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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. 5509

13 **PAUL ANTHONY ONSUREZ**  
14 **14610 Longview Drive**  
**Fontana, CA 92337**

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

15 **Pharmacy Technician Registration No. TCH 92948**

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Accusation solely in her official  
21 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.  
22 2. On July 9, 2009, the Board of Pharmacy issued Pharmacy Technician Registration  
23 Number TCH 92948 to Paul Anthony Onsurez (Respondent). The Pharmacy Technician  
24 Registration expired on July 31, 2013, and has not been renewed.

25 **JURISDICTION**

- 26 3. This Accusation is brought before the Board of Pharmacy (Board), Department of  
27 Consumer Affairs, under the authority of the following laws. All section references are to the  
28 Business and Professions Code (Code) unless otherwise indicated.

1 4. Code section 118, subdivision (b) provides that the suspension, expiration,  
2 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a  
3 disciplinary action during the period within which the license may be renewed, restored, reissued,  
4 or reinstated.

5 5. Code section 4300, subdivision (a) provides that every license issued by the Board  
6 may be suspended or revoked.

7 6. Code section 4300.1 states:

8 The expiration, cancellation, forfeiture, or suspension of a board-issued  
9 license by operation of law or by order or decision of the board or a court of law,  
10 the placement of a license on a retired status, or the voluntary surrender of a  
11 license by a licensee shall not deprive the board of jurisdiction to commence or  
12 proceed with any investigation of, or action or disciplinary proceeding against, the  
13 licensee or to render a decision suspending or revoking the license.

#### 12 STATUTORY PROVISIONS

13 7. Code section 482 states:

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

- 16 (a) Considering the denial of a license by the board under Section 480; or
- 17 (b) Considering suspension or revocation of a license under Section 490.

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

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

23 9. Code section 492 states:

24 Notwithstanding any other provision of law, successful completion of any  
25 diversion program under the Penal Code, or successful completion of an alcohol  
26 and drug problem assessment program under Article 5 (commencing with Section  
27 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit  
28 any agency established under Division 2 (commencing with Section 500) of this  
code, or any initiative act referred to in that division, from taking disciplinary  
action against a licensee or from denying a license for professional misconduct,  
notwithstanding that evidence of that misconduct may be recorded in a record  
pertaining to an arrest. This section shall not be construed to apply to any drug

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1 diversion program operated by any agency established under Division 2  
2 (commencing with Section 500) of this code, or any initiative act referred to in  
3 that division.

4 10. Code section 493 states:

5 Notwithstanding any other provision of law, in a proceeding conducted by  
6 a board within the department pursuant to law to deny an application for a license  
7 or to suspend or revoke a license or otherwise take disciplinary action against a  
8 person who holds a license, upon the ground that the applicant or the licensee has  
9 been convicted of a crime substantially related to the qualifications, functions, and  
10 duties of the licensee in question, the record of conviction of the crime shall be  
11 conclusive evidence of the fact that the conviction occurred, but only of that fact,  
12 and the board may inquire into the circumstances surrounding the commission of  
13 the crime in order to fix the degree of discipline or to determine if the conviction  
14 is substantially related to the qualifications, functions, and duties of the licensee in  
15 question.

16 As used in this section, 'license' includes 'certificate,' 'permit,'  
17 'authority,' and 'registration.'

18 11. Code section 4022 states

19 "Dangerous drug" or "dangerous device" means any drug or device unsafe  
20 for self-use in humans or animals, and includes the following:

21 (a) Any drug that bears the legend: "Caution: federal law prohibits  
22 dispensing without prescription," "Rx only," or words of similar import.

23 (b) Any device that bears the statement: "Caution: federal law restricts  
24 this device to sale by or on the order of a \_\_\_\_\_," "Rx only," or words of  
25 similar import, the blank to be filled in with the designation of the practitioner  
26 licensed to use or order use of the device.

27 (c) Any other drug or device that by federal or state law can be  
28 lawfully dispensed only on prescription or furnished pursuant to Section 4006.

12. Code section 4060 states

22 No person shall possess any controlled substance, except that furnished to  
23 a person upon the prescription of a physician, dentist, podiatrist, optometrist,  
24 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished  
25 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section  
26 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant  
27 pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a  
28 pharmacist pursuant to either Section 4052.1 or 4052.2. This section shall not  
apply to the possession of any controlled substance by a manufacturer,  
wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist,  
veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or  
physician assistant, when in stock in containers correctly labeled with the name  
and address of the supplier or producer.

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

4            13.    Code section 4301 states:

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

9            . . . .

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

13           . . . .

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

16           . . . .

17           (l) The conviction of a crime substantially related to the qualifications,  
18 functions, and duties of a licensee under this chapter. The record of conviction of  
19 a violation of Chapter 13 (commencing with Section 801) of Title 21 of the  
20 United States Code regulating controlled substances or of a violation of the  
21 statutes of this state regulating controlled substances or dangerous drugs shall be  
22 conclusive evidence of unprofessional conduct. In all other cases, the record of  
23 conviction shall be conclusive evidence only of the fact that the conviction  
24 occurred. The board may inquire into the circumstances surrounding the  
25 commission of the crime, in order to fix the degree of discipline or, in the case of  
26 a conviction not involving controlled substances or dangerous drugs, to determine  
27 if the conviction is of an offense substantially related to the qualifications,  
28 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.

          . . . .

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

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1 (p) Actions or conduct that would have warranted denial of a license.  
2 . . . .

3 14. Health & Safety Code (HSC) section 11350 states:

4 a) Except as otherwise provided in this division, every person who  
5 possesses (1) any controlled substance specified in subdivision (b) or (c), or  
6 paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14),  
7 (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or  
8 (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any  
9 controlled substance classified in Schedule III, IV, or V which is a narcotic drug,  
10 unless upon the written prescription of a physician, dentist, podiatrist, or  
11 veterinarian licensed to practice in this state, shall be punished by imprisonment  
12 pursuant to subdivision (h) of Section 1170 of the Penal Code.

13 . . . .

14 **REGULATORY PROVISIONS**

15 15. California Code of Regulations, title 16 (CCR), section 1769, states:

16 . . . .

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

- 21 (1) Nature and severity of the act(s) or offense(s).
- 22 (2) Total criminal record.
- 23 (3) The time that has elapsed since commission of the act(s) or  
24 offense(s).
- 25 (4) Whether the licensee has complied with all terms of parole,  
26 probation, restitution or any other sanctions lawfully imposed against the licensee.
- 27 (5) Evidence, if any, of rehabilitation submitted by the licensee.

28 16. CCR, 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.

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1 **COST RECOVERY**

2 17. Code section 125.3 provides, in pertinent part, that the Board may request the  
3 administrative law judge to direct a licentiate found to have committed a violation or violations  
4 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
5 enforcement of the case, with failure of the licentiate to comply subjecting the license to not  
6 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs  
7 may be included in a stipulated settlement.

8 **DRUG**

9 18. Hydrocodone with acetaminophen, sold under brand names including Norco, is a  
10 Schedule III controlled substance under Health and Safety Code section 11056, subdivision (e),  
11 and a dangerous drug under Business and Professions Code section 4022.

12 **FIRST CAUSE FOR DISCIPLINE**

13 **(Aug. 22, 2013 Conviction for Possession of a Controlled Substance on Jun. 15, 2013)**

14 19. Respondent subjected his Pharmacy Technician Registration to discipline under  
15 Code sections 490 and 4301, subdivision (l) in that Respondent was convicted of a crime that is  
16 substantially related to the qualifications, functions, and duties of a registered pharmacy  
17 technician. The circumstances are as follows:

18 a. On August 22, 2013, in a criminal proceeding entitled *The People of the*  
19 *State of California vs. Paul Anthony Onsurez*, in Riverside County Superior Court, Hall of  
20 Justice Courthouse, Case Number RIF1302744, Respondent was convicted on his plea of guilty  
21 of violation of HSC section 11350, subdivision (a), possession of the controlled substance  
22 hydrocodone, a felony. A felony charge of embezzlement under Penal Code section 503, was  
23 dismissed under a plea bargain.

24 b. As a result of the conviction, on August 22, 2013, Respondent was  
25 sentenced to be committed to the custody of the Riverside County Sheriff for 120 days, with  
26 credit for two days served, and the balance of 118 days to be served in the work release program.  
27 Respondent was granted 36 months formal probation under certain terms and conditions.  
28 Respondent was ordered to pay fines, fees, assessments, restitution, and the cost of probation.

1 Respondent was also ordered to participate and complete a counseling, rehabilitation, or  
2 treatment program and register under HSC 11590 as a controlled substance offender, with the  
3 chief of police of the city in which he resides or the sheriff of the county if he resides in an  
4 unincorporated area within 30 days of his coming into any county or city, or city and county in  
5 which he resides or is temporarily domiciled for that length of time.

6 c. The circumstances that led to his conviction are that on June 15, 2013,  
7 while employed with Rite Aid in Riverside, California, Respondent was caught on camera taking  
8 prescription pills and putting them in his pants. During an interview with responding officers  
9 from the Riverside Police Department, Respondent admitted to taking the pills, putting them in  
10 his pocket, and later placing them in his car that was parked outside the store. Respondent also  
11 admitted to having committed the theft on three previous occasions with a total loss of  
12 approximately 100 pills.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Unprofessional Conduct – Commission of Acts Involving Moral Turpitude)**

15 20. Respondent subjected his Pharmacy Technician Registration to discipline under  
16 Code section 4301, subdivision (f), in that on June 15, 2013 and on three earlier occasions,  
17 Respondent knowingly and voluntarily participated in the theft of drugs. Respondent committed  
18 acts involving moral turpitude when he engaged in the embezzlement of drugs from his employer  
19 and possessed dangerous drugs, as detailed in paragraph 19, above.

20 **THIRD CAUSE FOR DISCIPLINE**

21 **(Unprofessional Conduct – Violation of Drug Laws)**

22 21. Respondent subjected his Pharmacy Technician Registration to discipline under  
23 Code section 4301, subdivision (j) in that he violated HSC sections 11350, possession of the  
24 controlled substance hydrocodone, a statute of the State of California regulating controlled  
25 substances, as detailed in paragraph 19, above.

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**FOURTH CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct – Violation of Pharmacy Laws)**

22. Respondent subjected his Pharmacy Technician Registration to discipline under Code section 4301, subdivision (o), in that Respondent possessed a dangerous drug and controlled substance in violation of Code section 4060, as detailed in paragraph 19, above.

**FIFTH CAUSE FOR DISCIPLINE**

**(Conduct That Would Have Warranted Denial of a License)**

23. Respondent subjected his Pharmacy Technician Registration to discipline under Code section 4301, subdivision (p), in that Respondent was convicted of a felony, conduct that would have warranted the denial of a pharmacy technician registration under Code section 480, subdivision (a)(1), as detailed in paragraph 19, above.

**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 92948, issued to Paul Anthony Onsurez;
- 2. Ordering Paul Anthony Onsurez 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;
- 3. Taking such other and further action as deemed necessary and proper.

DATED: 5/2/16

*Virginia Herold*

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

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