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

11 In the Matter of the Accusation Against:  
12  
13 **MICHAEL VINCE ANTHONY SILVA**  
**1824 Brahms Way**  
**Modesto, CA 95358**  
14  
15 **Original Pharmacy Technician Registration**  
**No. TCH 95703**  
16  
17 Respondent.

Case No. 6158

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

18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 22 2. On or about May 26, 2010, the Board of Pharmacy (Board) issued Original Pharmacy  
23 Technician Registration Number TCH 95703 to Michael Vince Anthony Silva (Respondent). The  
24 Original Pharmacy Technician Registration expired on May 31, 2016, was canceled on  
25 September 4, 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 unless otherwise indicated.

4 4. Section 4300 of the Code states, in pertinent part:

5 "(a) Every license issued may be suspended or revoked. . . ."

6 5. Section 4300.1 of the Code states:

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

12 **BUSINESS AND PROFESSIONS CODE**

13 6. Section 4022 of the Code states, in pertinent part:

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

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

18 ". . .

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

21 7. Section 4059 of the Code states, in pertinent part:

22 "(a) A person may not furnish any dangerous drug, except upon the prescription of a  
23 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section  
24 3640.7. A person may not furnish any dangerous device, except upon the prescription of a  
25 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section  
26 3640.7. . . ."

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1           8.     Section 4060 of the Code states:

2            "No person shall possess any controlled substance, except that furnished to a person upon  
3 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor  
4 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse  
5 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a  
6 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,  
7 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of  
8 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not  
9 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,  
10 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified  
11 nurse midwife, nurse practitioner, or physician assistant, when in stock in containers correctly  
12 labeled with the name and address of the supplier or producer.

13           Nothing in this section authorizes a certified nurse midwife, a nurse practitioner, a  
14 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and  
15 devices."

16           9.     Section 4301 of the Code states, in pertinent part:

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

20           "...

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

24           "...

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

27           "...

28           ///



1 veterinarian licensed to practice in this state, shall be punished by imprisonment pursuant to  
2 subdivision (h) of Section 1170 of the Penal Code for three, four, or five years. . . .”

### 3 **COST RECOVERY**

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

### 8 **CONTROLLED SUBSTANCE**

9 15. “Hydrocodone w/APAP” or hydrocodone with acetaminophen tablets are produced  
10 by several drug manufacturers. Hydrocodone bitartrate is semisynthetic narcotic analgesic, a  
11 dangerous drug as defined in Code section 4022, a Schedule II controlled substance and narcotic  
12 as defined by section 11055, subdivision (b) of the Health and Safety Code, and a Schedule II  
13 controlled substance as defined by section 1308.12, subdivision (b) of Title 21 of the Code of  
14 Federal Regulations. As of October 5, 2014, the substance was reclassified as a Schedule II drug.  
15 Accordingly, before October 5, 2014, Hydrocodone bitartrate was classified as a Schedule III  
16 controlled substance.

### 17 **BACKGROUND**

18 16. From on or about October 2009 through July 17, 2014, Respondent worked as a  
19 Pharmacy Technician at CVS Pharmacy store number 9949, located in Ripon, California.

20 17. On or about July 31, 2014, the Board received an e-mail notification from CVS  
21 Pharmacy regarding Respondent’s admission to stealing controlled substances. The controlled  
22 substances were hydrocodone/APAP 10/325mg, hydrocodone/APAP 7.5/325mg, and  
23 hydrocodone/APAP 5/325mg.

24 18. Attached to the July 31, 2014 e-mail was a Voluntary Statement signed by  
25 Respondent and dated July 17, 2014. According to the statement, Respondent admitted to  
26 stealing hydrocodone/APAP 10/325mg, hydrocodone/APAP 7.5/325mg, and hydrocodone/APAP  
27 5/325mg from CVS Pharmacy. Respondent admitted to stealing a total of 20,400 pills.  
28 Respondent admitted that after stealing the hydrocodone/APAP, he would sell it to a friend.

1 Respondent admitted that the total dollar amount loss he caused to CVS Pharmacy was as  
2 follows: 20,400 tablets of hydrocodone/APAP 10/325mg at a value of \$15,909.96; 750 tablets of  
3 hydrocodone/APAP 7.5/325mg at a value of \$590.00; and 750 tablets of hydrocodone/APAP  
4 5/325mg at a value of \$537.00.

5 19. On or about July 17, 2014, Respondent was interviewed by an officer with the Ripon  
6 Police Department regarding his theft of controlled substances. During this interview,  
7 Respondent admitted that he began stealing hydrocodone/APAP 10/325mg, 7.5/325mg, and  
8 5/325mg in January 2013 from CVS Pharmacy. Respondent admitted that he would steal the  
9 hydrocodone/APAP from CVS Pharmacy one to three times per week and sell the pills to a  
10 friend. Respondent admitted that he usually stole the pills a handful at a time and then place the  
11 pills in his pocket. Respondent admitted that he had taken full 100-count bottles of  
12 hydrocodone/APAP in the past.

13 20. On or about June 3, 2015, a Board Inspector sent a letter to Respondent at his address  
14 of record seeking to speak with him regarding his theft of controlled substances from CVS  
15 Pharmacy. On or about June 12, 2015, the letter was returned to the Board Inspector marked  
16 "Return to Sender" and indicated that Respondent had moved but left no forwarding address.

17 21. On or about June 12, 2015, a Board Inspector sent a second letter to Respondent at his  
18 address of record seeking to speak with him regarding his theft of controlled substances from  
19 CVS Pharmacy. On or about June 19, 2015, this letter was returned to the Board Inspector  
20 marked "Return to Sender."

### 21 **FIRST CAUSE FOR DISCIPLINE**

#### 22 **(Unlawful Possession and Furnishing of a Controlled Substance)**

23 22. Respondent is subject to disciplinary action under sections 4059(a) and 4060 of the  
24 Code in that from on or about January 2013 through July 17, 2014, Respondent stole controlled  
25 substances from CVS Pharmacy without a valid, current prescription for himself and then sold the  
26 controlled substances to a friend, again without a valid, current prescription. The facts and  
27 circumstances are described with more particularity in paragraphs 16-19.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct—Unlawful Possession and Provision of a Narcotic Controlled**  
3 **Substance)**

4 23. Respondent is subject to disciplinary action under section 4301(j) of the Code, and  
5 sections 11171, 11173, 11350(a), and 11352(a) of the Health and Safety Code, in that Respondent  
6 violated the statutes of this state regulating controlled substances and dangerous drugs as follows:

7 24. From on or about January 2013 through July 17, 2014, Respondent stole 20,400  
8 tablets of hydrocodone/APAP from CVS Pharmacy without possessing a current, valid  
9 prescription.

10 25. From on or about January 2013 through July 17, 2014, Respondent stole 20,400  
11 tablets of hydrocodone/APAP from CVS Pharmacy and sold the tablets to a friend.

12 26. The facts and circumstances are described with more particularity in paragraphs 16-  
13 19.

14 **THIRD CAUSE FOR DISCIPLINE**

15 **(Unprofessional Conduct—Commission of an Act Involving Moral Turpitude, Dishonesty,**  
16 **Fraud, Deceit, or Corruption)**

17 27. Respondent is subject to disciplinary action under section 4301(f) of the Code in that  
18 from on or about January 2013 through July 17, 2014, he stole 20,400 tablets of  
19 hydrocodone/APAP from CVS Pharmacy and sold the tablets to a friend. The facts and  
20 circumstances are described with more particularity in paragraphs 16-19.

21 **FOURTH CAUSE FOR DISCIPLINE**

22 **(Unprofessional Conduct—Engaging in Conduct That Subverts or Attempts to Subvert an**  
23 **Investigation of the Board)**

24 28. Respondent is subject to disciplinary action under section 4301(q) of the Code in that  
25 Respondent failed to cooperate with the Board in its investigation into his theft of  
26 hydrocodone/APAP from CVS Pharmacy. The facts and circumstances are described with more  
27 particularity in paragraphs 20-21.

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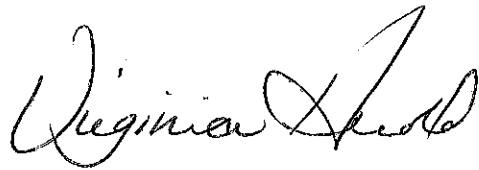
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**PRAYER**

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 Original Pharmacy Technician Registration Number TCH 95703, issued to Michael Vince Anthony Silva;
2. Ordering Michael Vince Anthony Silva to pay the Board of Pharmacy the 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: 8/11/17



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

SA2017107277