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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. 5169

**CELENA CHENG**  
5029 Matney Ave.  
Long Beach, CA 90807

**DEFAULT DECISION AND ORDER**

**Pharmacy Technician Registration No. TCH  
127782**

[Gov. Code, §11520]

Respondent.

FINDINGS OF FACT

1. On or about May 21, 2015, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, filed Accusation No. 5169 against Celena Cheng (Respondent) before the Board. (Accusation attached as Exhibit A.)

2. On or about November 8, 2012, the Board issued Pharmacy Technician Registration No. TCH 127782 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 5169 and expired on July 31, 2014. This lapse in licensure, however, pursuant to Business and Professions Code sections 118,

1 subdivision (b), and 4300.1 does not deprive the Board of its authority to institute or continue this  
2 disciplinary proceeding.

3 3. On or about June 26, 2015, Respondent was served by Certified and First Class Mail  
4 copies of the Accusation No. 5169, Statement to Respondent, Notice of Defense, Request for  
5 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at  
6 Respondent's address of record which, pursuant to Business and Professions Code section 4100,  
7 is required to be reported and maintained with the Board. Respondent's address of record was  
8 and is:

9 5029 Matney Ave.  
10 Long Beach, CA 90807.

11 4. Service of the Accusation was effective as a matter of law under the provisions of  
12 Government Code section 11505, subdivision (c) and/or Business & Professions Code section  
13 124.

14 5. On or about July 23, 2015, the aforementioned documents sent by certified mail were  
15 returned by the U.S. Postal Service marked "RETURN TO SENDER, ATTEMPTED – NOT  
16 KNOWN, UNABLE TO FORWARD, RETURN TO SENDER."

17 6. On or about July 30, 2015, the aforementioned documents sent by first class mail  
18 were returned by the U.S. Postal Service marked "RETURN TO SENDER, UNABLE TO  
19 FORWARD, UNABLE TO FORWARD, RETURN TO SENDER."

20 7. Government Code section 11506 states, in pertinent part:

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

26 8. Respondent failed to file a Notice of Defense within 15 days after service upon her of  
27 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 5169.

28 9. 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.

1           10. Pursuant to its authority under Government Code section 11520, the Board finds  
2 Respondent is in default. The Board will take action without further hearing and, based on the  
3 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as  
4 taking official notice of all the investigatory reports, exhibits and statements contained therein on  
5 file at the Board's offices regarding the allegations contained in Accusation No. 5169, finds that  
6 the charges and allegations in Accusation No. 5169, are separately and severally, found to be true  
7 and correct by clear and convincing evidence.

8           11. Taking official notice of its own internal records, pursuant to Business and  
9 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation  
10 and Enforcement is \$5,413.50 as of October 2, 2015.

11   DETERMINATION OF ISSUES

12           1. Based on the foregoing findings of fact, Respondent has subjected her Pharmacy  
13 Technician Registration No. TCH 127782 to discipline.

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

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

18                 a. Business and Professions Code sections 490 and 4301, subdivision (l), for  
19 conviction of a substantially related crime;

20                 b. Business and Professions Code section 4301, subdivision (f), for dishonest acts;

21                 c. Business and Professions Code section 4301, subdivisions (j) and (o), for  
22 obtaining or possession a controlled substance in violation of law.

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ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 127782, heretofore issued to Respondent, 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 December 9, 2015.

It is so ORDERED on November 9, 2015.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By \_\_\_\_\_

Amy Gutierrez, Pharm.D.  
Board President

51924557.DOC  
DOJ Matter ID:LA2014511454

Attachment:  
Exhibit A: Accusation

# Exhibit A

Accusation

(CELENA CHENG)

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA L. SUN  
Supervising Deputy Attorney General  
3 BORA SONG  
Deputy Attorney General  
4 State Bar No. 276475  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2674  
6 Facsimile: (213) 897-2804  
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. 5169

13 **CELENA CHENG**  
5029 Matney Ave.  
14 Long Beach, CA 90807

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

15 Pharmacy Technician Registration  
16 No. TCH 127782

17 Respondent.

18  
19 Complainant alleges:

20 **PARTIES**

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

23 2. On November 8, 2012, the Board issued Pharmacy Technician Registration No. TCH  
24 127782 to Celena Cheng (Respondent). The Pharmacy Technician Registration was in full force  
25 and effect at all times relevant to the charges brought herein, expired on July 31, 2014, and has  
26 not been renewed.

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In the Matter of the Accusation Against: Celena Cheng, Pharmacy Technician Registration No. TCH 127782  
Accusation

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## JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws.

4. Business and Professions Code section 118, subdivision (b),<sup>1</sup> provides, in pertinent part, that the expiration of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 4300 that every license issued by the Board is subject to discipline, including suspension or revocation.

6. 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.

## STATUTORY PROVISIONS

7. Section 490 states, in pertinent part:

(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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<sup>1</sup> All further statutory references are to the Business and Professions Code unless otherwise indicated.

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8. Section 493 states:

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

9. Section 4301 states:

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.

(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.

(l) 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.



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

6 10. Section 4060 provides, in pertinent part, that no person shall possess any controlled  
7 substance, except that furnished to a person upon the prescription of a physician, dentist,  
8 podiatrist, optometrist, veterinarian, or other authorized prescriber.

#### 9 REGULATORY PROVISION

10 11. California Code of Regulations, title 16, section 1770, states, in pertinent part:

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

#### 18 COST RECOVERY

19 12. Section 125.3 states, in pertinent part, that the Board may request the administrative  
20 law judge to direct a licensee found to have committed a violation or violations of the licensing  
21 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the  
22 case.

#### 23 CONTROLLED SUBSTANCES

24 13. Norco is the brand name for hydrocodone/acetaminophen. It is a Schedule III  
25 controlled substance as designated by Health and Safety Code section 11056, subdivision (e)(7),  
26 and is categorized as a dangerous drug pursuant to section 4022.

27 14. Phenergan with Codeine is the brand name for promethazine with codeine. It is a  
28 Schedule V controlled substance as designated by Health and Safety Code section 11058,  
subdivision (c)(1), and is categorized as a dangerous drug pursuant to section 4022.

15. Xanax is the brand name for alprazolam. It is a Schedule V controlled substance as  
designated by Health and Safety Code section 11057, subdivision (d)(1), and is categorized as a  
dangerous drug pursuant to section 4022.

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**FIRST CAUSE FOR DISCIPLINE**  
**(Conviction of a Substantially Related Crime)**

16. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, in that on February 17, 2015, in *People v. Celena Cheng* (Super. Ct., Bellflower Courthouse, L.A. County, 2015, No. 4BF02299), Respondent was convicted of one count of petty theft (Pen. Code, § 484, subd. (a)), a misdemeanor. The Court sentenced Respondent to 30 days jail and 36 months of summary probation with standard terms and conditions of probation, and ordered Respondent to stay out of J.C. Penney. The circumstances leading to the conviction are that on or about February 15, 2014, Respondent committed a theft of makeup from J.C. Penney. Respondent admitted to a Los Angeles County Sheriff's Deputy that she concealed the makeup in her purse and walked out of the store without paying for it.

**SECOND CAUSE FOR DISCIPLINE**  
**(Dishonest Acts)**

17. Respondent is subject to disciplinary action under section 4301, subdivisions (f), in that on or about February 15, 2014, Respondent committed an act involving moral turpitude, dishonesty, fraud, deceit, or corruption. Complainant refers to, and by this reference incorporates, the allegations set forth in paragraph 16, above.

18. Additionally, Respondent is subject to disciplinary action under section 4301, subdivisions (f), in or about March 2013 through June 2013, while working as a pharmacy technician at CVS Pharmacy in Los Angeles, Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption, when she stole controlled substances. During a June 12, 2013 interview with the CVS Regional Loss Prevention Manager and the CVS Pharmacy Manager, Respondent admitted to stealing hydrocodone, alprazolam, and promethazine with codeine.

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**THIRD CAUSE FOR DISCIPLINE**

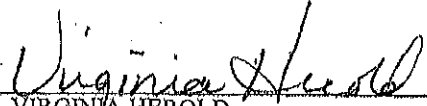
**(Obtaining or Possessing a Controlled Substance in Violation of Law)**

19. Respondent is subject to disciplinary action under section 4301, subdivisions (j) and (o), as defined in section 4060, in that in or about March 2013 through June 2013, while working as a pharmacy technician at CVS Pharmacy in Los Angeles, Respondent obtained or possessed controlled substances in violation of law. Complainant refers to, and by this reference incorporates, the allegations set forth in paragraph 18, above.

**PRAYER**

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

1. Revoking or suspending Pharmacy Technician Registration No. TCH 127782, issued to Celena Cheng;
2. Ordering Celena Cheng to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 5/21/15   
VIRGINIA HEROLD  
Executive Officer  
Board of Pharmacy  
Department of Consumer Affairs  
State of California  
Complainant

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