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7 *Attorneys for Complainant*

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. 5519

13 **JENNIFER GUZMAN**  
1715 West Blvd.  
Los Angeles, CA 90019

**ACCUSATION**

14 **Pharmacy Technician Registration No.**  
15 **TCH 129984**

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity as  
21 the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

22 2. On January 31, 2013, the Board issued Pharmacy Technician Registration Number  
23 TCH 129984 to Jennifer Guzman (Respondent). The Pharmacy Technician Registration was in full  
24 force and effect at all times relevant to the charges brought herein and will expire on April 30,  
25 2016, unless it is renewed.

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1 JURISDICTION

2 3. This Accusation is brought before the Board under the authority of the following laws.

3 All section references are to the Business and Professions Code unless otherwise indicated.

4 4. Section 4300.1 of the Code states:

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

11 5. Section 4300 of the Code states, in pertinent part, that every license issued may be  
12 suspended or revoked, and that proceedings to suspend or revoke a license over which the Board  
13 has authority must be conducted in accordance with Chapter 5 (commencing with Section 11500)  
14 of Part 1 of Division 3 of the Government Code.

13 STATUTES

14 6. Section 490 of the Code states:

15 (a) In addition to any other action that a board is permitted to take against a  
16 licensee, a board may suspend or revoke a license on the ground that the licensee has  
17 been convicted of a crime, if the crime is substantially related to the qualifications,  
18 functions, or duties of the business or profession for which the license was issued.

19 (b) Notwithstanding any other provision of law, a board may exercise any  
20 authority to discipline a licensee for conviction of a crime that is independent of the  
21 authority granted under subdivision (a) only if the crime is substantially related to the  
22 qualifications, functions, or duties of the business or profession for which the licensee's  
23 license was issued.

24 (c) A conviction within the meaning of this section means a plea or verdict of  
25 guilty or a conviction following a plea of nolo contendere. Any action that a board is  
26 permitted to take following the establishment of a conviction may be taken when the  
27 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal,  
28 or when an order granting probation is made suspending the imposition of sentence,  
irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal  
Code.

(d) The Legislature hereby finds and declares that the application of this section  
has been made unclear by the holding in *Petropoulos v. Department of Real Estate*  
(2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant  
number of statutes and regulations in question, resulting in potential harm to the  
consumers of California from licensees who have been convicted of crimes. Therefore,  
the Legislature finds and declares that this section establishes an independent basis for a

1 board to impose discipline upon a licensee, and that the amendments to this section  
2 made by Senate Bill 797 of the 2007 -08 Regular Session do not constitute a change to,  
3 but rather are declaratory of, existing law.

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12 7. Section 492 of the Code states:

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

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

25  
26  
27  
28 8. Section 493 of the Code states:

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

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

9. Section 4301 of the Code states:

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

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

...

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

6 ...

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

9 ...

10 (l) The conviction of a crime substantially related to the qualifications, functions,  
11 and duties of a licensee under this chapter. The record of conviction of a violation of  
12 Chapter 13 (commencing with Section 801) of Title 21 of the United States Code  
13 regulating controlled substances or of a violation of the statutes of this state regulating  
14 controlled substances or dangerous drugs shall be conclusive evidence of unprofessional  
15 conduct. In all other cases, the record of conviction shall be conclusive evidence only of  
16 the fact that the conviction occurred. The board may inquire into the circumstances  
17 surrounding the commission of the crime, in order to fix the degree of discipline or, in  
18 the case of a conviction not involving controlled substances or dangerous drugs, to  
19 determine if the conviction is of an offense substantially related to the qualifications,  
20 functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a  
21 conviction following a plea of nolo contendere is deemed to be a conviction within the  
22 meaning of this provision. The board may take action when the time for appeal has  
23 elapsed, or the judgment of conviction has been affirmed on appeal or when an order  
24 granting probation is made suspending the imposition of sentence, irrespective of a  
25 subsequent order under Section 1203.4 of the Penal Code allowing the person to  
26 withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the  
27 verdict of guilty, or dismissing the accusation, information, or indictment.

28 ...

(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.

...

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

10. Section 4060 of the Code states:

No person shall possess any controlled substance, except that furnished to a  
person upon the prescription of a physician, dentist, podiatrist, optometrist,  
veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to  
a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse  
practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section

1 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to  
2 either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of  
3 paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the  
4 possession of any controlled substance by a manufacturer, wholesaler, pharmacy,  
5 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor,  
6 certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in  
7 containers correctly 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  
10 drugs and devices.

### 11 REGULATIONS

12 11. California Code of Regulations, title 16, section 1770, states:

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

### 20 COST RECOVERY

21 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
22 administrative law judge to direct a licentiate found to have committed a violation or violations of  
23 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
24 enforcement of the case.

### 25 DRUG CLASSIFICATIONS

26 13. Alprazolam is a dangerous drug and Schedule IV controlled substance and narcotic  
27 drug. (Bus. & Prof. Code, §, 4022; Health & Saf. Code, § 11057, subd. (d).) Alprazolam is a  
28 benzodiazepine used to treat anxiety disorders, panic disorders and depression.

14 14. Dulera is a brand name for a combination of formoterol and mometasone. Formoterol  
15 is a long-acting bronchodilator that relaxes muscles in the airways to improve breathing.  
16 Mometasone is a steroid. It prevents the release of substances in the human body that cause  
17 inflammation. Dulera is a dangerous drug. (Bus. & Prof. Code, § 4022.)

18 15. Neomycin is a dangerous drug that acts as an antibiotic. (Bus. & Prof. Code, § 4022.)  
19 It is used to fight certain types of bacteria and to reduce the risk of infection during intestinal

1 surgery. It is also used to reduce the symptoms of hepatic coma, which occurs in advanced  
2 cirrhosis, hepatitis, poisoning or other liver disease.

3 16. Neomycin and polymyxin B sulfates and hydrocortisone ophthalmic suspension is a  
4 sterile antimicrobial and anti-inflammatory dangerous drug indicated for eye infections. (Bus. &  
5 Prof. Code, § 4022.)

6 17. Ofloxacin is a dangerous drug that acts as an antibiotic. (Bus. & Prof. Code, § 4022.)  
7 It attacks certain types of bacteria in the human body, especially bacterial infections of the skin,  
8 lungs, prostate and urinary tract. It is also indicated for the treatment of pelvic inflammatory  
9 disease and Chlamydia and gonorrhea.

10 18. Omeprazole is a proton pump inhibitor indicated for gastroesophageal reflux disease  
11 and other conditions caused by excess stomach acid. It is used to promote healing of erosive  
12 esophagitis (damage to the esophagus caused by stomach acid). Omeprazole is a dangerous drug.  
13 (Bus. & Prof. Code, § 4022.)

14 19. ProAir HFA aerosol is a brand name for albuterol, a dangerous drug. (Bus. & Prof.  
15 Code, § 4022.) Albuterol is a bronchodilator that widens airways in the lungs. It is indicated for  
16 patients with asthma and certain other respiratory diseases.

17 20. Promethazine is a prescription-strength antihistamine indicated for allergy symptoms,  
18 such as itching, runny nose, sneezing, itchy or watery eyes, hives and itchy skin rashes.  
19 Promethazine is a dangerous drug. (Bus. & Prof. Code, § 4022.)

20 21. Promethazine with codeine cough syrup is a dangerous drug and Schedule V  
21 controlled substance. Codeine is a narcotic pain reliever and cough suppressant. (Bus. & Prof.  
22 Code, § 4022; Health & Saf. Code, § 11058.) Promethazine is an antihistamine that blocks the  
23 effects of the naturally occurring chemical histamine in the human body. The combination of  
24 codeine and promethazine is used to treat cold and allergy symptoms.

25 22. Tobramycin is a dangerous drug. It is used to treat serious infections caused by certain  
26 types of bacteria. (Bus. & Prof. Code, § 4022.)

27 23. Tobramycin and dexamethasone ophthalmic is a steroidal dangerous drug used to treat  
28 bacterial eye infections. (Bus. & Prof. Code, § 4022.)

1 24. Zofran is a brand name for ondansetron, a dangerous drug. (Bus. & Prof. Code, §  
2 4022.) Ondansetron is used to prevent nausea and vomiting that may be the result of surgery or  
3 cancer treatment.

#### 4 STATEMENT OF FACTS

5 25. Between October 2011 and January 2014, Respondent stole dangerous drugs and  
6 controlled substances from CVS/pharmacy (CVS). Then in September 2014, she stole non-drug-  
7 related merchandise from Target. The circumstances of the CVS thefts are alleged in subdivision  
8 (A), below. The circumstances of the Target theft are alleged in subdivision (B), below.

##### 9 **A. CVS Drug Diversion**

10 26. On or about October 21, 2011, CVS hired Respondent as a pharmacy technician in its  
11 store located at 5944 North Figueroa Avenue, Los Angeles, California, 90042 (store number  
12 09665).

13 27. On or about December 29, 2013, CVS undertook an investigation of Respondent to  
14 determine whether she was involved in prescription drug theft. During the course of that  
15 investigation, Respondent admitted that she diverted drugs from the pharmacy for her personal  
16 use.

17 28. On or about January 20, 2014, Respondent made a voluntary written statement to  
18 CVS investigators. She admitted that on January 17, 2014, she stole promethazine with codeine  
19 cough syrup. She admitted to thefts throughout her employment at CVS and confessed that on  
20 past occasions (whose exact dates are known to Respondent but unknown to Complainant) she  
21 stole 1) tobramycin; 2) neomycin; 3) ofloxacin; 4) tobramycin and dexamethasone ophthalmic;  
22 5) neomycin and polymyxin B sulfates and hydrocortisone ophthalmic suspension; 6) Dulera; 7)  
23 Proair HFA aerosol; 8) alprazolam; 9) Zofran; 10) omeprazole; and 11) promethazine. Respondent  
24 stated that she stole some, if not all, of the medications by hiding them in her bra. She stole the  
25 medications for personal use and did, in fact, use them.

26 29. CVS fired Respondent on or about January 20, 2014.

27 30. On or about January 29, 2014, CVS alerted the Board of Respondent's theft. CVS  
28 reported the loss of 1,419 milliliters of promethazine with codeine and 90 tablets of 2 milligram-

1 strength alprazolam. CVS valued the drugs at \$1,328.69.

2 **B. Target Burglary**

3 31. On or about September 8, 2014, Respondent stole baby wipes and formula from a  
4 Target department store located at 6000 Sepulveda Boulevard in Culver City. Respondent told the  
5 arresting officer that, in addition to stealing formula and baby wipes on September 8, 2014, she  
6 also stole “about six other times” from Target. She admitted that at other times she has stolen  
7 “cameras and a navigation [system].” The arresting officer asked Respondent if she had money to  
8 pay for the formula and baby wipes. Respondent said, “Yeah[,] my mom gave me money to buy  
9 some things and I have some more money in my wallet.”

10 32. On or about June 26, 2015, Respondent pleaded *nolo contendere* to one misdemeanor  
11 count of burglary (Pen. Code, § 459). The Los Angeles County Superior Court suspended the  
12 imposition of sentence and placed Respondent on summary probation for 36 months. It ordered  
13 her to pay Target \$2,100. (*People v. Jennifer Guzman* (Super. Ct. L.A. County, 2015, No.  
14 SA088591).)

15 **FIRST CAUSE FOR DISCIPLINE**

16 **(Conviction of a Substantially Related Crime)**

17 33. Respondent is subject to disciplinary action under Code sections 490 and 4301,  
18 subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, because  
19 she was convicted of a crime that is substantially related to the qualifications, functions and duties  
20 of a pharmacy technician. Complainant realleges paragraphs 31 through 32.

21 **SECOND CAUSE FOR DISCIPLINE**

22 **(Violate Pharmacy Law—Unlawful Possession of a Controlled Substance)**

23 34. Respondent is subject to disciplinary action under Code section 4301, subdivision (o),  
24 in conjunction with California Code of Regulations, title 16, section 1770, because she violated  
25 provisions of the Pharmacy Law, in particular Code section 4060, which prohibits possession of a  
26 controlled substance except that furnished to a person upon the prescription of a person who is  
27 authorized by law to write a prescription, or except that possessed by a manufacturer, wholesaler,  
28 pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor,



1 certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers  
2 correctly labeled with the name and address of the supplier or producer. Respondent unlawfully  
3 possessed controlled substances without having a prescription for them and without being exempt  
4 as a person entitled to possess a prescription that is correctly labeled and in a proper container.  
5 Complainant realleges paragraphs 13 through 30.

6 **THIRD CAUSE FOR DISCIPLINE**

7 **(Violate State Statutes Regulating Controlled Substances and Dangerous Drugs)**

8 35. Respondent is subject to disciplinary action under Code section 4301, subdivision (j),  
9 in conjunction with California Code of Regulations, title 16, section 1770, because she violated a  
10 state statute regulating controlled substances and dangerous drugs. In particular, Respondent  
11 violated Code section 4060 and Health and Safety Code sections 11350, subdivision (a), 11352,  
12 subdivision (a), and 11377, subdivision (a). Complainant realleges paragraphs 13 through 34.

13 **FOURTH CAUSE FOR DISCIPLINE**

14 **(Dangerous Use of Drugs)**

15 36. Respondent is subject to disciplinary action under Code section 4301, subdivision (h),  
16 in conjunction with California Code of Regulations, title 16, section 1770, because she  
17 administered to herself a controlled substance and used dangerous drugs in a manner as to be  
18 dangerous or injurious to herself and to others. In particular, Respondent used controlled  
19 substances and dangerous drugs without a prescription therefor. Complainant realleges paragraphs  
20 13 through 32.

21 **FIFTH CAUSE FOR DISCIPLINE**

22 **(Dishonesty)**

23 37. Respondent is subject to disciplinary action under Code section 4301, subdivision (f), in  
24 conjunction with California Code of Regulations, title 16, section 1770, because she committed an act  
25 involving dishonesty and deceit. Complainant realleges paragraphs 13 through 32.

26 **SIXTH CAUSE FOR DISCIPLINE**

27 **(Denial-Worthy Conduct)**

28 38. Respondent is subject to disciplinary action under Code section 4301, subdivision (p),

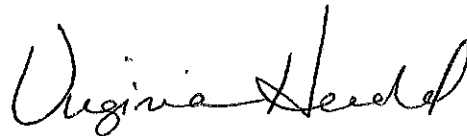
1 in conjunction with California Code of Regulations, title 16, section 1770, because she committed  
2 acts that would have warranted denial of a license. Complainant realleges paragraphs 13 through  
3 37.

4 **PRAYER**

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

- 7 1. Revoking or suspending Pharmacy Technician Registration Number TCH 129984,  
8 issued to Jennifer Guzman;
- 9 2. Ordering Jennifer Guzman to pay the Board of Pharmacy the reasonable costs of the  
10 investigation and enforcement of this case, pursuant to Business and Professions Code section  
11 125.3; and,
- 12 3. Taking such other and further action as deemed necessary and proper.

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16  
17 DATED: 4/8/16



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

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