1 2 3 4 5 6 7	EDMUND G. BROWN JR. Attorney General of California ARTHUR D. TAGGART Supervising Deputy Attorney General KAREN R. DENVIR Deputy Attorney General State Bar No. 197268 1300 I Street, Suite 125 P.O. Box 944255 Sacramento, CA 94244-2550 Telephone: (916) 324-5333 Facsimile: (916) 327-8643 Attorneys for Complainant			
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10	BEFORE THE BOARD OF PHARMACY			
11	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA			
12		·		
13	In the Matter of the Accusation Against:	Case No. 3373		
14	FRANCES IRENE HABIG AKA FRANCES IRENE HABIG			
15	19134 Tropical Drive Modesto, CA 95350	DEFAULT DECISION AND ORDER		
16	Original Pharmacy Technician	[Gov. Code, §11520]		
17	Registration Number TCH 45006			
18	D			
19	Respondent.			
20	FINDINGS OF FACT			
21	1. On or about September 24, 2009, Complainant Virginia Herold, in her official			
22	capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs,			
23	filed Accusation No. 3373 against Frances Irene Habig (Respondent) before the Board of			
24	Pharmacy.			
25	2. On or about October 22, 2002, the Board of Pharmacy (Board) issued Pharmacy			
26	Technician Registration No. TCH 45006 to Respondent. The Pharmacy Technician Registration			
27	was in full force and effect at all times relevant to the charges brought herein and will expire on			
28	May 31, 2010, unless renewed.			
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3. On or about	October 1, 2009, Christina A. Pek, an employee of the Department of				
Justice, served by Certifi	ed and First Class Mail a copy of the Accusation No. 3373, Statement to				
Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5,					
11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is: 19134					
Tropical Drive, Modesto	, CA 95350. A copy of the Accusation is attached as Exhibit A, and is				
incorporated herein by re	eference.				

- 4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c).
 - 5. Government Code section 11506 states, in pertinent part:
 - (c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts 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.
- 6. Respondent failed to file a Notice of Defense within 15 days after service upon her of the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 3373.
 - 7. California Government Code section 11520 states, in pertinent part:
 - (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.
- 8. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the evidence on file herein, finds that the allegations in Accusation No. 3373 are true.
- 9. The total cost for investigation and enforcement in connection with the Accusation are \$4,391.25 as of October 26, 2009.

DETERMINATION OF ISSUES

- 1. Based on the foregoing findings of fact, Respondent Frances Irene Habig has subjected her Pharmacy Technician Registration No. TCH 45006 to discipline.
 - 2. A copy of the Accusation is attached.
 - 3. The agency has jurisdiction to adjudicate this case by default.

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1	4.	The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician	
2	Registration based upon the following violations alleged in the Accusation:		
3	a.	Bus. & Prof. Code sections 490 and 4301 – Criminal Convictions	
4	ъ.	Bus. & Prof. Code section 4301(f) – Acts of Moral Turpitude	
5	c.	Bus. & Prof. Code section 4301(h) – Self-Administration of Controlled Substance	
6	d.	Bus. & Prof. Code section 4301(j) - Violation of State Statute Regulating Controlled	
7	Substances.		
8	e.	Bus. & Prof. Code section 4301(p) – Conduct Warranting Denial of License	
9		<u>ORDER</u>	
ιο	IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 45006, heretofore		
1	issued to Respondent Frances Irene Habig, is revoked.		
ا 2	Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a		
13	written motion requesting that the Decision be vacated and stating the grounds relied on within		
۱4	seven (7) days after service of the Decision on Respondent. The agency in its discretion may		
15	vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.		
16		This Decision shall become effective on February 18, 2010.	
ا 17		It is so ORDERED January 19, 2010.	
18		Bennich H. Scheel	
19	KENNETH H. SCHELL, BOARD PRESIDENT FOR THE BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS		
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22		50.DOC ocket number:SA2009310806	
23	Attac	chment:	
24	Exhibit A: Accusation No. 3373		
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Exhibit A
Accusation No. 3373

	1		
1	EDMUND G. BROWN JR. Attorney General of California	•	
2	ARTHUR D. TAGGART		
3	Supervising Deputy Attorney General KAREN R. DENVIR		
4	Deputy Attorney General State Bar No. 197268		
5	1300 I Street, Suite 125 P.O. Box 944255	•	
6	Sacramento, CA 94244-2550 Telephone: (916) 324-5333		
7	Facsimile: (916) 327-8643 Attorneys for Complainant		
8		מרטינים מוני	
٠.	BEFORE THE BOARD OF PHARMACY		
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
10			
11.	In the Matter of the Accusation Against:	Case No. 3373	
12	FRANCES IRENE HABIG AKA FRANCES IRENE FISHER		
13	19134 Tropical Drive	ACCUSATION	
14	Modesto, Ca 95350		
15	Original Pharmacy Technician		
16	REGISTRATION NUMBER TCH 45006		
17	Respondent.		
.18	Complainant alleges:		
19	<u>PAR'</u>	<u>ries</u>	
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 October 22, 2002, the Board of Pharmacy issued Pharmacy Technician		
23	Registration Number TCH 45006 to Frances Irene Habig (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 May 31, 2010, unless renewed.		
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JURISDICTION

- 3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.
 - 4. Section 4300 of the Code states, in pertinent part:
 - (a) Every license issued may be suspended or revoked.
- (b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:
 - (1) Suspending judgment.
 - (2) Placing him or her upon probation.
 - (3) Suspending his or her right to practice for a period not exceeding one year.
 - (4) Revoking his or her license.
- (5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.
 - 5. Section 4301 of the Code states, in pertinent part:

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

- (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.
- (h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to

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the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

(i) The violation of any of the statutes of this state, of any other state, or of the United

States regulating controlled substances and dangerous drugs.

(1) The conviction of a crime substantially related to the qualifications, functions, and

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

- 6. Section 475 of the Code states, in pertinent part:
- (a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(2) Conviction of a crime.

- (3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.
- (4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.
 - 7. Section 490 of the Code states, in pertinent part (emphasis added):
- (a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.
- (b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.
- (c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken 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 the provisions of Section 1203.4 of the Penal Code.

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SECOND CAUSE FOR DISCIPLINE

(Acts Involving Moral Turpitude)

15. Respondent is subject to disciplinary action under section 4301, subdivision (f), in that she committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption. Specifically, during at least May of 2008 and June of 2008, and per her admissions, on multiple occasions, all the exact dates of which are unknown, Ms. Habig fraudulently appropriated tablets of hydrocodone-containing medications, as well as tablets of alprazolam, from Longs of Modesto, while on duty as a registered pharmacy technician. Respondent admitted to stealing between 180 and 240 tablets of hydrocodone-containing medications, as well as an unknown number of tablets of alprazolam. Based on the drug counts done by Longs, the amount of stolen medication is believed to be 1033 tablets of hydrocodone-containing medications, and 34 tablets of alprazolam.

THIRD CAUSE FOR DISCIPLINE

(Unlawful Self-Administration of a Controlled Substance)

16. Respondent is subject to disciplinary action under section 4301, subdivision (h) in that during at least May of 2008 and June of 2008, per her admissions, on multiple occasions she unlawfully self-administered hydrocodone-containing medications, which are controlled substances.

FOURTH CAUSE FOR DISCIPLINE

(Violation of State/Federal Statute Regulating Controlled Substances)

17. Respondent is subject to disciplinary action under section 4301, subdivision (j), in that she violated the statutes of this state regulating controlled substances and dangerous drugs.

As set forth above in paragraphs 14 through 16, Respondent was in violation of Health and Safety Code section 11350(a).

FIFTH CAUSE FOR DISCIPLINE

(Actions or Conduct Warranting Denial of License)

18. Respondent is subject to disciplinary action under section 4301, subdivision (p) in that she committed an act that would have warranted denial of a license, as set forth more fully above in paragraphs 14 through 16.

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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 45006, issued to Frances Irene Habig.
- 2. Ordering Frances Irene Habig 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;
 - 3. Taking such other and further action as deemed necessary and proper.

DATED: 4/24/09

VIRGINIA HEROLD Executive Officer

Board of Pharmacy

Department of Consumer Affairs

State of California Complainant

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