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

10 In the Matter of the Accusation Against:

Case No. 6216

11 **ESMERALDA ODALIS FERNANDEZ**  
12 **VASQUEZ**  
13 **1255 1/4 West Sunset Boulevard**  
**Los Angeles, CA 90026**

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

14 **Pharmacy Technician Registration No. TCH**  
15 **153184**

16 Respondent.

17  
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 February 2, 2016, the Board of Pharmacy issued Pharmacy Technician  
23 Registration Number TCH 153184 to Esmeralda Odalis Fernandez Vasquez (Respondent). The  
24 Pharmacy Technician Registration expired on June 30, 2017, and has not been renewed.

25 **JURISDICTION**

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

1           4.    Section 4300, subdivision (a), of the Code states that "[e]very license issued may be  
2 suspended or revoked."

3           5.    Section 4300.1 of the Code states:

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

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

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

1 of this provision. The board may take action when the time for appeal has elapsed, or the  
2 judgment of conviction has been affirmed on appeal or when an order granting probation is made  
3 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of  
4 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
5 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
6 indictment.

7 ....

8 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
9 violation of or conspiring to violate any provision or term of this chapter or of the applicable  
10 federal and state laws and regulations governing pharmacy, including regulations established by  
11 the board or by any other state or federal regulatory agency."

#### 12 REGULATORY PROVISION

13 7. California Code of Regulations, title 16, section 1770, states:

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

#### 20 COST RECOVERY

21 8. Section 125.3 provides that the Board may request the administrative law judge to  
22 direct a licentiate found to have committed a violation or violations of the licensing act to pay a  
23 sum not to exceed the reasonable costs of the investigation and enforcement of the case, with  
24 failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a  
25 case settles, recovery of investigation and enforcement costs may be included in a stipulated  
26 settlement.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Conviction of a Substantially Related Crime)**

3 9. Respondent is subject to disciplinary action under sections 4300 and 4301,  
4 subdivision (l), of the Code, in conjunction with California Code of Regulations, title 16, section  
5 1770, on the grounds of unprofessional conduct, in that Respondent committed a substantially  
6 related crime.

7 a. On or about June 16, 2017, Respondent was convicted of one felony count of  
8 violating Penal Code section 459 [Burglary], in the criminal proceeding entitled *The People of the*  
9 *State of California v. Esmeralda Odalis Fernandez Vasquez* (Super Ct. L.A. County, 2017, No.  
10 BA456364). The Court sentenced Respondent to three years probation with terms and conditions,  
11 and paying fees and restitution.

12 b. The circumstances underlying the conviction are that on or about April 1, 2017, Los  
13 Angeles Unified School District Police officers were dispatched at about 1:00 am to a burglary  
14 alarm activation at a high school. At the school, officers found Respondent standing with a  
15 backpack by the stair case and raising her hands as if she were surrendering. Police discovered a  
16 classroom with a smashed window and a stack of laptops. Respondent admitted that she entered  
17 the high school with a friend in order to steal laptop computers and sell them.

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(Acts Involving Dishonesty, Fraud or Deceit)**

20 10. Respondent is subject to disciplinary action under section 4301, subdivision (f) and  
21 (o) violating the Pharmacy Practice Act for unprofessional conduct in that Respondent committed  
22 acts involving dishonesty, fraud, or deceit. Complainant refers to, and by this reference  
23 incorporates, the allegations set forth above in paragraph 9, inclusive as though set forth fully.

24 **PRAYER**

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

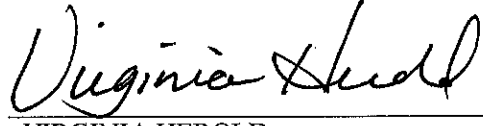
27 1. Revoking or suspending Pharmacy Technician Registration Number TCH 153184,  
28 issued to Esmeralda Odalis Fernandez Vasquez;

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2. Ordering Esmeralda Odalis Fernandez Vasquez 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: 9/12/17



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

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