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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. 5954

13 **JOHN PAOLO M. CACHO**
315 1/4 W. 220th Street
Carson, CA 90745

A C C U S A T I O N

14 **Pharmacy Technician Registration No.**
15 **TCH 114307**

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 September 20, 2011, the Board of Pharmacy issued Pharmacy Technician
23 Registration No. TCH 114307 to John Paolo M. Cacho (“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 September 30, 2017, unless renewed.

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1 **JURISDICTION**

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

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

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

11 6. Section 4300.1 of the Code states:

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

18 **STATUTORY AND REGULATORY PROVISIONS**

19 7. Section 4301 of the Code states, in pertinent part:

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

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

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

. . . .

(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

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

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

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

24 8. Section 4060 of the Code states, in pertinent part:

25 No person shall possess any controlled substance, except that furnished to a
26 person upon the prescription of a physician, dentist, podiatrist, optometrist,
27 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant
28 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 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist
pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph
(A) of paragraph (5) of, subdivision (a) of Section 4052. 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.

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

9. California Code of Regulations, title 16, section 1770, states, in pertinent part:

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.

1 **COST RECOVERY**

2 10. Section 125.3 of the Code 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 of
4 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 **CONTROLLED SUBSTANCE / DANGEROUS DRUG**

9 11. Acetaminophen with Codeine (#3 for 30 milligram and #4 for 60 milligram) is a
10 Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision
11 (e)(2), and a dangerous drug pursuant to section 4022 of the Code.

12 **FIRST CAUSE FOR DISCIPLINE**

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

14 12. Respondent is subject to disciplinary action under Code section 4301, subdivision (l),
15 in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent was
16 convicted of a crime substantially related to qualifications, functions, or duties of a registered
17 pharmacy technician which to a substantial degree evidence his present or potential unfitness to
18 perform the functions authorized by his registration in a manner consistent with the public health,
19 safety, or welfare, as follow:

20 a. On or about August 30, 2016, Respondent was convicted of one misdemeanor count
21 of violating Penal Code sections 484, subdivision (a), and 490.2 [petty theft, acetaminophen-
22 codeine #4], in the criminal proceeding entitled *The People of the State of California v. John*
23 *Paolo Cacho* (Super. Ct. L.A. County, 2016, No. 6CS03135). The court ordered Respondent to
24 complete 26 narcotics anonymous meetings, 13 days community labor, and pay restitution to
25 victim in the amount of \$2,038.30.

26 b. The circumstances surrounding the conviction are that on or about April 20, 2016,
27 Los Angeles County Sheriff's Department deputies responded to a report of 2,000 stolen drug
28 tablets from a CVS pharmacy where Respondent working as a pharmacy technician. On May 3,

1 2016 and May 5, 2016, the investigation included surveillance video that indicated Respondent
2 unlawfully took approximately 70 tablets of acetaminophen-codeine #4, valued at \$11.99 each.
3 On May 10, 2016, the surveillance video showed Respondent unlawfully taking approximately
4 100 tablets of acetaminophen-codeine #4. The value of the acetaminophen-codeine #4 for all
5 three incidents was \$2,038.30.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Unlawful Possession of Dangerous Drug / Controlled Substance)**

8 13. Respondent is subject to disciplinary action under Code sections 4301, subdivision
9 (j), and 4060, on the grounds of unprofessional conduct, in that Respondent possessed or
10 conspired to possess dangerous drugs and controlled substances without a valid prescription.
11 Complainant refers to and by this reference incorporates the allegations set forth above in
12 paragraph 12, inclusive, as though set forth fully.

13 **THIRD CAUSE FOR DISCIPLINE**

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

15 14. Respondent is subject to disciplinary action under Code section 4301, subdivision (f),
16 on the grounds of unprofessional conduct, in that Respondent committed acts involving moral
17 turpitude, dishonesty, fraud, deceit, or corruption. Complainant refers to and by this reference
18 incorporates the allegations set forth above in paragraph 12, inclusive, as though set forth fully.

19 **FOURTH CAUSE FOR DISCIPLINE**

20 **(Violating Pharmacy Law / Acts Warranting Denial of Licensure)**

21 15. Respondent is subject to disciplinary action under Code section 4301, subdivisions
22 (o) and (p), on the grounds of unprofessional conduct, in that Respondent committed acts
23 violating the Pharmacy Law and/or federal and state laws that would have warranted denial of a
24 license. Complainant refers to and by this reference incorporates the allegations set forth above
25 in paragraph 12, inclusive, as though set forth fully.

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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 issue a decision:

1. Revoking or suspending Pharmacy Technician Registration No. TCH 114307, issued to John Paolo M. Cacho, aka John Paolo Cacho;
2. Ordering John Paolo M. Cacho, aka John Paolo Cacho to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: 11/30/16



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

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