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7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 6043

11 **SUSANA MEDINA-MONTEJANO**
12 1105 E. Lake Ave., # 17
Watsonville, CA 95076

A C C U S A T I O N

13 **Pharmacy Technician Registration No. TCH**
14 **153269**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about April 8, 2016, the Board issued Pharmacy Technician Registration
22 Number TCH 153269 to Susana Medina-Montejano (Respondent). The Pharmacy Technician
23 Registration was in full force and effect at all times relevant to the charges brought herein and
24 will expire on October 31, 2017, unless renewed.

25 **JURISDICTION**

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

1 7. Section 4022 of the Code states:

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

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

6 ". . . .

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

9 8. 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 issued by mistake. Unprofessional conduct shall include, but is
12 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
22 duties 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 9. Section 4059(a) of the Code states:

17 "A person may not furnish any dangerous drug, except upon the prescription of a physician,
18 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A
19 person may not furnish any dangerous device, except upon the prescription of a physician, dentist,
20 podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7."

21 10. Section 4060 of the Code states:

22 "No person shall possess any controlled substance, except that furnished to a person upon
23 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
24 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
25 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
26 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
27 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
28 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not

1 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
2 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
3 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
4 labeled with the name and address of the supplier or producer."

5 11. Code section 490(a) provides, in pertinent part, that a board may suspend or revoke a
6 license on the ground that the licensee has been convicted of a crime substantially related to the
7 qualifications, functions, or duties of the business or profession for which the license was issued.

8 COSTS

9 12. Section 125.3 of the Code states, in pertinent part, that the Board may request the
10 administrative law judge to direct a licentiate found to have committed a violation or violations of
11 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
12 enforcement of the case.

13 DRUGS

14 13. Phentermine is a stimulant drug, is a controlled substance per Health and Safety Code
15 section 11057(f)(4), and is a dangerous drug per Code section 4022.

16 BACKGROUND

17 14. In 2015, while working as a pharmacy technician for CVS, Respondent stole roughly
18 50 capsules of phentermine 37.5 mg from the pharmacy. Respondent furnished the phentermine
19 to another individual to whom she then owed a debt. Respondent also admitted stealing another
20 medication on a different occasion.

21 15. Criminal charges were brought against Respondent based on the theft.

22 16. On July 25, 2016, in the Superior Court of California for the County of Santa Cruz, in
23 the case entitled *People of the State of California v. Susana Montejano Medina*,
24 Case No. 16CR04163, Respondent pled no contest to and was convicted of violating Penal Code
25 section 484 (petty theft), a misdemeanor.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Possess Controlled Substance)**

3 17. Respondent is subject to disciplinary action under Code section 4301(j) and/or (o), in
4 conjunction with Code section 4060, in that Respondent possessed a controlled substance without
5 a valid prescription. The circumstances are described above in "Background."

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Furnish Dangerous Drug)**

8 18. Respondent is subject to disciplinary action under Code section 4301(j) and/or (o), in
9 conjunction with Code section 4059(a), in that Respondent illegally furnished a dangerous drug to
10 another person. The circumstances are described above in "Background."

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Act Involving Dishonesty)**

13 19. Respondent is subject to disciplinary action under Code section 4301(f), in that
14 Respondent did an act involving moral turpitude, dishonesty, fraud, deceit, or corruption. The
15 circumstances are described above in "Background."

16 **FOURTH CAUSE FOR DISCIPLINE**

17 **(Criminal Conviction)**

18 20. Respondent is subject to disciplinary action under Code sections 490(a) and/or
19 4301(l), in that Respondent was convicted of an offense substantially related to the duties,
20 functions, or qualifications of a licensee. The circumstances are described above in
21 "Background."

22 **PRAYER**

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

25 1. Revoking or suspending Pharmacy Technician Registration Number TCH 153269,
26 issued to Susana Medina-Montejano;

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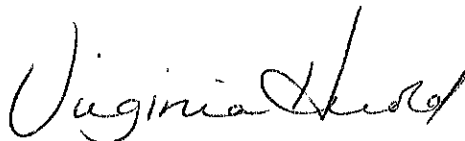
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2. Ordering Susana Medina-Montejano to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

DATED: _____

5/12/17



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

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