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8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 5766

12 **MELISSA CAROLYN GRAY**

13 1540 Catalina St., #G
14 Burbank, CA 91505

A C C U S A T I O N

15 Pharmacy Technician Registration No. TCH
107620

16 Respondent.

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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 (Board).

22 2. On or about December 8, 2010, the Board issued Pharmacy Technician Registration
23 Number TCH 107620 to Melissa Carolyn Gray (Respondent). Said registration was in full force
24 and effect at all times relevant to the charges brought herein and will expire on December 31,
25 2016, unless renewed.

26 **JURISDICTION AND STATUTORY PROVISIONS**

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

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4. Section 4300 of the Code states:

“(a) Every license issued may be suspended or revoked.

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

- (1) Suspending judgment.
- (2) Placing him or her upon probation.
- (3) Suspending his or her right to practice for a period not exceeding one year.
- (4) Revoking his or her license.
- (5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy, including, but not limited to, the following:

- (1) Medical or psychiatric evaluation.
- (2) Continuing medical or psychiatric treatment.
- (3) Restriction of type or circumstances of practice.
- (4) Continuing participation in a board-approved rehabilitation program.
- (5) Abstention from the use of alcohol or drugs.
- (6) Random fluid testing for alcohol or drugs.
- (7) Compliance with laws and regulations governing the practice of pharmacy.

(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary certificate of licensure for any violation of the terms and conditions of probation. Upon satisfactory completion of probation, the board shall convert the probationary certificate to a regular certificate, free of conditions.

(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure.”

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5. Section 4301 of the Code provides, in pertinent part:

“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.

...

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

6. Section 490 of the Code states:

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

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

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken 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

1 sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of
2 the Penal Code.

3 (d) The Legislature hereby finds and declares that the application of this
4 section has been made unclear by the holding in *Petropoulos v. Department of Real*
5 *Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a
6 significant number of statutes and regulations in question, resulting in potential harm
7 to the consumers of California from licensees who have been convicted of crimes.
8 Therefore, the Legislature finds and declares that this section establishes an
9 independent basis for a board to impose discipline upon a licensee, and that the
10 amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session
11 do not constitute a change to, but rather are declaratory of, existing law.”

12 REGULATORY PROVISIONS

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

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

21 COST RECOVERY

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

28 FIRST CAUSE FOR DISCIPLINE

(Substantially Related Criminal Conviction)

9 Respondent is subject to disciplinary action under section 490 and section 4301,
10 subdivision (l) of the Code, in conjunction with California Code of Regulations, title 16, section
11 1770 in that Respondent was convicted of a crime substantially related to the qualifications,
12 functions and duties of a pharmacy technician. Specifically, on January 9, 2014, Respondent was
13 convicted of one felony count of violating Nevada Revised Statutes 205.060 [Burglary] and one
14 felony count of violating Nevada Revised Statutes 205.740 [Utter a Forged Credit or Debit Card]
15 in the criminal proceeding entitled *The State of Nevada v. Melissa Carolyn Gray* (Clark County

1 Nevada District Court, C-13-294990-1). The court ordered Respondent to serve a maximum of
2 48 months and a minimum of 12 months in the Nevada Department of Corrections (but suspended
3 the jail sentence) and placed Respondent on probation for a period of 5 years, with terms and
4 conditions. Among other conditions, the court ordered that Respondent undergo substance abuse
5 and mental health evaluations and complete any counseling deemed necessary. On November 14,
6 2013, Respondent went to the cashier cage inside the Stratosphere to get a cash advance on a
7 credit card. The cashier noticed flaws with the card, believed it to be fake, and called security.
8 Police officers arrived and confirmed the card was, in fact, fraudulent.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Act Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

11 10. Respondent is subject to disciplinary action under section 4301, subdivision (f) of the
12 Code in that she committed an act involving moral turpitude, dishonesty, fraud, deceit, or
13 corruption. The conduct is described in more particularity in paragraph 9 above, inclusive, and
14 hereby incorporated by reference.

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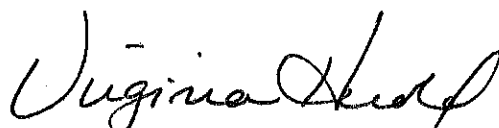
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PRAYER

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 107620, issued to Melissa Carolyn Gray;
2. Ordering Melissa Carolyn Gray 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: 7/19/16



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

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