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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. 5735

13 **CINDY NATIVIDAD GUERRA**
8452 Alder Avenue
Fontana, CA 92335

A C C U S A T I O N

14 Pharmacy Technician Registration
15 No. TCH 98710

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 (Board).
22 2. On or about March 11, 2010, the Board issued Pharmacy Technician Registration No.
23 TCH 98710 to Cindy Natividad Guerra (Respondent). The Pharmacy Technician Registration
24 expired on January 31, 2016, and has not been renewed.

25 **JURISDICTION**

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

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1 4. Section 4300 provides in pertinent part, that every license issued by the Board is
2 subject to discipline, including suspension or revocation.

3 5. Section 4300.1 states:

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

9 **STATUTORY PROVISIONS**

10 6. Section 4301 states, in pertinent part:

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

14

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

18

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

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

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

18 7. Section 4059 states, in pertinent part:

19 “(a) A person may not furnish any dangerous drug, except upon the prescription of a
20 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
21 3640.7. A person may not furnish any dangerous device, except upon the prescription of a
22 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
23 3640.7.”

24 REGULATORY PROVISIONS

25 8. California Code of Regulations, title 16, section 1770, states:

26 “For the purpose of denial, suspension, or revocation of a personal or facility license
27 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
28 crime or act shall be considered substantially related to the qualifications, functions or duties of a

1 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
2 licensee or registrant to perform the functions authorized by his license or registration in a manner
3 consistent with the public health, safety, or welfare."

4 **COST RECOVERY**

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

11 10. **CONTROLLED SUBSTANCES / DANGEROUS DRUGS**

12 "Methocarbomal," is a medication that relaxes muscles, and used along with rest and
13 physical therapy to decrease muscle pain and spasms associated with strains, sprains or other
14 muscle injuries. It is categorized as a dangerous drug pursuant to Business and Profession Code
15 section 4022.

16 **FIRST CAUSE FOR DISCIPLINE**

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

18 11. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and
19 490, in conjunction with California Code of Regulations, title 16, section 1770, in that,
20 Respondent was convicted of a crime substantially related to the qualifications, functions or
21 duties of a pharmacy technician as follows:

22 a. On or about June 15, 2016, after pleading nolo contendere, Respondent was convicted
23 of one misdemeanor count of violating Penal code section 504 [embezzlement] in the criminal
24 proceeding entitled *The People of the State of California v. Cindy Natividad Guerra* (Super. Ct.
25 San Bernardino County, 2016, No. 16CR-001497). The Court sentenced Respondent to serve 10
26 days in jail and placed her on 36 months probation, with terms and conditions.

27 b. The circumstances surrounding the conviction are that on or about December 19,
28 2015, Respondent while working as a pharmacy technician at CVS, Respondent committed acts

1 involving dishonesty, fraud, or deceit when she admitted to taking over \$1,000.00 in pain
2 medication and methocarbomal for the past six months without permission and without any
3 attempt to pay for the items.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Acts Involving Dishonesty, Fraud, or Deceit)**

6 12. Respondent is subject to disciplinary action under section 4301, subdivision (f), on
7 the grounds of unprofessional conduct, as follows:

8 a. On or about December 19, 2015, while working as a pharmacy technician at CVS,
9 Respondent committed acts involving dishonesty, fraud, or deceit when she took methocarbomal
10 pills from the pharmacy drug stock. Complainant refers to, and by this reference incorporates, the
11 allegations set forth above in paragraph 11, subparagraph (b), as though set forth fully.

12 b. On or about October 24, 2016, a Target an Asset Protection Specialist observed
13 Respondent select several items and conceal them in reusable bags. Respondent exited the store
14 where shew as detained by Target security. Respondent admitted to coming to the store to steal
15 merchandise. The value of the stolen items was \$359.97.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Furnishing of Controlled Substances and / or Dangerous Drugs)**

18 13. Respondent is subject to disciplinary action under section 4301, subdivision (o), in
19 conjunction with section 4059, subdivision (a), on the grounds of unprofessional conduct in that
20 on December 19, 201 Respondent admitted to a CVS manger that she unlawfully furnished
21 methocarbomal, a dangerous drug, to her father, who did not have a prescription for the
22 medication, for pain management. Complainant refers to, and by this reference incorporates, the
23 allegations set forth above in paragraph 11, subparagraph (b), as though set forth fully.

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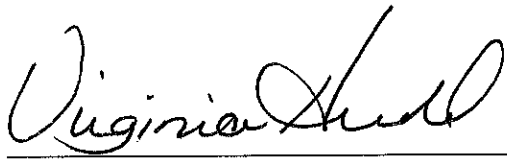
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PRAYER

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 98710, issued to Cindy Natividad Guerra;
2. Ordering Cindy Natividad Guerra 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; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: 10/18/17



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

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