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

11
12 In the Matter of the Accusation Against:

Case No. 6023

13 **JOSHUA MICHAEL UDELL**
14 **562 Osage St.**
Spring Valley, CA 91977

A C C U S A T I O N

15 **Pharmacy Technician Registration No.**
16 **TCH 86995**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about October 24, 2008, the Board issued Pharmacy Technician Registration
24 Number TCH 86995 to Joshua Michael Udell (Respondent). The Pharmacy Technician
25 Registration expired on February 29, 2016, and has not been renewed.

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1 **JURISDICTION**

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

5 4. Section 4300, subdivision (a) of the Code states: "Every license issued may be
6 suspended or revoked."

7 5. Section 4300.1 of the Code states:

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

12 **STATUTORY PROVISIONS**

13 6. Section 482 of the Code states:

14 Each board under the provisions of this code shall develop criteria to evaluate the
15 rehabilitation of a person when:

16 (a) Considering the denial of a license by the board under Section 480; or

17 (b) Considering suspension or revocation of a license under Section 490.

18 Each board shall take into account all competent evidence of rehabilitation
19 furnished by the applicant or licensee.

20 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or
21 revoke a license on the ground that the licensee has been convicted of a crime substantially related
22 to the qualifications, functions, or duties of the business or profession for which the license was
23 issued.

24 8. Section 493 of the Code states:

25 Notwithstanding any other provision of law, in a proceeding conducted by a board
26 within the department pursuant to law to deny an application for a license or to suspend
27 or revoke a license or otherwise take disciplinary action against a person who holds a
28 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,

1 functions, and duties of the licensee in question.

2 As used in this section, "license" includes "certificate," "permit," "authority," and
3 "registration."

4 9. Section 4022 of the Code states:

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

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

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

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

15 10. Section 4059 of the Code states, in pertinent part, that a person may not furnish any
16 dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,
17 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

18 11. Section 4060 of the Code states, in pertinent part, that no person shall possess any
19 controlled substance, except that furnished to a person upon the prescription of a physician,
20 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.
21 2746.51, a nurse practitioner pursuant to Section 2836.1, or a

22 12. Section 4301 of the Code states:

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

26 ...

27 (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit,
28 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.

(g) Knowingly making or signing any certificate or other document that falsely
represents the existence or nonexistence of a state of facts.

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

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(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.

...

(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. . .

13. United States Code, title 21, section 843 states, in pertinent part:

(a) It shall be unlawful for any person knowingly or intentionally –

...

(3) to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge. . .

REGULATORY PROVISIONS

14. California Code of Regulations, title 16, section 1769, subdivision (c) states:

When considering the suspension or revocation of a facility or a personal license on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

1 (5) Evidence, if any, of rehabilitation submitted by the licensee.

2 15. California Code of Regulations, title 16, section 1770, states:

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

7 **COSTS**

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

14 **DRUGS**

15 17. Codeine with acetaminophen, sold under the brand name Tylenol #4, is a Schedule III
16 controlled substance as designated by Health and Safety Code section 11056(e)(2), and is a
17 dangerous drug pursuant to Business and Professions Code section 4022.

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(May 13, 2015 Criminal Conviction for Petty Theft)**

20 18. Respondent has subjected his registration to discipline under sections 490 and 4301,
21 subdivision (l) of the Code in that he was convicted of a crime that is substantially related to the
22 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

23 a. On or about May 13, 2015, in a criminal proceeding entitled *People of the State*
24 *of California v. Joshua Udell*, in San Diego County Superior Court, case number M196718,
25 Respondent was convicted on his plea of guilty to violating Penal Code section 484, petty theft, a
26 misdemeanor.

27 b. As a result of the conviction, Respondent was granted summary probation for
28 three years, ordered to pay fines, fees, and restitution, submit to a Fourth Amendment waiver, and

1 to complete an anti-theft class through the court. Respondent was further ordered to stay away
2 from the pharmacy where the theft occurred.

3 c. The facts that led to the conviction are that on or about January 13, 2015, an
4 officer with the San Diego Police Department (SDPD) responded to a local hospital to investigate
5 allegations of forgery and theft, which were reported by the hospital's pharmacy staff. The
6 pharmacist-in-charge informed the SDPD officer that she received an email from a pharmacist
7 explaining how a discrepancy was discovered, and that she believed Respondent committed the
8 theft. The pharmacist-in-charge provided the SDPD officer with a copy of Invoice No. 749895548
9 showing that two types of medications were ordered, Tylenol #4 (4 bottles, 500-ct.) and
10 Lorazepam (1 bottle, 100-ct.), and a copy of the same invoice which was altered by Respondent
11 with white-out so that the Tylenol #4 was no longer legible. During the investigation, Respondent
12 immediately admitted to hiding the medication in the building, and that he took approximately 60
13 Tylenol #4 pills out of one of the bottles home with him. Respondent told the SDPD officer he
14 took the pills because he has a sick family member who was unable to get his medication.
15 Respondent denied taking the medication for the purpose of self-administration or to sell.
16 Respondent directed the SDPD officer to where he could locate the bottles of medication, and the
17 SDPD officer retrieved approximately 1,940 Tylenol #4 pills. Respondent further admitted to
18 taking medication from the pharmacy on a previous occasion. An audit conducted by the
19 pharmacy confirmed an additional loss of 4,700 APAP/codeine #4 pills between January 16, 2014
20 and December 8, 2014, however, they were unable to track the pills at the time of the
21 investigation.

22 **SECOND CAUSE FOR DISCIPLINE**

23 **(Making a False Document)**

24 19. Respondent has subjected his registration to discipline under section 4301,
25 subdivision (g) of the Code for unprofessional conduct in that he altered an invoice using white-
26 out to conceal his theft of controlled substances from the pharmacy's inventory, as described in
27 paragraph 18, above.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Commission of Acts Involving Dishonesty, Fraud, Deceit & Corruption)**

3 20. Respondent has subjected his registration to discipline under section 4301,
4 subdivision (f) of the Code for unprofessional conduct in that he stole controlled substances and
5 dangerous drugs from his employer/pharmacy using fraud, deceit, and dishonesty, as described in
6 paragraph 18, above.

7 **FOURTH CAUSE FOR DISCIPLINE**

8 **(Violation of California Statutes Regulating Controlled Substances)**

9 21. Respondent has subjected his registration to discipline under section 4301,
10 subdivision (j) of the Code for unprofessional conduct in that he knowingly violated Business and
11 Professions Code sections 4022, 4059, and 4060, as described in paragraph 18, above.

12 **FIFTH CAUSE FOR DISCIPLINE**

13 **(Violating Federal & State Laws & Regulations Governing Pharmacy)**

14 22. Respondent has subjected his registration to discipline under section 4301,
15 subdivision (o) of the Code for unprofessional conduct in that he violated Title 21 U.S.C. section
16 843, subdivision (a)(3), Board of Pharmacy Regulations (California Code of Regulations, Title
17 16, Section 1700, et seq.), and the California Uniform Controlled Substances Act (Health and
18 Safety Code 11000, et seq.), when he obtained controlled substances using fraud and deceit, as
19 described in paragraph 18, above.

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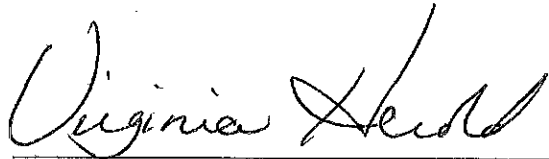
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PRAYER

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 86995, issued to Joshua Michael Udell;
2. Ordering Joshua Michael Udell 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: 6/5/17



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

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