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9  
10 **BEFORE THE  
BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**  
11

12 In the Matter of the Accusation Against:

Case No. 3403

13  
14 **NANCY MICHELE GAMBOA**  
3988 Louisiana Street  
15 San Diego, CA 92104

**DEFAULT DECISION AND ORDER**

16 Pharmacy Technician License No.  
17 TCH 82115

[Gov. Code, §11520]

18 Respondent.  
19

20 **FINDINGS OF FACT**

21 1. On or about December 21, 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. 3403 against Nancy Michele Gamboa (Respondent) before the Board of  
24 Pharmacy.

25 2. On or about March 5, 2008, the Board of Pharmacy (Board) issued Pharmacy  
26 Technician License No. TCH 82115 to Respondent. The Pharmacy Technician License was in  
27 full force and effect at all times relevant to the charges brought herein. The License expired on  
28 January 31, 2010, and has not been renewed.

1           3.     On or about December 29, 2009, Rosita Donovan, an employee of the Department of  
2 Justice, served by Certified and First Class Mail a copy of the Accusation No. 3403, Statement to  
3 Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5,  
4 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is: 3988  
5 Louisiana Street, San Diego, CA 92104. A copy of the Accusation is attached as Exhibit "A,"  
6 and is incorporated herein by reference.

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

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

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

15           6.     Respondent failed to file a Notice of Defense within 15 days after service upon her of  
16 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 3403.

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

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

22           8.     Pursuant to its authority under Government Code section 11520, the Board finds  
23 Respondent is in default. The Board will take action without further hearing and, based on the  
24 evidence on file herein, finds that the allegations in Accusation No. 3403 are true.

25           9.     The total cost for investigation and enforcement in connection with the Accusation  
26 are \$5,603.50 as of February 19, 2010.

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**DETERMINATION OF ISSUES**

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- 2       1.    Based on the foregoing findings of fact, Respondent Nancy Michele Gamboa has
- 3 subjected her Pharmacy Technician License No. TCH 82115 to discipline.
- 4       2.    A copy of the Accusation is attached.
- 5       3.    The agency has jurisdiction to adjudicate this case by default.
- 6       4.    The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
- 7 License based upon the following violations alleged in the Accusation:
  - 8       a.    Respondent is subject to disciplinary action under Business and Professions Code
  - 9 sections 490 and 4301(l) for conviction of a crime substantially related to the qualifications,
  - 10 duties and functions of a pharmacy technician (theft of controlled substances);
  - 11       b.    Respondent is subject to disciplinary action under Business and Professions Code
  - 12 section 4301(o) for possession of controlled substance without a prescription;
  - 13       c.    Respondent is subject to disciplinary action under Business and Professions Code
  - 14 section 4301(o) for furnishing a controlled substance without a prescription'
  - 15       d.    Respondent is subject to disciplinary action under Business and Professions Code
  - 16 section 4301(f) for commission of acts of dishonesty and fraud;
  - 17       e.    Respondent is subject to disciplinary action under Business and Professions Code
  - 18 section 4301(j) for violation of Health and Safety Code sections 11170 and 11173(a) for fraud,
  - 19 deceit or subterfuge; and
  - 20       f.    Respondent is subject to disciplinary action under Business and Professions Code
  - 21 sections 1445(e) for working without a license.

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ORDER

IT IS SO ORDERED that Pharmacy Technician License No. TCH 82115, heretofore issued to Respondent Nancy Michele Gamboa, is revoked.

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

This Decision shall become effective on May 26, 2010.

It is so ORDERED April 26, 2010.

*Benneth H. Schell*

KENNETH H. SCHELL, BOARD PRESIDENT  
FOR THE BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS

80434024.DOC  
DOJ docket number: SD2009804406

Attachment: Exhibit A: Accusation No. 3403

Exhibit A  
Accusation No. 3403

1 EDMUND G. BROWN JR.  
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**BOARD OF PHARMACY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
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Case No. 3403

12 **NANCY MICHELE GAMBOA**  
13 **3988 Louisiana Street**  
14 **San Diego, CA 92104**

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

15 **Pharmacy Technician Registration No. TCH**  
**82115**

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 March 5, 2008, the Board of Pharmacy issued Pharmacy Technician  
23 Registration Number TCH 82115 to Nancy Michele Gamboa (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 January 31, 2010, 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 unless otherwise indicated.

5 4. Section 4300 of the Code states:

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

7 (b) The board shall discipline the holder of any license issued by the board,  
8 whose default has been entered or whose case has been heard by the board and found  
9 guilty, by any of the following methods:

10 (1) Suspending judgment.

11 (2) Placing him or her upon probation.

12 (3) Suspending his or her right to practice for a period not exceeding one year.

13 (4) Revoking his or her license.

14 (5) Taking any other action in relation to disciplining him or her as the board  
15 in its discretion may deem proper.

16 . . . .

17 5. Section 118, subdivision (b), of the Code provides that the  
18 suspension/expiration/surrender/cancellation of a license shall not deprive the Board of  
19 jurisdiction to proceed with a disciplinary action during the period within which the license may  
20 be renewed, restored, reissued or reinstated.

21 **STATUTORY PROVISIONS**

22 6. Section 490 of the Code states:

23 (a) In addition to any other action that a board is permitted to take against a  
24 licensee, a board may suspend or revoke a license on the ground that the licensee has  
25 been convicted of a crime, if the crime is substantially related to the qualifications,  
26 functions, or duties of the business or profession for which the license was issued.

27 (b) Notwithstanding any other provision of law, a board may exercise any  
28 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

1 appeal, or when an order granting probation is made suspending the imposition of  
2 sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of  
3 the Penal Code.

4 7. Section 493 of the Code states:

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

16 8. Section 4059 of the Code states, in pertinent part, that a person may not furnish any  
17 dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,  
18 veterinarian, or naturopathic doctor pursuant to Section 3640.7. . . .

19 9. Section 4060 of the Code states:

20 No person shall possess any controlled substance, except that furnished to a  
21 person upon the prescription of a physician, dentist, podiatrist, optometrist,  
22 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant  
23 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a  
24 nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to  
25 Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist  
26 pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of  
27 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section  
28 shall not apply to the possession of any controlled substance by a manufacturer,  
wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist,  
veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or  
physician assistant, when in stock in containers correctly labeled with the name and  
address of the supplier or producer.

29 10. Section 4115(d) of the Code states in pertinent part that it is unlawful to work  
30 as a pharmacy technician without being licensed by the Board.

31 11. Section 4301 of the Code states:

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



1  
2 (f) The commission of any act involving moral turpitude, dishonesty, fraud,  
3 deceit, or corruption, whether the act is committed in the course of relations as a  
4 licensee or otherwise, and whether the act is a felony or misdemeanor or not.

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

7 (l) The conviction of a crime substantially related to the qualifications,  
8 functions, and duties of a licensee under this chapter. The record of conviction of a  
9 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United  
10 States Code regulating controlled substances or of a violation of the statutes of this  
11 state regulating controlled substances or dangerous drugs shall be conclusive  
12 evidence of unprofessional conduct. In all other cases, the record of conviction shall  
13 be conclusive evidence only of the fact that the conviction occurred. The board may  
14 inquire into the circumstances surrounding the commission of the crime, in order to  
15 fix the degree of discipline or, in the case of a conviction not involving controlled  
16 substances or dangerous drugs, to determine if the conviction is of an offense  
17 substantially related to the qualifications, functions, and duties of a licensee under this  
18 chapter. A plea or verdict of guilty or a conviction following a plea of nolo  
19 contendere is deemed to be a conviction within the meaning of this provision. The  
20 board may take action when the time for appeal has elapsed, or the judgment of  
21 conviction has been affirmed on appeal or when an order granting probation is made  
22 suspending the imposition of sentence, irrespective of a subsequent order under  
23 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of  
24 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or  
25 dismissing the accusation, information, or indictment.

26 (o) Violating or attempting to violate, directly or indirectly, or assisting in or  
27 abetting the violation of or conspiring to violate any provision or term of this chapter  
28 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.

## REGULATORY PROVISIONS

12. Health and Safety Code section 11170 states:

No person shall prescribe, administer, or furnish a controlled substance for himself.

13. Health and Safety Code section 11173(a) states:

No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

1 14. California Code of Regulations, title 16, section 1770 states:

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

9 15. California Code of Regulations, title 16, section 1769(b) states:

10 ...  
11 (b) When considering the suspension or revocation of a facility or a personal license  
12 on the ground that the licensee or the registrant has been convicted of a crime, the board, in  
13 evaluating the rehabilitation of such person and his present eligibility for a license will  
14 consider the following criteria:

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

16 (2) Total criminal record.

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

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

20 (5) Evidence, if any, of rehabilitation submitted by the licensee.

#### 21 COST RECOVERY

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

#### 26 DRUG

27 17. Hydrocodone/APAP is the generic name for Norco, a Schedule III controlled  
28 substance pursuant to Health and Safety Code section 11056(e)(4).

#### 29 FIRST CAUSE FOR DISCIPLINE

30 (September 19, 2008 Conviction for Theft of Controlled Substances)

31 18. Respondent is subject to disciplinary action under Code sections 490 and 4301(l) in  
32 that she has been convicted of a crime substantially related to the qualifications duties and  
33 functions of a pharmacy technician. Respondent was convicted of violating Penal Code section

1 487(b)(3) grand theft, for stealing drugs from the pharmacy where she was employed as a  
2 pharmacy technician. The circumstances are as follows:

3 19. Respondent worked as a pharmacy technician at a CVS Pharmacy in San Diego from  
4 about October 12, 2004 to July 11, 2008 when she was terminated for several thefts of  
5 Hydrocodone/APAP 10-325 (hydrocodone).

6 20. On or about May 22, 2008, a Loss Prevention Specialist (LPS) for CVS Pharmacies  
7 reviewed an inventory report for the CVS Pharmacy store in San Diego that employed  
8 respondent. The report revealed inventory shortages of hydrocodone totaling 3,639 pills. Based  
9 upon the shortages, the LPS installed a hidden camera system in the area where the hydrocodone  
10 was located on May 27, 2008.

11 21. The videotape revealed the following:

12 a. On June 1, 2008, respondent is seen taking a bottle of hydrocodone from the  
13 shelf and putting into her pants.

14 b. On June 14, 2008, respondent is seen taking a bottle of hydrocodone from the  
15 shelf, while talking on a cell phone, and putting the bottle in her pants in full view of the camera.  
16 She then pulls her coat down to conceal the bulge.

17 c. On June 17, 2008, respondent is seen putting a bottle of hydrocodone in the left  
18 side of her pants.

19 d. On June 24, 2008, respondent is seen taking three bottles of hydrocodone from  
20 the shelf. She puts one bottle on a lower shelf and puts two bottles in her pants on the left side.  
21 She then exits the drug aisle. A few seconds later she returns and retrieves the third bottle and  
22 conceals it in her pants, looks around to see if anyone is watching, and then exits the drug aisle.

23 e. On June 25, 2008, respondent is seen taking a bottle of hydrocodone and  
24 putting it into her pants and exiting the drug aisle.

25 f. On June 30, 2008, respondent is seen removing outdated drugs from the  
26 pharmacy shelves and placing them in a "returns" box. She is then seen taking two bottles of  
27 hydrocodone, which were not outdated, and putting them in the returns box.

28 ///

1 g. On July 8, 2008, respondent is seen taking a bottle of hydrocodone, looking to  
2 see if anyone is watching, and then putting it in her pants on the left side. Approximately two  
3 hours later, respondent returns to the hydrocodone aisle and takes a second bottle and puts it in  
4 her pants on the right side and leaves the drug aisle.

5 h. As seen on the videotape, respondent took 1,100 tablets of hydrocodone.

6 22. On July 12, 2008, respondent was arrested for grand theft and unlawful possession of  
7 hydrocodone. On September 19, 2008, in a criminal proceeding entitled *People of the State of*  
8 *California v. Nancy Michele Gamboa*, in the San Diego Superior Court, case number CD214797,  
9 respondent was convicted on her plea of guilty of grand theft. On November 25, 2008, she was  
10 sentenced to three years formal probation, to submit to custody for 365 days which is stayed  
11 pending successful completion of probation, to pay fines and penalties, to make restitution to the  
12 victim, and to complete six months at a Women's Recovery Center, among other things.

13 **SECOND CAUSE FOR DISCIPLINE**

14 (Possession of a Controlled Substance Without a Prescription)

15 23. Respondent is subject to disciplinary action under Code section 4301(o) in that she  
16 possessed controlled substances without a prescription in violation of Code section 4060, as set  
17 forth above in paragraphs 18 through 22.

18 **THIRD CAUSE FOR DISCIPLINE**

19 (Furnishing of a Controlled Substance Without a Prescription)

20 24. Respondent is subject to disciplinary action under Code section 4301(o) by furnishing  
21 a controlled substance to herself without a prescription in violation of Business and Professions  
22 Code section 4059, as set forth above in paragraphs 18 through 22.

23 **FOURTH CAUSE FOR DISCIPLINE**

24 (Commission of Acts of Dishonesty and Fraud)

25 25. Respondent is subject to disciplinary action under Code section 4301(f) for obtaining  
26 controlled substances through theft and dishonesty, as set forth above in paragraphs 18 through  
27 22.

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1 FIFTH CAUSE FOR DISCIPLINE

2 (Fraud, Deceit or Subterfuge)

3 26. Respondent is subject to disciplinary action under Code section 4301(j) for violating  
4 Health and Safety Code sections 11170 and 11173(a), for obtaining controlled substances for  
5 herself through fraud, deceit or subterfuge, as set forth above in paragraph 18 through 22.

6 SIXTH CAUSE FOR DISCIPLINE

7 (Working Without a License)

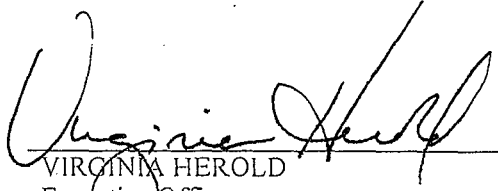
8 27. Respondent is subject to disciplinary action under Code section 1445(e) by working  
9 at CVS Pharmacy from August 28, 2007 to March 4, 2008 while her pharmacy technician permit  
10 was cancelled due to non-payment of fees.

11 PRAYER

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

- 14 1. Revoking or suspending Pharmacy Technician Registration Number TCH 82115,  
15 issued to Nancy Michele Gamboa.
- 16 2. Ordering Nancy Michele Gamboa to pay the Board of Pharmacy the reasonable costs  
17 of the investigation and enforcement of this case, pursuant to Business and Professions Code  
18 section 125.3;
- 19 3. Taking such other and further action as deemed necessary and proper.

20  
21 DATED: 12/21/09

22   
23 VIRGINIA HEROLD  
24 Executive Officer  
25 Board of Pharmacy  
26 Department of Consumer Affairs  
27 State of California  
28 Complainant

26 SD2009804406