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

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|---|-------------------|
| 11 In the Matter of the Accusation Against: | Case No. 6089 |
| 12 MINERVA ORNELAS | |
| 13 6636 Irvine Ave, #4 | |
| 14 N. Hollywood, CA 91606 | ACCUSATION |
| 15 Pharmacy Technician Registration | |
| 16 No. TCH 71413 | |
| 17 Respondent. | |

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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, Department of Consumer Affairs.
- 23 2. On or about September 29, 2006, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 71413 to Minerva Ornelas (Respondent). The Pharmacy Technician
25 Registration was in full force and effect at all times relevant to the charges brought herein and
26 will expire on May 31, 2018, 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.

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

8 5. Business and Professions Code section 4300, subdivision (a), states, in pertinent part,
9 that “[e]very license issued may be suspended or revoked.”

10 6. Business and Professions Code section 4300.1 provides:

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

16 **STATUTORY AND REGULATORY PROVISIONS**

17 7. Business and Professions Code section 4301 provides, in pertinent part, that the
18 Board shall take action against any holder of a license who is guilty of “unprofessional conduct,”
19 defined to include, but not be limited to, any of the following:

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

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

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

1 (o) Violating or attempting to violate directly or indirectly, or assisting
2 in or abetting the violation of or conspiring to violate any provision or
3 terms of this chapter or of the applicable federal and state laws and
4 regulations governing pharmacy, including regulations established by
5 the board or by any other state or federal regulatory agency.

6 8. Business and Professions Code section 4059, subdivision (a), states that “[a] person
7 may not furnish any dangerous drug, except upon the prescription of a physician, dentist,
8 podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. . .”

9 9. Business and Professions Code section 4060 states, in part:

10 No person shall possess any controlled substance, except that furnished to
11 a person upon the prescription of a physician, dentist, podiatrist,
12 optometrist, veterinarian, or naturopathic doctor pursuant to Section
13 3640.7, or furnished pursuant to a drug order issued by a certified nurse-
14 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to
15 Section 2836.1, a physician assistant pursuant to Section 3502.1, a
16 naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant
17 to either Section 4052.1 or 4052.2. This section shall not apply to the
18 possession of any controlled substance by a manufacturer, wholesaler,
19 pharmacy, pharmacist, physician, podiatrist, dentist, optometrist,
20 veterinarian, naturopathic doctor, certified nurse-midwife, nurse
21 practitioner, or physician assistant, when in stock in containers correctly
22 labeled with the name and address of the supplier or producer. . . .

23 10. Health and Safety Code section 11170 provides that “[n]o person shall prescribe,
24 administer, or furnish a controlled substance for himself.”

25 11. Health and Safety Code section 11173, subdivision (a), provides, in part, that “[n]o
26 person shall obtain or attempt to obtain controlled substances . . . (1) by fraud, deceit,
27 misrepresentation, or subterfuge; or (2) by the concealment of a material fact.”

28 COST RECOVERY

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

1 **DANGEROUS DRUG / CONTROLLED SUBSTANCES**

2 13. Phentermine 37.5 mg is a Schedule IV controlled substance as designated by Health
3 and Safety Code section 11057, subdivision (f)(4), and a dangerous drug within the meaning of
4 Business and Profession Code section 4022 in that it can only be obtained by a valid prescription.
5 Phentermine 37.5 mg is indicated for weight loss. "Adipex-P" is a brand of phentermine 37.5 mg.

6 **FACTUAL ALLEGATIONS**

7 14. At all times relevant to the charges brought in the Accusation, Respondent was
8 employed as a pharmacy technician at Walgreens Pharmacy #4474, located at 2501 W. Magnolia
9 Boulevard in Burbank, California 91505 ("Walgreens").

10 15. On or about November 21, 2016, the Board of Pharmacy was notified via email by
11 the Pharmacist-in-Charge of "an employee theft of controlled substances" at Walgreens. The
12 email included a copy of DEA Form 106, filed on November 22, 2016, for the loss of five (5)
13 phentermine 37.5 mg tablets due to employee pilferage, and a signed statement from the
14 Pharmacist-in-Charge. A handwritten note on the DEA Form 106 identified the employee as
15 Respondent. The incident was captured on surveillance video. The facts and circumstances
16 regarding the theft are as follows:

17 a. On or about November 14, 2016, the Pharmacist-in-Charge was on shift with
18 Respondent. At approximately 12:06 p.m., Respondent approached the counter in the work area
19 with a red bin in her hand. Red bins are used to hold prescriptions that required immediate
20 attention. Respondent removed certain contents from inside this red bin. Respondent then grabbed
21 another red bin that was already resting on the counter and stacked this red bin on top of the red
22 bin from which she removed certain contents. Respondent then left the stacked red bins on top of
23 the counter and continued about her work. At approximately 12:14 p.m., the Pharmacist-in-
24 Charge noticed the two red bins stacked on top of each in the work area where Respondent was
25 filling prescriptions. The Pharmacist-in-Charge found this to be unusual as red bins would
26 ordinarily be placed to the right of the technician's working area for the pharmacist to check and
27 would not normally be stacked. The Pharmacist-in-Charge separated the bins and discovered five
28 loose tablets in the bottom bin, concealed by the top bin. When questioned by the Pharmacist-in-

1 Charge, Respondent initially denied having any knowledge of the loose tablets. There was no
2 medication container or paperwork accompanying the loose tablets.

3 b. Using an online drug reference database, the Pharmacist-in-Charge identified
4 the loose tablets as phentermine 37.5 mg tablets.

5 c. The Pharmacist-in-Charge ran a usage report, which revealed that phentermine
6 37.5 mg was last dispensed at Walgreens about one week prior to the date of incident. The
7 Pharmacist-in-Charge recalled Respondent stating that she had previously obtained a prescription
8 for the same medication from a weight loss clinic. The Pharmacist-in-Charge reported the
9 incident to the Asset Protective Manager. The Asset Protective Manager conducted an interview
10 of Respondent later that day. Respondent claimed that she intended to replace the five
11 phentermine 37.5 mg tablets that she diverted from Walgreens with tablets she had at home.
12 Respondent verbally admitted the following:

13 1. Respondent attempted to remove the five phentermine 37.5 mg tablets from
14 Walgreens without authorization and take them home for self-use;

15 2. Respondent was dishonest with the Pharmacist-in-Charge when she denied
16 having knowledge of why the tablets were concealed in the bottom red bin; and

17 3. Respondent was aware that the diverted five phentermine 37.5 mg tablets
18 could not be replaced with those from her home.

19 d. Respondent was terminated from her employment on November 15, 2016.

20 **FIRST CAUSE FOR DISCIPLINE**

21 **(Violation of Pharmacy Law / Unprofessional Conduct – Dishonesty)**

22 16. Respondent is subject to disciplinary action pursuant to Code section 4301,
23 subdivision (f), for unprofessional conduct, in that while on duty as a pharmacy technician at
24 Walgreens, Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, or
25 corruption by stealing and diverting five phentermine 37.5 mg tablets, a controlled substance and
26 dangerous drug, for self-administration. The circumstances are set forth more fully in paragraphs
27 13 and 14, above, and incorporated herein by this reference.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Violation of Pharmacy Law / Unprofessional Conduct –**
3 **Furnishing Dangerous Drugs Without a Prescription)**

4 17. Respondent is subject to disciplinary action pursuant to Code section 4301,
5 subdivision (j), for unprofessional conduct, in that while on duty as a pharmacy technician at
6 Walgreens, Respondent diverted five phentermine 37.5 mg tablets without a valid or lawful
7 prescription in violation of laws and provisions of the Code regulating dangerous drugs and
8 controlled substances, including Business and Professions Code section 4059, subdivision (a),
9 and Business and Professions Code section 4060. The circumstances are set forth more fully in
10 paragraphs 13 and 14, above, and incorporated herein by this reference.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Violation of Pharmacy Law / Unprofessional Conduct)**

13 18. Respondent is subject to disciplinary action pursuant to Code section 4301,
14 subdivision (o), for unprofessional conduct, in that while on duty as a pharmacy technician at
15 Walgreens, Respondent violated or attempted to violate, directly or indirectly, a provision or term
16 of the Pharmacy Law (Bus. & Prof Code § 4000, et seq.), as well as applicable federal and state
17 laws and regulations governing pharmacy, specifically the Uniform Controlled Substances Act,
18 Health and Safety Code section 11170 [furnishing a controlled substance for herself]; and Health
19 and Safety Code section 11173, subdivision (a) [obtaining controlled substance by fraud, deceit,
20 misrepresentation, subterfuge, or concealment of material fact]. The circumstances are set forth
21 more fully in paragraphs 13 and 14, above, and incorporated herein by this reference.

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 71413,
26 issued to Minerva Ornelas;

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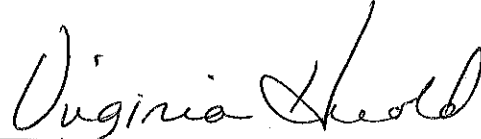
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2. Ordering Minerva Ornelas to pay the Board of Pharmacy reasonable costs of investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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

DATED:

9/16/17



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

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