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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 First Amended Accusation  
Against:

Case No. 5450

**FIRST AMENDED ACCUSATION**

12 **EVELYN LISSETTE GUILLEN**  
13 4220 N. Lakewood Blvd  
14 Long Beach, CA 90808  
15 Pharmacy Technician Registration  
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.

1 STATUTORY PROVISIONS

2 4. Section 492 states:

3 "Notwithstanding any other provision of law, successful completion of any diversion  
4 program under the Penal Code, or successful completion of an alcohol and drug problem  
5 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of  
6 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2  
7 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that  
8 division, from taking disciplinary action against a licensee or from denying a license for  
9 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a  
10 record pertaining to an arrest.

11 This section shall not be construed to apply to any drug diversion program operated by any  
12 agency established under Division 2 (commencing with Section 500) of this code, or any initiative  
13 act referred to in that division."

14 5. Section 493 states:

15 "Notwithstanding any other provision of law, in a proceeding conducted by a board within  
16 the department pursuant to law to deny an application for a license or to suspend or revoke a  
17 license or otherwise take disciplinary action against a person who holds a license, upon the  
18 ground that the applicant or the licensee has been convicted of a crime substantially related to the  
19 qualifications, functions, and duties of the licensee in question, the record of conviction of the  
20 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,  
21 and the board may inquire into the circumstances surrounding the commission of the crime in  
22 order to fix the degree of discipline or to determine if the conviction is substantially related to the  
23 qualifications, functions, and duties of the licensee in question.

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

25 6. Section 4300, subdivision (a), states that "[e]very license issued may be suspended or  
26 revoked."

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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 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."

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**REGULATORY PROVISION**

13. 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**

14. 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.

**CONTROLLED SUBSTANCE / DANGEROUS DRUG**

15. Alprazolam is a Schedule IV controlled substance under Health and Safety Code section 11057(d) and a dangerous drug pursuant to section 4022. Alprazolam is a generic name for Xanax, Invirase, Crixivan, Serzone and Alprazolam Intensol.

16. Cocaine is a Schedule II controlled substance under as designated in Health 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 as designated by Health and Safety Code section 11054(c)(11).

18. Marijuana is a hallucinogenic Schedule I controlled substance under State and federal law (Health & Saf. Code § 11054 subd. (d)(13); and 21 U.S.C. § 812) and a dangerous drug pursuant to section 4022.

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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 States  
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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1 **THIRD CAUSE FOR DISCIPLINE**

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

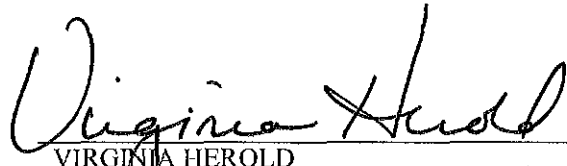
3 21. Respondent is subject to disciplinary action under sections 4300 and 4301,  
4 subdivision (f), on the grounds of unprofessional conduct, in that Respondent committed acts  
5 involving moral turpitude, dishonesty, fraud, deceit, or corruption when she was in possession of  
6 Cocaine, Heroin, Alprazolam and Marijuana, controlled substances and dangerous drugs, without  
7 valid prescriptions. Complainant refers to and by this reference incorporates the allegations set  
8 forth above in paragraphs 19 through 20, inclusive, as though set forth fully.

9 **PRAYER**

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

- 12 1. Revoking or suspending Pharmacy Technician Registration No. TCH 138520, issued  
13 to Evelyn Lissette Guillen;
- 14 2. Ordering Evelyn Lissette Guillen to pay the Board the reasonable costs of the  
15 investigation and enforcement of this case, pursuant to section 125.3; and
- 16 3. Taking such other and further action as deemed necessary and proper.

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19 DATED: 1/12/16



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

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