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

In the Matter of the Amended Accusation
Against:

SELENA A. ALMAGUER
aka SELENA BECKHAM
9188 Walker Court
Reedley, California 93654

Pharmacy Technician Registration
No. TCH 18352

Respondent.

Case No. 5101

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about May 2, 2016, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Amended Accusation No. 5101 against Selena A. Almaguer, also known as Selena Beckham, (Respondent) before the Board of Pharmacy. (Amended Accusation attached as Exhibit A.)
2. On or about February 1, 1996, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 18352 to Respondent. The Pharmacy Technician Registration expired on October 31, 2013, and has not been renewed.
3. On or about May 10, 2016, Respondent was served by Certified and First Class Mail copies of Amended Accusation No. 5101, Statement to Respondent, Notice of Defense, Request

1 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
2 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
3 section 4100, is required to be reported and maintained with the Board. Respondent's address of
4 record was and is:

5 9188 Walker Court
6 Reedley, California 93654.

7 Respondent was also served with the aforementioned documents at an additional address, as

8 follows: 1467 E. Carolyn Lane, # 210
9 Reedley, CA 93654

10 4. Service of the Amended Accusation was effective as a matter of law under the
11 provisions of Government Code section 11505, subdivision (c) and/or Business & Professions
12 Code section 124.

13 5. On or about May 24, 2016 and June 14, 2016, the aforementioned documents were
14 returned as undeliverable by the U.S. Postal Service to the Office of the Attorney General,
15 marked "'Deceased, 3 or 4 months".

16 6. Government Code section 11506(c) states, in pertinent part:

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

22 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
23 the Amended Accusation, and therefore waived her right to a hearing on the merits of Amended
24 Accusation No. 5101.

25 8. California Government Code section 11520(a) states, in pertinent part:

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

9. 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

1 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
2 taking official notice of all the investigatory reports, exhibits and statements contained therein on
3 file at the Board's offices regarding the allegations contained in Amended Accusation No. 5101,
4 finds that the charges and allegations in Amended Accusation No. 5101, are separately and
5 severally, found to be true and correct by clear and convincing evidence.

6 10. Taking official notice of its own internal records, pursuant to Business and
7 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
8 and Enforcement is \$2,992.00 as of August 8, 2016.

9 DETERMINATION OF ISSUES

10 1. Based on the foregoing findings of fact, Respondent Selena A. Almaguer, also known
11 as Selena Beckham, has subjected her Pharmacy Technician Registration No. TCH 18352 to
12 discipline.

13 2. The agency has jurisdiction to adjudicate this case by default.

14 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
15 Registration based upon the following violations alleged in the Amended Accusation which are
16 supported by the evidence contained in the Default Decision Evidence Packet in this case.:

17 a. Violation of Business and Professions Code sections 4301, subdivision (f), for
18 unprofessional conduct (committed acts involving moral turpitude, dishonesty, fraud, deceit, or
19 corruption); Code section 4301, subdivision (h) (Self-Administration of Controlled Substances);
20 Code section 4301, subdivision (j) (possession of Controlled Substances); and Code section 4301,
21 subdivision (o) (violations of pharmacy law), in that while on duty as a pharmacy technician at
22 CVS/Pharmacy #9377, Respondent committed acts involving moral turpitude, dishonesty, fraud,
23 deceit, or corruption, as follows: In and between October 2012 and December 2012, Respondent
24 stole or diverted over 300 tablets of the controlled substance Norco from the pharmacy for self-
25 administration.

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ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 18352, issued to Respondent Selena A. Almaguer, also known as Selena Beckham, 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 at 5:00 p.m. on October 31, 2016.

It is so ORDERED on September 30, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____

Amy Gutierrez, Pharm.D.
Board President

12376759
DOJ Matter ID:SA2014114491

Attachment: Exhibit A: Amended Accusation

Exhibit A

Amended Accusation

(SELBNA A. ALMAGUER)

1 KAMALA D. HARRIS
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 JEFFREY M. PHILLIPS
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4 State Bar No. 154990
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-6292
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 5101

12 **SELENA A. ALMAGUER**
13 **aka SELENA BECKHAM**
14 **9188 Walker Court**
Reedley, California 93654

AMENDED ACCUSATION

15 **Pharmacy Technician Registration No. TCH 18352**

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 ("Board"), Department of Consumer Affairs.

22 2. On or about February 1, 1996, the Board issued Pharmacy Technician Registration
23 Number TCH 18352 to Selena A. Almaguer, also known as Selena Beckham ("Respondent").
24 The pharmacy technician registration expired on October 31, 2013 and was canceled on February
25 2, 2014.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board under the authority of the following
28 laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Code section 4300 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. Code section 4300.1 states:

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

6. Code section 4301 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 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.

.....

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

3

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

9 7. Code section 4060 states, in pertinent part:

10 No person shall possess any controlled substance, except that furnished to
11 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
12 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant
13 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a
14 nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to
15 Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist
16 pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
17 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.

18 8. Health and Safety Code section 11170 states that "[n]o person shall prescribe,
19 administer, or furnish a controlled substance for himself."

20 9. Health and Safety Code section 11173, subdivision (a), states, in pertinent part, that
21 "[n]o person shall obtain or attempt to obtain controlled substances, or procure or attempt to
22 procure the administration of or prescription for controlled substances, (1) by fraud, deceit,
23 misrepresentation, or subterfuge . . ."

24 10. Health and Safety Code section 11350, subdivision (a), states:

25 Except as otherwise provided in this division, every person who possesses
26 (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of
27 subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of
28 subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section
11055, or specified in subdivision (h) of Section 11056, or (2) any controlled
substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon
the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to
practice in this state, shall be punished by imprisonment pursuant to subdivision (h)
of Section 1170 of the Penal Code.

COST RECOVERY

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

1 CONTROLLED SUBSTANCE

2 12. "Norco" is a compound consisting of 7.5 mg hydrocodone bitartrate and 325 mg
3 acetaminophen per tablet. At the time of the incidents described below, Norco was classified as a
4 Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision
5 (e)(4).¹

6 BACKGROUND

7 13. At all times relevant to the charges brought herein, Respondent was employed as a
8 pharmacy technician at CVS/Pharmacy #9377 located on West Manning Avenue in Reedley,
9 California.

10 14. On or about February 15, 2013, J. J., Regional Loss Prevention Manager for CVS,
11 notified the Board that he conducted an investigation at Store #9377 after receiving an exception
12 based report indicating a potential discrepancy of hydrocodone/APAP 7.5-325. An audit was
13 conducted at the pharmacy for the period of April 30, 2011, to the current inventory, revealing a
14 loss of 1,004 tablets of hydrocodone/APAP 7.5-325 mg. An additional audit was conducted on
15 December 27, 2012, indicating an additional loss of 138 tablets. On or about January 16, 2013,
16 J. J. conducted interviews of pharmacy personnel, including Respondent. J. J. provided the Board
17 with a copy of a statement, signed by Respondent, admitting that from mid October through mid
18 December 2012, she took or stole hydrocodone 7.5-325 mg from the pharmacy. Respondent
19 would grab the hydrocodone off of the shelf, open the bottle, and put the medication (tablets) into
20 her pocket. Respondent estimated that she took a total of 300 tablets of hydrocodone over the
21 above period of time. Respondent also admitted that she took the hydrocodone for her own
22 personal use to help relieve job stress, and did not have a prescription for the medication.

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26 _____
27 ¹ Hydrocodone has been rescheduled by the United States Drug Enforcement
28 Administration from a Schedule III to Schedule II controlled substance via the Controlled
Substances Act (21 CFR Part 1308 § 1308.12; 21 U.S.C. 812 (c)).

1 Respondent violated or attempted to violate, directly or indirectly, a provision or term of the
2 Pharmacy Law (Bus. & Prof. Code § 4300, et seq.), specifically, Code section 4060, as set forth
3 above.

4 PRAYER

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

7 1. Revoking or suspending Pharmacy Technician Registration Number TCH 18352,
8 issued to Selena A. Almaguer;

9 2. Ordering Selena A. Almaguer to pay the Board of Pharmacy the reasonable costs of
10 the investigation and enforcement of this case, pursuant to Business and Professions Code section
11 125.3;

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

13
14 DATED: 5/2/16

Virginia Herold

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

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1 KAMALA D. HARRIS
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 JEFFREY M. PHILLIPS
Deputy Attorney General
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6 Telephone: (916) 324-6292
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 5101

13 **SELENA A. ALMAGUER**
14 **9188 Walker Court**
15 **Reedley, California 93654**

ACCUSATION

16 **Pharmacy Technician Registration No. TCH 18352**

Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Virginia Herold ("Complainant") brings this Accusation solely in her official capacity
20 as the Executive Officer of the Board of Pharmacy ("Board"), Department of Consumer Affairs.

21 2. On or about February 1, 1996, the Board issued Pharmacy Technician Registration
22 Number TCH 18352 to Selena A. Almaguer ("Respondent"). The pharmacy technician
23 registration expired on October 31, 2013 and was canceled on February 2, 2014.

24 **JURISDICTION**

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26 laws. All section references are to the Business and Professions Code unless otherwise indicated.

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1 STATUTORY PROVISIONS

2 4. Code section 4300 states, in pertinent part:

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

6 (1) Suspending judgment.

7 (2) Placing him or her upon probation.

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

10 (4) Revoking his or her license.

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

12 5. Code section 4300.1 states:

13 The expiration, cancellation, forfeiture, or suspension of a board-issued
14 license by operation of law or by order or decision of the board or a court of law, the
15 placement of a license on a retired status, or the voluntary surrender of a license by a
16 licensee shall not deprive the board of jurisdiction to commence or proceed with any
17 investigation of, or action or disciplinary proceeding against, the licensee or to render
18 a decision suspending or revoking the license.

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

21

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

24

25 (h) The administering to oneself, of any controlled substance, or the use
26 of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be
27 dangerous or injurious to oneself, to a person holding a license under this chapter, or
28 to any other person or to 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.

27

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

2

3 (o) Violating or attempting to violate, directly or indirectly, or assisting in
4 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
5 pharmacy, including regulations established by the board or by any other state or
federal regulatory agency

6 7. Code section 4060 states, in pertinent part:

7 No person shall possess any controlled substance, except that furnished to
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veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant
9 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a
nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to
10 Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist
pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
11 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.

12 8. Health and Safety Code section 11170 states that "[n]o person shall prescribe,
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14 9. Health and Safety Code section 11173, subdivision (a), states, in pertinent part, that
15 "[n]o person shall obtain or attempt to obtain controlled substances, or procure or attempt to
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18 10. Health and Safety Code section 11350, subdivision (a), states:

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20 (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of
subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of
21 subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section
11055, or specified in subdivision (h) of Section 11056, or (2) any controlled
22 substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon
the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to
23 practice in this state, shall be punished by imprisonment pursuant to subdivision (h)
of Section 1170 of the Penal Code.

24 **COST RECOVERY**

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

1 **CONTROLLED SUBSTANCE**

2 12. "Norco" is a compound consisting of 7.5 mg hydrocodone bitartrate and 325 mg
3 acetaminophen per tablet. At the time of the incidents described below, Norco was classified as a
4 Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision
5 (e)(4).¹

6 **BACKGROUND**

7 13. At all times relevant to the charges brought herein, Respondent was employed as a
8 pharmacy technician at CVS/Pharmacy #9377 located on West Manning Avenue in Reedley,
9 California.

10 14. On or about February 15, 2013, J. J., Regional Loss Prevention Manager for CVS,
11 notified the Board that he conducted an investigation at Store #9377 after receiving an exception
12 based report indicating a potential discrepancy of hydrocodone/APAP 7.5-325. An audit was
13 conducted at the pharmacy for the period of April 30, 2011, to the current inventory, revealing a
14 loss of 1,004 tablets of hydrocodone/APAP 7.5-325 mg. An additional audit was conducted on
15 December 27, 2012, indicating an additional loss of 138 tablets. On or about January 16, 2013,
16 J. J. conducted interviews of pharmacy personnel, including Respondent. J. J. provided the Board
17 with a copy of a statement, signed by Respondent, admitting that from mid October through mid
18 December 2012, she took or stole hydrocodone 7.5-325 mg from the pharmacy. Respondent
19 would grab the hydrocodone off of the shelf, open the bottle, and put the medication (tablets) into
20 her pocket. Respondent estimated that she took a total of 300 tablets of hydrocodone over the
21 above period of time. Respondent also admitted that she took the hydrocodone for her own
22 personal use to help relieve job stress, and did not have a prescription for the medication.

23 ///

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26 _____
27 ¹ Hydrocodone has been rescheduled by the United States Drug Enforcement
28 Administration from a Schedule III to Schedule II controlled substance via the Controlled
Substances Act (21 CFR Part 1308 § 1308.12; 21 U.S.C. 812 (c).

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

3 15. Respondent is subject to disciplinary action pursuant to Code section 4301,
4 subdivision (f), for unprofessional conduct, in that while on duty as a pharmacy technician at
5 CVS/Pharmacy #9377, Respondent committed acts involving moral turpitude, dishonesty, fraud,
6 deceit, or corruption, as follows: In and between October 2012 and December 2012, Respondent
7 stole or diverted over 300 tablets of the controlled substance Norco from the pharmacy for self-
8 administration, as set forth in paragraph 14 above.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Self-Administration of a Controlled Substance)**

11 16. Respondent is subject to disciplinary action pursuant to Code section 4301,
12 subdivision (h), for unprofessional conduct, in that in and between October 2012 and December
13 2012, while employed and/or on duty as a pharmacy technician at CVS/Pharmacy #9377,
14 Respondent self-administered the controlled substance Norco without a valid or lawful
15 prescription for the medication, as set forth in paragraph 14 above.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Violations of State Laws Regulating Controlled Substances)**

18 17. Respondent is subject to disciplinary action pursuant to Code section 4301,
19 subdivision (j), for unprofessional conduct, in that in and between October 2012 and December
20 2012, while on duty as a pharmacy technician at CVS/Pharmacy #9377, Respondent possessed
21 the controlled substance Norco without a valid or lawful prescription for the medication, as set
22 forth in paragraph 14 above, in violation of Code section 4060 and/or Health and Safety Code
23 section 11350, subdivision (a).

24 **FOURTH CAUSE FOR DENIAL**

25 **(Violations of the Pharmacy Law)**

26 18. Respondent is subject to disciplinary action pursuant to Code section 4301,
27 subdivision (o), for unprofessional conduct, in that in and between October 2012 and December
28 2012, while employed and/or on duty as a pharmacy technician at CVS/Pharmacy #9377,

1 Respondent violated or attempted to violate, directly or indirectly, a provision or term of the
2 Pharmacy Law (Bus. & Prof. Code § 4300, et seq.), specifically, Code section 4060, as set forth
3 above.

4 **PRAYER**

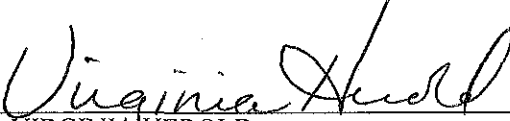
5 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
6 and that following the hearing, the Board of Pharmacy issue a decision:

7 1. Revoking or suspending Pharmacy Technician Registration Number TCH 18352,
8 issued to Selena A. Almaguer;

9 2. Ordering Selena A. Almaguer to pay the Board of Pharmacy the reasonable costs of
10 the investigation and enforcement of this case, pursuant to Business and Professions Code section
11 125.3;

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

13
14 DATED: 11/30/15


15 VIRGINIA HEROLD
16 Executive Officer
17 Board of Pharmacy
18 Department of Consumer Affairs
19 State of California
20 Complainant

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28 SA2014114491