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

In the Matter of the Accusation Against:

Case No. 3350

**THELMA IVENKA JIMENEZ  
27177 Terrytown Road  
Sun city, CA 92586  
Pharmacy Technician Registration No. TCH  
50178**

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

Respondent.

FINDINGS OF FACT

1. On or about August 11, 2009, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 3350 against Thelma Ivenka Jimenez (Respondent) before the Board of Pharmacy.

2. On or about August 21, 2003, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 50178 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2009, unless renewed.

3. On or about August 18, 2009, Charlette Sheppard, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation No. 3350, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5,

1 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is: 27177  
2 Terrytown Road, Sun city, CA 92586. A copy of the Accusation is attached as exhibit A, and is  
3 incorporated herein by reference.

4 4. Service of the Accusation was effective as a matter of law under the provisions of  
5 Government Code section 11505, subdivision (c).

6 5. Government Code section 11506 states, in pertinent part:

7 (c) The respondent shall be entitled to a hearing on the merits if the respondent  
8 files a notice of defense, and the notice shall be deemed a specific denial of all parts  
9 of the accusation not expressly admitted. Failure to file a notice of defense shall  
constitute a waiver of respondent's right to a hearing, but the agency in its discretion  
may nevertheless grant a hearing.

10 6. Respondent failed to file a Notice of Defense within 15 days after service upon her of  
11 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No.  
12 3350.

13 7. California Government Code section 11520 states, in pertinent part:

14 (a) If the respondent either fails to file a notice of defense or to appear at the  
15 hearing, the agency may take action based upon the respondent's express admissions  
16 or upon other evidence and affidavits may be used as evidence without any notice to  
respondent.

17 8. Pursuant to its authority under Government Code section 11520, the Board finds  
18 Respondent is in default. The Board will take action without further hearing and, based on the  
19 evidence on file herein, finds that the allegations in Accusation No. 3350 are true.

20 9. The total cost for investigation and enforcement in connection with the Accusation  
21 are \$4,784 (four thousand seven hundred eighty four dollars) as of September 29, 2009.

#### 22 DETERMINATION OF ISSUES

23 1. Based on the foregoing findings of fact, Respondent Thelma Ivenka Jimenez has  
24 subjected her Pharmacy Technician Registration No. TCH 50178 to discipline.

25 2. A copy of the Accusation is attached.

26 3. The agency has jurisdiction to adjudicate this case by default.

27 4. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician  
28 Registration based upon the following violations alleged in the Accusation:

1 a. Respondent subjected her Pharmacy Technician license to discipline under Business  
2 and Professions Code section 4301, subdivision (f), in that she committed acts involving moral  
3 turpitude, dishonesty, fraud, or deceit while working as a Pharmacy Technician, as follows:  
4 Respondent stole approximately 3,000 to 4,000 hydrocodone tablets from her employer by  
5 concealing the hydrocodone in her Pharmacy Technician smock to remove it from the pharmacy,  
6 hiding the hydrocodone in her purse, and exiting the store with the hydrocodone in her purse and  
7 without paying for the hydrocodone.

8 b. Respondent violated Business and Professions Code section 4060 and Health and  
9 Safety Code section 11350 by possessing the controlled substance hydrocodone without a valid  
10 prescription.

11 c. Respondent violated Business and Professions Code section 4059 by furnishing the  
12 controlled substance hydrocodone to her mother and her uncle, even though they did not have a  
13 valid prescription for hydrocodone.


14 ORDER

15 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 50178, heretofore  
16 issued to Respondent Thelma Ivenka Jimenez, is revoked.

17 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a  
18 written motion requesting that the Decision be vacated and stating the grounds relied on within  
19 seven (7) days after service of the Decision on Respondent. The agency in its discretion may  
20 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

21 This Decision shall become effective on February 10, 2010.

22 It is so ORDERED January 11, 2010.

23   
24 \_\_\_\_\_  
25 KENNETH H. SCHELL, BOARD PRESIDENT  
26 FOR THE BOARD OF PHARMACY  
27 DEPARTMENT OF CONSUMER AFFAIRS

28 Exhibit A: Accusation No. 3350

Exhibit A  
Accusation No. 3350 Against Thelma Ivenka Jiminez

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 LORETTA A. WEST  
Deputy Attorney General  
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6 San Diego, CA 92186-5266  
Telephone: (619) 645-2107  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 3350

12 **THELMA IVENKA JIMENEZ**  
13 **27177 Terrytown Road**  
14 **Sun City, CA 92586**

**ACCUSATION**

15 **Pharmacy Technician**  
16 **Registration No. TCH 50178**

17 Respondent.

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 August 21, 2003, the Board of Pharmacy issued Pharmacy Technician  
23 Registration Number TCH 50178 to Thelma Ivenka Jimenez (Respondent). The Pharmacy  
24 Technician Registration was in full force and effect at all times relevant to the charges brought  
25 herein and will expire on July 31, 2011, 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. All section references are to the  
4 Business and Professions Code (Code) unless otherwise indicated.

5 4. Code section 118(b) provides that the expiration of a license shall not deprive the  
6 Board of jurisdiction to proceed with a disciplinary action. Code section 4402, subdivision (e),  
7 provides that a Pharmacy Technician registration may be cancelled by the Board if the  
8 registration is not renewed within 60 days of its expiration.

9 5. Code section 4300, subdivision (a) provides that the Board may suspend or revoke  
10 every license issued by the Board.

11 STATUTORY PROVISIONS

12 6. Code section 4202, subdivision (d) provides that the Board may suspend or revoke  
13 any Pharmacy Technician registration on any ground specified in Code section 4301.

14 7. Section 4301 of the Code states:

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

18 ". . . .

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

22 ". . . .

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

25 ". . . .

26 "(l) The conviction of a crime substantially related to the qualifications, functions, and  
27 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
28 (commencing with Section 801) of Title 21 of the United States Code regulating controlled

1 substances or of a violation of the statutes of this state regulating controlled substances or  
2 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the  
3 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.  
4 The board may inquire into the circumstances surrounding the commission of the crime, in order  
5 to fix the degree of discipline or, in the case of a conviction not involving controlled substances  
6 or dangerous drugs, to determine if the conviction is of an offense substantially related to the  
7 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or  
8 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning  
9 of this provision. The board may take action when the time for appeal has elapsed, or the  
10 judgment of conviction has been affirmed on appeal or when an order granting probation is made  
11 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of  
12 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
13 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
14 indictment.

15 "...."

16 8. Section 4059, subdivision (a), of the Code provides that a person may not furnish any  
17 dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, or  
18 veterinarian.

19 9. Section 4060 of the Code provides that no person shall possess any controlled  
20 substance, except that furnished upon the prescription of a physician, dentist, podiatrist,  
21 optometrist, or veterinarian.

22 10. Section 4329 of the Code provides that any non-pharmacist who furnishes controlled  
23 substances except as otherwise provided in the Pharmacy Law (Business and Professions Code  
24 section 4000 et seq.) is guilty of a misdemeanor.

25 11. Section 482 of the Code states:

26 "Each board under the provisions of this code shall develop criteria to evaluate the  
27 rehabilitation of a person when:

28 "...."

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

2           "Each board shall take into account all competent evidence of rehabilitation furnished by  
3 the applicant or licensee."

4           12. Section 490 of the Code provides, in pertinent part, that a board may suspend or  
5 revoke a license on the ground that the licensee has been convicted of a crime substantially  
6 related to the qualifications, functions, or duties of the business or profession for which the  
7 license was issued..

8           13. Section 493 of the Code states:

9           "Notwithstanding any other provision of law, in a proceeding conducted by a board within  
10 the department pursuant to law to deny an application for a license or to suspend or revoke a  
11 license or otherwise take disciplinary action against a person who holds a license, upon the  
12 ground that the applicant or the licensee has been convicted of a crime substantially related to the  
13 qualifications, functions, and duties of the licensee in question, the record of conviction of the  
14 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,  
15 and the board may inquire into the circumstances surrounding the commission of the crime in  
16 order to fix the degree of discipline or to determine if the conviction is substantially related to the  
17 qualifications, functions, and duties of the licensee in question.

18           "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and  
19 'registration.'"

20           14. California Code of Regulations, title 16, section 1769, subdivision (b), states:

21           "(b) When considering the suspension or revocation of a facility or a personal license on the  
22 ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating  
23 the rehabilitation of such person and his present eligibility for a license will consider the  
24 following criteria:

25           " (1) Nature and severity of the act(s) or offense(s).

26           " (2) Total criminal record.

27           " (3) The time that has elapsed since commission of the act(s) or offense(s).

28



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

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

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

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

11           16. Health and Safety Code section 11350, subdivision (a), states:

12           "Except as otherwise provided in this division, every person who possesses (1) any  
13 controlled substance specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of  
14 Section 11054, specified in subdivision in paragraph (14), (15), or (20) of subdivision (d) of  
15 Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision  
16 (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is  
17 a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist or  
18 veterinarian licensed in this state, shall be punished by imprisonment in the state prison".

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

20           "Except as otherwise provided in this division, every person who transports, imports into  
21 this state, sells, furnishes, administrates, or gives away, or offers to transport, import into this  
22 state, sell, furnish, administer, or give away, or attempts to import into this state or transport  
23 (1) any controlled substance specified in subdivision (b), (c), or (e), or paragraph (1) of  
24 subdivision (f) of Section 11054, specified in subdivision in paragraph (14), (15), or (20) of  
25 subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or  
26 specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in  
27 Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a

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1 physician, dentist, podiatrist or veterinarian licensed in this state, shall be punished by  
2 imprisonment in the state prison for three, four, or five years.”

3 18. Penal Code section 508 (embezzlement) states:

4 “Every clerk, agent or servant of any person who fraudulently appropriates to her own use,  
5 or secretes with a fraudulent intent to appropriate to her own use, any property of another which  
6 has come into her control or care by virtue of her employment as such clerk, agent, or servant, is  
7 guilty of embezzlement.”

#### 8 COST RECOVERY

9 19. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
10 administrative law judge to direct a licentiate found to have committed a violation or violations of  
11 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
12 enforcement of the case.

#### 13 CONTROLLED SUBSTANCES

14 20. Hydrocodone with acetaminophen, also known by the brand name Norco, is a  
15 narcotic Schedule III controlled substance pursuant to Health and Safety Code section  
16 11056(e)(4), and under Business and Professions Code section 4022 is a dangerous drug.

#### 17 FACTS

18 21. Between July 1, and November 13, 2007, while employed as a Pharmacy Technician  
19 at Best Pharmacy, Respondent stole from her employer approximately 3,000 to 4,000  
20 hydrocodone tablets, a controlled substance. Surveillance cameras were installed at Best  
21 Pharmacy and recorded Respondent doing the following on November 10, 2007, while working at  
22 Best Pharmacy: Respondent took hydrocodone tablets from the pharmacy’s supply bottle and  
23 placed the hydrocodone tablets into the pocket of her Pharmacy Technician smock. By her own  
24 admission, Respondent later took the hydrocodone tablets out of her smock pockets and placed  
25 them into her purse. Respondent then exited the store with her purse and without paying for the  
26 hydrocodone concealed inside her purse. Respondent did not have a valid prescription for  
27 hydrocodone. By her own admission, Respondent provided hydrocodone to her mother and her  
28 uncle even though they did not have a valid prescription for hydrocodone.



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**THIRD CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct: Dishonesty, Fraud or Deceit)**

27. Respondent's Pharmacy Technician registration is subject to disciplinary action under section 4301, subdivision (f), in that she committed acts involving moral turpitude, dishonesty, fraud or deceit while working as a Pharmacy Technician, as follows: Respondent stole approximately 3,000 to 4,000 hydrocodone tablets from her employer by concealing the hydrocodone in her Pharmacy Technician smock to remove it from the pharmacy, hiding the hydrocodone in her purse, and exiting the store with the hydrocodone in her purse and without paying for the hydrocodone, as described above in paragraphs 21 and 22 which are incorporated herein by reference.

**FOURTH CAUSE FOR DISCIPLINE**

**(March 11, 2008, Conviction for Unlawful Possession of Controlled Substances, for Sale, on November 13, 207)**

28. Respondent's Pharmacy Technician registration is subject to disciplinary action under section 4301, subdivision (l), in that she was convicted of violating Health and Safety Code section 11352 (a) (unlawful transportation/ sale/distribution of controlled substance – hydrocodone), a felony crime substantially related to the qualifications, functions and duties of a pharmacy technician, as described above in paragraphs 21 through 24 which are incorporated herein by reference.

**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 50178, issued to Thelma Ivenka Jimenez.

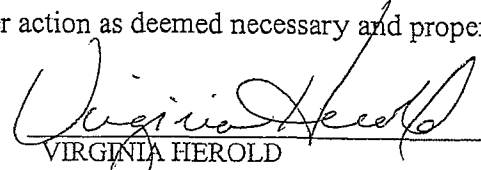
2. Ordering Thelma Ivenka Jimenez to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 8/11/09



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