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8  
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. 6145

13 **LUZ C. CADENA**  
14 **3844 Alpha Street**  
**San Diego, CA 92113**

**A C C U S A T I O N**

15 **Pharmacy Technician Registration No.**  
16 **TCH 45631**

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 November 26, 2002, the Board issued Pharmacy Technician Registration  
24 Number TCH 45631 to Luz C. Cadena (Respondent). The Pharmacy Technician Registration was  
25 in full force and effect at all times relevant to the charges brought herein and will expire on  
26 August 31, 2018, unless 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 4022 of the Code states

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

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

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

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

24 7. Section 4060 of the Code states, in pertinent part, that no person shall possess any  
25 controlled substance, except that furnished to a person upon the prescription of a physician,  
26 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor.

27 8. Health and Safety Code section 11351 states:

28 Except as otherwise provided in this division, every person who possesses for sale  
or purchases for purposes of sale (1) any controlled substance specified in subdivision  
(b), (c), or (e) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision  
(d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified  
in subdivision (h) of Section 11056, or (2) any controlled substance classified in  
Schedule III, IV, or V which is a narcotic drug, shall be punished by imprisonment  
pursuant to subdivision (h) of Section 1170 of the Penal Code for two, three, or four  
years.

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9. Health and Safety Code section 11352, subdivision (a) states:

Except as otherwise provided in this division, every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport (1) any 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, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for three, four, or five years.

10. Health and Safety Code section 11377, subdivision (a) provides, in pertinent part, that every person who possesses the controlled substance methamphetamine shall be punished by imprisonment in a county jail for a period of not more than one year (misdemeanor offense).

11. Health and Safety Code section 11378 states:

Except as otherwise provided in Article 7 (commencing with Section 4110) of Chapter 9 of Division 2 of the Business and Professions Code, a person who possesses for sale a controlled substance that meets any of the following criteria shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code:

- (1) The substance is classified in Schedule III, IV, or V and is not a narcotic drug, except the substance specified in subdivision (g) of Section 11056.
- (2) The substance is specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), (20), (21), (22), and (23) of subdivision (d).
- (3) The substance is specified in paragraph (11) of subdivision (c) of Section 11056.
- (4) The substance is specified in paragraph (2) or (3) of subdivision (f) of Section 11054.
- (5) The substance is specified in subdivision (d), (e), or (f), except paragraph (3) of subdivision (e) and subparagraphs (A) and (B) of paragraph (2) of subdivision (f), of Section 11055.

12. Health and Safety Code section 11379, subdivision (a) states:

(a) Except as otherwise provided in subdivision (b) and in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport any controlled substance which is (1) classified in Schedule III, IV, or V and which is not a narcotic drug, except subdivision (g) of Section 11056, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), (20), (21), (22), and (23) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of

1 subdivision (f) of Section 11054, or (5) specified in subdivision (d) or (e), except  
2 paragraph (3) of subdivision (e), or specified in subparagraph (A) of paragraph (1) of  
3 subdivision (f), of Section 11055, unless upon the prescription of a physician, dentist,  
4 podiatrist, or veterinarian, licensed to practice in this state, shall be punished by  
imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for a period  
of two, three, or four years.

5 13. Section 4301 of the Code states:

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

8 ...

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

### 11 COSTS

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

### 18 DRUGS

19 15. Cocaine is a schedule II controlled substance as designated by Health and Safety Code  
20 section 11055(b)(6), and is a dangerous drug pursuant to Business and Professions Code section  
21 4022.

22 16. Methamphetamine is a Schedule II controlled substance as designated by Health and  
23 Safety Code section 11055(d)(2), and is a dangerous drug pursuant to Business and Professions  
24 Code section 4022.

### 25 FIRST CAUSE FOR DISCIPLINE

#### 26 (Violation of California Statutes Regulating Controlled Substances)

27 17. Respondent has subjected her license to disciplinary action under section 4301,  
28 subdivision (j) of the Code for unprofessional conduct in that on or about January 7, 2017,

1 Respondent violated Business and Professions Code sections 4060, and Health and Safety Code  
2 sections 11351; 11352, subdivision (a); 11377, subdivision (a); 11378; and 11379, subdivision  
3 (a). The circumstances are as follows:

4 a. On January 7, 2017, at approximately 12:48 in the morning, Respondent  
5 attempted to enter into the United States from Mexico through the San Ysidro Port of Entry. A  
6 CBP officer inspected Respondent's vehicle, and noticed a spare tire underneath the vehicle  
7 which had grease present between the rim and the tire. The CBP officer tapped the spare tire and  
8 it felt solid. Respondent was removed from her vehicle, and taken to the security office. During a  
9 secondary inspection of Respondent's vehicle, CBP officers discovered sixteen packages  
10 concealed inside Respondent's spare tire. Six packages contained a white, powdery substance,  
11 which tested positive for cocaine, and ten packages contained a white, crystalline substance,  
12 which tested positive for methamphetamine. The CBP officers intercepted a total of  
13 approximately 14.87 pounds of cocaine, and 10.82 pounds of methamphetamine from  
14 Respondent's vehicle. Respondent denied having any knowledge about the drugs. Respondent  
15 was arrested on felony charges of possession and/or purchase for sale of a controlled substance  
16 (Health and Saf. Code, § 11351), transport/import/sell controlled substances (Health and Saf.  
17 Code, § 11352(a)), possession for sale of a controlled substance (Health and Saf. Code, § 11378),  
18 and transport/etc. controlled substances (Health and Saf. Code, § 11379(a)).

19 b. The San Diego County District Attorney's Office reviewed the case, but  
20 decided not to file charges against Respondent.

21 **SECOND CAUSE FOR DISCIPLINE**

22 **(Unprofessional Conduct)**

23 18. Respondent has subjected her license to disciplinary action under section 4301 of the  
24 Code for unprofessional conduct in that on or about January 7, 2017, Respondent attempted to  
25 enter into the United States with cocaine and methamphetamine, as described in paragraph 17,  
26 above, and incorporated herein by reference.

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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 45631, issued to Luz C. Cadena;

2. Ordering Luz C. Cadena 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: \_\_\_\_\_

7/17/17



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

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