions authorized by his license or registration in         9       cost recovery         11       14. Section 125.3 states, in pertinent part, that the Board may request the adminitiate act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of case.         15       CONTROLLED SUBSTANCE / DANGEROUS DRUG         16       15. Alprazolam is a Schedule IV controlled substance under Health and Safety C section 11057(d) and a dangerous drug pursuant to section 4022. Alprazolam is a generic for Xanax, Invirase, Crixivan, Serzone and Alprazolam Intensol.         19       16. Cocaine is a Schedule II controlled substance under as designated in Health action administration, a semisynthetic drug derived from morphine is a Schedule I controlled substance under State and Safety Code section 11055(b)(6) and a dangerous drug pursuant to section 4022.         17       Heroin, a semisynthetic drug derived from morphine is a Schedule I controlled substance under State and law (Health & Saf. Code § 11054 subd. (d)(13); and 21	1	
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	26	
	27	- ///
28 ///	28	///
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1	FIRST CAUSE FOR DISCIPLINE
2	(Possession of Controlled Substances/Dangerous Drugs)
3	19. Respondent is subject to disciplinary action under sections 4300, and 4301,
4	subdivision (o), on the grounds of unprofessional conduct, for violating section 4060, in that on or
5	about November 19, 2014, Respondent violated or attempted to violate the Pharmacy law when
6	she was found in possession of controlled substances or dangerous drugs, as follows:
7	a. On or about November 19, 2014 Respondent was found in possession of 0.39 gg
8	Cocaine, 0.60 gg Heroin, 0.25 gg Alprazolam, and 13.30 gg Marijuana, controlled substances and
9	dangerous drugs, without valid prescriptions.
10	b. Subsequently on or about February 11, 2015, after pleading nolo contendere with a
11	finding of guilty, Respondent was convicted of one misdemeanor count of violating Health and
12	Safety Code section 11350 [possession of a controlled substance] in the criminal proceeding
13	entitled The People of the State of California v. Evelyn Guillen (Super. Ct. L.A. County, 2015,
14	No. 4CA30124). The Court placed Respondent on 12 months of formal diversion, and ordered to
15	complete a three-month Teen Challenge in-patient program. On or about June 11, 2015,
16	Respondent met and completed the terms of formal diversion and the matter was dismissed
17	pursuant to Penal Code section 1385.
18	SECOND CAUSE FOR DISCIPLINE
19	(Violating Drug Statutes)
20	20. Respondent is subject to disciplinary action under sections 4300, 4301,
21	subdivision (j), on the grounds of unprofessional conduct, in that on or about November 19, 2014,
22	Respondent violated Health and Safety Code section 11173, subdivision (a), and United Stated
23	States Code Service, title 21, section 844, when she was in possession of Cocaine, Heroin,
24	Alprazolam and Marijuana, controlled substances and dangerous drugs, without valid
25	prescriptions. Complainant refers to and by this reference incorporates the allegations set forth
26	above in paragraph 19, inclusive, as though set forth fully.
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ļ	(EVELYN LISSETTE GUILLEN) FIRST AMENDED ACCUSATION, Case No. 5450

1	THIRD CAUSE FOR DISCIPLINE
2	(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)
3	21. Respondent is subject to disciplinary action under sections 4300 and 4301,
1	subdivision (f), on the grounds of unprofessional conduct, in that Respondent committed acts
	involving moral turpitude, dishonesty, fraud, deceit, or corruption when she was in possession of
	Cocaine, Heroin, Alprazolam and Marijuana, controlled substances and dangerous drugs, without
j	valid prescriptions. Complainant refers to and by this reference incorporates the allegations set
	forth above in paragraphs 19 through 20, inclusive, as though set forth fully.
	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 138520, issued
	to Evelyn Lissette Guillen;
	2. Ordering Evelyn Lissette Guillen 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.
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	DATED: 1/12/16 VIRGINIA HEROLD
l	Executive Officer
į	Board of Pharmacy Department of Consumer Affairs
ļ	State of California Complainant
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