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

11 In the Matter of the Accusation Against:

Case No. 6090

12 **JORGE AYALA-PORRAS**
13 **26603 Mission St.**
San Juan Capistrano, CA 92675

A C C U S A T I O N

14 **Pharmacy Technician Registration No. TCH 87994**

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

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

21 2. On December 30, 2008, the Board issued Pharmacy Technician Registration
22 Number TCH 87994 to Jorge Ayala-Porras (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 June 30, 2018, unless renewed.

25 **JURISDICTION**

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

1 4. Code section 118, subdivision (b) provides that the suspension, expiration,
2 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
3 disciplinary action during the period within which the license may be renewed, restored, reissued,
4 or reinstated.

5 5. Code section 4300, subdivision (a) provides that every license issued by the Board
6 may be suspended or revoked.

7 6. Code section 4300.1 states:

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

12 **STATUTORY PROVISIONS**

13 7. Code section 480 states, in pertinent part:

14 (a) A board may deny a license regulated by this code on the grounds
15 that the applicant has one of the following:

16 ...

17 (2) Done any act involving dishonesty, fraud, or deceit with the
18 intent to substantially benefit himself or herself or another, or substantially injure
19 another.

20

21 8. Code section 482 states:

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

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

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

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

28 9. Code section 492 states:

 Notwithstanding any other provision of law, successful completion of any
diversion program under the Penal Code, or successful completion of an alcohol
and drug problem assessment program under Article 5 (commencing with Section
23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit

1 any agency established under Division 2 (commencing with Section 500) of this
2 code, or any initiative act referred to in that division, from taking disciplinary
3 action against a licensee or from denying a license for professional misconduct,
4 notwithstanding that evidence of that misconduct may be recorded in a record
5 pertaining to an arrest. This section shall not be construed to apply to any drug
6 diversion program operated by any agency established under Division 2
7 (commencing with Section 500) of this code, or any initiative act referred to in
8 that division.

9 10. Code section 4022 states:

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

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

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

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

21 11. Code section 4060 states:

22 A person shall not possess any controlled substance, except that furnished
23 to a person upon the prescription of a physician, dentist, podiatrist, optometrist,
24 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
25 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
26 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant
27 pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a
28 pharmacist pursuant to Section 4052.1, 4052.2, or 4052.6. This section does not
apply to the possession of any controlled substance by a manufacturer,
wholesaler, third-party logistics provider, pharmacy, pharmacist, physician,
podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-
midwife, nurse practitioner, or physician assistant, if in stock in containers
correctly labeled with the name and address of the supplier or producer.

This section does not authorize 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.

12. Code section 4301 states:

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

...

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

4 ...

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

11 ...

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

14 ...

15 (l) The conviction of a crime substantially related to the qualifications,
16 functions, and duties of a licensee under this chapter. The record of conviction of
17 a violation of Chapter 13 (commencing with Section 801) of Title 21 of the
18 United States Code regulating controlled substances or of a violation of the
19 statutes of this state regulating controlled substances or dangerous drugs shall be
20 conclusive evidence of unprofessional conduct. In all other cases, the record of
21 conviction shall be conclusive evidence only of the fact that the conviction
22 occurred. The board may inquire into the circumstances surrounding the
23 commission of the crime, in order to fix the degree of discipline or, in the case of
24 a conviction not involving controlled substances or dangerous drugs, to determine
25 if the conviction is of an offense substantially related to the qualifications,
26 functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
27 a conviction following a plea of nolo contendere is deemed to be a conviction
28 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.

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

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13. Health & Safety Code section 11056 states, in pertinent part:

(a) The controlled substances listed in this section are included in Schedule III.

...

(f) Anabolic steroids and chorionic gonadotropin. Any material, compound, mixture, or preparation containing chorionic gonadotropin or an anabolic steroid (excluding anabolic steroid products listed in the "Table of Exempt Anabolic Steroid Products" (Section 1308.34 of Title 21 of the Code of Federal Regulations), as exempt from the federal Controlled Substances Act (Section 801 and following of Title 21 of the United States Code)), including, but not limited to, the following:

...

(30) Testosterone.

....

14. Health & Safety Code section 11170 states:

No person shall prescribe, administer, or furnish a controlled substance for himself.

15. Health & Safety Code section 11364 states, in pertinent part:

(a) It is unlawful to possess an opium pipe or any device, contrivance, instrument, or paraphernalia used for unlawfully injecting or smoking (1) a controlled substance specified in subdivision (b), (c), or (e) or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, specified in subdivision (b) or (c) of Section 11055, or specified in paragraph (2) of subdivision (d) of Section 11055, or (2) a controlled substance that is a narcotic drug classified in Schedule III, IV, or V.

....

REGULATORY PROVISIONS

16. California Code of Regulations, title 16, section 1769, states, in pertinent part:

...

(b) 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).

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1 (4) Whether the licensee has complied with all terms of parole,
2 probation, restitution or any other sanctions lawfully imposed against the licensee.

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

4 17. California Code of Regulations, title 16, section 1770, states:

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

12 **COST RECOVERY**

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

19 **DRUG**

20 19. Testosterone Cypionate contains Testosterone, a Schedule III controlled substance
21 as designated by Health and Safety Code section 11056, subdivision (30), and is categorized as a
22 dangerous drug under Code section 4022.

23 **FIRST CAUSE FOR DISCIPLINE**

24 **(March 23, 2017 Criminal Conviction for Petty Theft in 2016)**

25 20. Respondent has subjected his Pharmacy Technician Registration to discipline
26 under Code sections 490 and 4301, subdivision (l), in that he was convicted of crimes
27 substantially related to the qualifications, functions, and duties of a registered pharmacy
28 technician. The circumstances are as follows:

a. On March 23, 2017, in a criminal proceeding entitled *The People of the
State of California v. Jorge Ayala Porras, aka Jorge Ayala-Porras, aka Jorge Ayalaporras, aka*

1 *Jorge Ayagaporras, aka George Ayala*, in the Orange County Superior Court, Harbor Justice
2 Center – Newport Beach Facility, Case Number 16HM13814, Respondent was convicted on his
3 plea of guilty of two counts of petty theft, a misdemeanor, as defined in Penal Code (PC)
4 sections 488 and 483, subdivision (a).

5 b. As a result of the convictions, on March 23, 2017, Respondent was
6 sentenced to one year of informal probation. Respondent was also ordered to complete 40 hours
7 of community service.

8 c. The facts that led to the convictions are that on October 31, 2016, in a
9 review of a closed-circuit television recording, Respondent was shown refunding a customer's
10 prescription where no customer was present at the pharmacy counter of a CVS branch in Rancho
11 Santa Margarita, California. When Respondent returned for work on November 8, 2016, the
12 store's loss prevention officer and the pharmacy supervisor interviewed Respondent about the
13 possible fraudulent activity. During the interview, Respondent, a lead pharmacy technician at the
14 branch, admitted that on October 28, 2016, he refunded a customer's prescription, used the
15 refund to purchase a CVS money card, and used the money card to purchase over-the-counter
16 medication for personal use. Respondent also admitted that on September 28, 2016, he removed
17 a 1 ml vial of the prescription medication testosterone cypionate 200mg/ml, placed it in his
18 pocket, and left the store.

19 d. Due to Respondent's admission, on November 8, 2016, a deputy from the
20 Orange County Sheriff's Department responded to the CVS store. Respondent admitted to the
21 deputy that he picked and damaged CVS merchandise, used the label of the merchandise to
22 simulate a returned item, issued himself a CVS money card, and used the money card to
23 purchase over-the-counter medication for personal use. The deputy issued Respondent a citation
24 for shoplifting, in violation of Penal Code section 459.5.

25 **SECOND CAUSE FOR DISCIPLINE**

26 **(Unprofessional Conduct - Commission of Acts Involving Dishonesty)**

27 21. Respondent has subjected his Pharmacy Technician Registration to disciplinary
28 action under Code section 4301, subdivision (f), in that on September 28, 2016, Respondent

1 shoplifted a 1 ml vial of the prescription medication testosterone cypionate 200mg/ml. On
2 October 28, 2016, Respondent simulated returning an item to CVS, then issued himself a CVS
3 money card, and used the CVS money card to purchase personal items. These two acts constitute
4 theft, which is a dishonest act, as detailed in paragraph 20, above, and incorporated herein by this
5 reference.

6 **THIRD CAUSE FOR DISCIPLINE**

7 **(Unprofessional Conduct – Self-Administration of Drugs Without Prescription)**

8 22. Respondent has subjected his Pharmacy Technician Registration to disciplinary
9 action under Code section 4301, subdivision (h) in that without a prescription, he took from the
10 pharmacy testosterone cypionate, a medication containing testosterone, a controlled substance
11 that requires a prescription, as detailed in paragraph 20, above, and incorporated herein by this
12 reference.

13 **FOURTH CAUSE FOR DISCIPLINE**

14 **(Unprofessional Conduct – Violation of Drug Laws)**

15 23. Respondent has subjected his Pharmacy Technician Registration to discipline
16 under Code section 4301, subdivision (j) in that he committed acts that violated statutes of the
17 State of California regulating controlled substances and dangerous drugs, as detailed in
18 paragraph 20, above, and incorporated herein by this reference. The circumstances are that on
19 September 28, 2016, Respondent possessed testosterone cypionate, without a prescription, in
20 violation of Code section 4060.

21 **FIFTH CAUSE FOR DISCIPLINE**

22 **(Unprofessional Conduct – Violation of Pharmacy Laws)**

23 24. Respondent has subjected his Pharmacy Technician Registration to discipline
24 under Code section 4301, subdivision (o), in that he committed acts that violated pharmacy laws
25 of the State of California regulating controlled substances and dangerous drugs, as detailed in
26 paragraph 20, above, and incorporated herein by this reference. The circumstances are that on
27 September 28, 2016, Respondent self-administered testosterone cypionate, without a . . .

28 ///

1 prescription, in violation of Health and Safety Code section 11170, and unlawfully possessed
2 testosterone cypionate, in violation of Health and Safety Code section 11364, subdivision (a).

3 **SIXTH CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct – Conduct That Would Have Warranted Denial of a License)**

5 25. Respondent subjected his Pharmacy Technician Registration to discipline under
6 Code section 4301, subdivision (p), in that Respondent stole money and a controlled substance
7 from his employer, conduct that would have warranted the denial of a pharmacy technician
8 registration under Code section 480, subdivision (a)(1), as detailed in paragraph 20, above, and
9 incorporated herein by this reference.

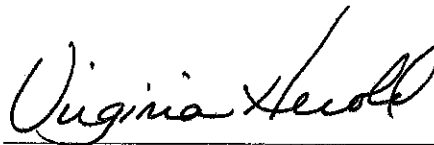
10 **PRAYER**

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

- 13 1. Revoking or suspending Pharmacy Technician Registration Number TCH 87994,
14 issued to Jorge Ayala-Porras;
- 15 2. Ordering Jorge Ayala-Porras to pay the Board of Pharmacy the reasonable costs
16 of the investigation and enforcement of this case, pursuant to Business and Professions Code
17 section 125.3; and,
- 18 3. Taking such other and further action as deemed necessary and proper.
- 19
20

21
22 DATED: _____

7/11/17



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

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