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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 Accusation Against:

Case No. 5600

12 **SYLVIA THERESA SOLORIO**
13 **6039 Ferguson Drive**
Los Angeles, CA 90022

A C C U S A T I O N

14 **Pharmacy Technician Registration No. TCH**
15 **79018.**

16 Respondent.

17
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 October 25, 2007, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 79018 to Sylvia Theresa Solorio (Respondent). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought
25 herein and will expire on February 28, 2017, unless renewed. On October 1, 2015, pursuant to
26 Penal Code Section 23, an order was issued prohibiting Respondent from engaging in any activity
27 for which a pharmacy technician registration was required until there was a final disposition of
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1 the criminal case entitled *People v. Sylvia Theresa Solorio*, Los Angeles Superior Court Case No.
2 5EA04492.

3 **JURISDICTION**

4 3. This Accusation is brought before the Board under the authority of the following
5 laws. All section references are to the Business and Professions Code unless otherwise indicated.

6 4. Section 4011 of the Code provides that "[t]he board shall administer and enforce this
7 chapter [Pharmacy Law, (Business and Profession Code, Sec 4000 et seq.)] and the Uniform
8 Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and
9 Safety Code)."

10 5. Section 4300, subdivision (a), of the Code states, in pertinent part, that "[e]very
11 license issued may be suspended or revoked."

12 6. Section 4300.1 of the Code states, in pertinent part:

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

18 **STATUTORY PROVISIONS**

19 7. Section 4021 of the Code states, in pertinent part:

20 "'Controlled substance' means any substance listed in Chapter 2 (commencing with Section
21 11053) of Division 10 of the Health and Safety Code."

22 8. Section 4022 of the Code states, in pertinent part:

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

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

1 (b) Any device that bears the statement: 'Caution: federal law restricts this device to sale
2 by or on the order of a _____,' 'Rx only,' or words of similar import, the blank to be filled
3 in with the designation of the practitioner licensed to use or order use of the device.

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

6 9. Section 4060 of the Code states, in pertinent part:

7 "No person shall possess any controlled substance, except that furnished to a person upon
8 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
9 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
10 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
11 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
12 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
13 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
14 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
15 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
16 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
17 labeled with the name and address of the supplier or producer.

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

21 10. Section 490 states, in pertinent part:

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

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

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

9 11. Section 4301 of the Code states:

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

13 ...

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

17 ...

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

20 ...

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

1 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
2 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
3 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
4 of this provision. The board may take action when the time for appeal has elapsed, or the
5 judgment of conviction has been affirmed on appeal or when an order granting probation is made
6 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
7 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
8 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
9 indictment.

10 ...

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

15 ...”

16 12. Health and Safety Code section 11350, subdivision (a), states, in pertinent part:

17 “Except as otherwise provided in this division, every person who possesses (1) any
18 controlled substance specified in subdivision (b), (c), (e), or paragraph (1) of subdivision (f) of
19 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or
20 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section
21 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic
22 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian
23 licensed to practice in this state, shall be punished by imprisonment in a county jail for not more
24 than one year, except that such person shall instead be punished pursuant to subdivision (h) of
25 Section 1170 of the Penal Code if that person has one or more prior convictions for an offense
26 specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of
27 the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290
28 of the Penal Code.”

1 13. Health and Safety Code section 11377, subdivision (a), states, in pertinent part:
2 "Except as authorized by law and as otherwise provided in subdivision (b) or Section
3 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the
4 Business and Professions Code, every person who possesses any controlled substance which is
5 (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in
6 subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d),
7 (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2)
8 or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section
9 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to
10 practice in this state, shall be punished by imprisonment in a county jail for a period of not more
11 than one year or pursuant to subdivision (h) of Section 1170 of the Penal Code."

12 REGULATORY PROVISIONS

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

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

20 COST RECOVERY

21 15. Section 125.3 of the Code states, 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 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

26 16. Phenergan/Codeine, the brand name for Promethazine with Codeine Syrup is a
27 Schedule V controlled substance under Health and Safety Code section 11058 and is a dangerous
28 drug pursuant to Business and Professions Code section 4022.

1 17. Amoxicillin is a dangerous drug pursuant to Business and Professions Code section
2 4022.

3 18. Cyclobenzaprine, brand name Flexeril, is a muscle relaxant.

4 **FIRST CAUSE FOR DISCIPLINE**

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

6 19. Respondent is subject to disciplinary action under sections 4301, subdivision (l), and
7 490, in conjunction with California Code of Regulations, title 16, section 1770, in that on or about
8 November 5, 2015, after pleading nolo contendere, Respondent was convicted of one
9 misdemeanor count of violating Penal Code section 487(a), grand theft in the case entitled *People*
10 *v. Sylvia Theresa Solorio*, Los Angeles Superior Court Case No. 5EA04492. The court sentenced
11 Respondent to three years probation, 15 days of community service and ordered her to stay 100
12 yards away from the CVS Pharmacy located in the City of Montebello. The circumstances of the
13 conviction are that CVS conducted a random inventory of Promethazine with Codeine and
14 discovered eight missing bottles for the period between June 1, 2014 to May 1, 2015.
15 Surveillance camera footage showed Respondent take a medication bottle of Promethazine with
16 Codeine and pills of Cyclobenzaprine 10 mg when no prescription was dispensed for those drugs
17 on that day. On July 31, 2015, Respondent was interviewed by CVS and she admitted to taking
18 approximately 22 bottles of Promethazine with Codeine. Respondent also admitted to taking 25
19 pills of Cyclobenzaprine, 30 pills of Amoxicillin, pamper wipes, greeting cards and additional
20 items from the store. On or about July 31, 2015, Respondent was arrested by the Montebello
21 Police Department.

22 **SECOND CAUSE FOR DISCIPLINE**

23 **(Possession of Controlled Substance Without a Prescription)**

24 20. Respondent is subject to disciplinary action under Code section 4301, subdivision (j),
25 on the grounds of unprofessional conduct, for violating Code section 4060 and Health and Safety
26 Code sections 11350, subdivision (a), and 11377, in that Respondent unlawfully possessed
27 controlled substances that were not furnished to her upon prescription of a physician.
28

1 Complainant refers to and by this reference incorporates the allegations set forth above in
2 paragraph 19, inclusive, as though set forth fully.

3 **THIRD CAUSE FOR DISCIPLINE**

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

5 21. Respondent is subject to disciplinary action under Code section 4301, subdivision (f),
6 on the grounds of unprofessional conduct, in that Respondent committed acts involving moral
7 turpitude, dishonesty, fraud, deceit, or corruption. Complainant refers to and by this reference
8 incorporates the allegations set forth above in paragraph 19, inclusive, as though set forth fully.

9 **FOURTH CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct/ Violation of Licensing Chapter)**

11 22. Respondent is subject to disciplinary action under section 4301, subdivision (o), in
12 that Respondent committed acts of unprofessional conduct and/ or violated provisions of the
13 licensing chapter. Complainant refers to and by this reference incorporates the allegations set
14 forth above in paragraph 19, inclusive, as though set forth fully.

15 **PRAYER**

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

18 1. Revoking or suspending Pharmacy Technician Registration Number TCH 79018,
19 issued to Sylvia Theresa Solorio;

20 2. Ordering Sylvia Theresa Solorio to pay the Board of Pharmacy the reasonable costs
21 of the investigation and enforcement of this case, pursuant to Business and Professions Code
22 section 125.3;

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3. Taking such other and further action as deemed necessary and proper.

DATED:

12/22/15



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

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