

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

In the Matter of the First Amended
Accusation Against:

EVELYN LISSETTE GUILLEN,

**Pharmacy Technician Registration
No. TCH 138520**

Respondent.

Case No. 5450

OAH No. 2015110840

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective at 5:00 p.m. on April 20, 2016.

It is so ORDERED on March 21, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

BEFORE THE
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Accusation Against:

EVELYN LISSETTE GUILLEN,

Pharmacy Technician Registration
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PROPOSED DECISION

Matthew Goldsby, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on January 27, 2016, at Los Angeles, California.

BrieAnn West, a certified law student acting under the supervision of Nancy Kaiser, Deputy Attorney General, appeared and represented complainant Virginia Herold, Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

Respondent Evelyn Lissette Guillen appeared and represented herself.

The parties submitted the matter for decision at the conclusion of the hearing.

FACTUAL FINDINGS

1. On January 28, 2014, the Board issued Pharmacy Technician Registration number TCH 138520 to respondent. Respondent's license expired on May 31, 2015. The Board maintains jurisdiction over this matter pursuant to Business and Professions Code section 4300.1.

2. Complainant brought the Accusation in her official capacity. Respondent timely submitted a Notice of Defense.

3. The Accusation seeks an order revoking or suspending respondent's pharmacy technician registration and awarding reasonable costs in the enforcement and investigation of this case. The issue is whether respondent engaged in unprofessional conduct.

4. On February 11, 2015, respondent entered a plea of nolo contendere and was convicted of possession of a controlled substance in violation of Health and Safety Code section 11350, a misdemeanor. (*People v. Guillen* (Super. Ct. Los Angeles County, 2015, No. 4CA30124).) The court placed respondent on formal diversion for 12 months and ordered her to participate in an in-patient program for at least three months. On May 13, 2015, the court modified respondent's diversion to add a requirement that she attend two Narcotics Anonymous meetings per week until her next court appearance. On June 11, 2015, respondent appeared in court for a progress report. Finding that respondent met all terms and conditions of the diversion program, the court dismissed the criminal proceeding pursuant to Penal Code section 1385.

5. The conviction arose from an incident on November 19, 2014. Shortly after 11:00 p.m., respondent agreed to give a ride to her boyfriend's brother, who rode in the passenger seat of respondent's car. Respondent knew that her passenger used drugs and had a criminal record. When police officers observed respondent driving at an excessive rate of speed and turning left without a signal, the officers turned on the patrol car's lights and siren in order to conduct a traffic stop. The police report notes "the vehicle did not stop immediately" and respondent, as the driver, "appeared to be stalling." (Ex. 4, p. 30.) When respondent finally stopped and the officers approached her vehicle, the officers observed a glass pipe on the middle console, in plain view, and detected the odor of marijuana emanating from the vehicle.

6. The officers conducted a search of respondent's vehicle and summoned a female officer to conduct a search of respondent's person. While waiting, the officers observed respondent "open [a] Velcro purse in what appeared to be an attempt to empty its contents" and advised her "to let go of the purse." (Ex. 4.) After searching respondent, the purse, and her vehicle, the officers found heroin, cocaine, Alprazolam, methamphetamine residue, and marijuana, each of which is either a controlled substance or dangerous drug or both. (Health & Saf. Code, §§ 11054, 11055, 11057, and 4022.) When the officers asked respondent and her passenger if either had a prescription for the pills, "both suspects just shrugged their shoulders and did not answer the question." (Ex. 4.) Respondent's passenger was on probation for possession of a controlled substance in violation of Health and Safety Code section 11377, subdivision (a). They arrested the passenger for violating the terms of his probation and respondent for the unlawful possession of a controlled substance.

7. At the hearing, respondent testified that the narcotics belonged to her passenger. She denied ever using any illicit drugs. She expressed remorse that she gave her boyfriend's brother a ride and that she "should not have been with him at the moment." However, she did not acknowledge her own wrongful possession of controlled substances. Respondent testified that she did not contest the charges because her court-appointed attorney advised her to plead nolo contendere and she followed her attorney's advice. Respondent's testimony may not be used to disprove her criminal conduct and the record of conviction involving a controlled substance is conclusive proof of unprofessional conduct. (Bus. & Prof. Code, § 4301, subd. (I).)

8. Respondent attended substance abuse programs to comply with the court's diversion program and to obey her parents. However, she testified that the treatment program "wasn't for me" and she stopped attending any formal drug abuse treatment after completing the three-month in-patient program and going to the meetings that the court ordered.

9. Respondent presented a letter of recommendation from her prospective employer, the United States Department of the Army. The author does not address whether he knew about respondent's drug-related conviction, although respondent testified that she disclosed the conviction to him.

10. Respondent does not intend to continue working as a pharmacy technician. She most recently worked as a pharmacy technician for CVS Pharmacy for two months in 2014, but she voluntarily quit to return to school before her arrest. Respondent would like to retain her license for future possibilities.

11. Complainant incurred reasonable prosecution costs in the amount of \$2,537.50, evidenced by a declaration and detailed billing statements. Complainant presented no evidence of investigation costs.

LEGAL CONCLUSIONS

1. Complainant has the burden of proving cause for discipline by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.)

2. The Board shall take disciplinary action against the holder of a pharmacy technician registration guilty of unprofessional conduct. (Bus. & Prof. Code, § 4301.)

3. Unprofessional conduct includes the commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption. (Bus. & Prof. Code, § 4301, subd. (f).)

4. Unprofessional conduct includes the violation of any law regulating controlled substances and dangerous drugs, including the possession of a controlled substance without a prescription. (Bus. & Prof. Code, §§ 4060 and 4301, subd. (j).)

5. Unprofessional conduct includes violating any law governing pharmacy. (Bus. & Prof. Code, § 4301, subd. (o).)

6. In this case, respondent was convicted of possession of a controlled substance without a prescription in violation of Health and Safety Code section 11350. By violating a law governing pharmacy and regulating controlled substances, respondent engaged in unprofessional conduct under Business and Professions Code section 4301, subdivisions (j) and (o). Respondent's offense violated the very pharmacy laws the Bureau licensed her to enforce and uphold for the public's protection. Accordingly, a direct nexus exists between

the criminal conduct and the licensed activity and her unlawful possession of controlled substances is more egregious than would be the case for a non-licensure. A pharmacy technician's unlawful possession of controlled substances undermines the purpose of the licensing act, and poses a substantial risk of harm to the public.

7. Respondent did not engage in unprofessional conduct under Business and Professions Code section 4301, subdivision (f), because she did not engage in acts involving moral turpitude, dishonesty, deceit, and corruption. Although not amenable to a precise definition, "moral turpitude" connotes a readiness to do evil, an act of baseness, vileness, or "depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man." (*People v. Forster* (1994) 29 Cal.App.4th 1746, 1757, quoting from *People v. Mansfield* (1988) 200 Cal.App.3d 82, 87.)

8. Simple possession of narcotics does not necessarily involve moral turpitude. (*Brandt v. Fox* (1979) 90 Cal. App. 3d 737.) Although not to be condoned, respondent's possession of controlled substances does not connote any evil motive or intent to corrupt others. (*Clerici v. Dept. of Motor Vehicles* (1990) 224 Cal. App. 3d 1016 [possession for sale or trafficking]; *Rice v. Alcoholic Beverage Appeals Bd.* (1979) 89 Cal.App.3d 30.)

9. Accordingly, complainant has met her burden to show that cause exists to discipline respondent's pharmacy technician registration under Business and Professions Code section 4301, subdivisions (j) and (o), but not under Business and Professions Code section 4301, subdivision (f). (Factual Findings 1-5.)

10. When considering the revocation or suspension of a pharmacy technician registration, the Board must consider evidence of mitigation and rehabilitation. (Cal. Code Regs., tit. 16, § 1769). To evaluate respondent's rehabilitation, the Board must consider the following criteria:

- (A) The nature and severity of the act.
- (B) The total criminal record.
- (C) The time that has elapsed since commission of the act.
- (D) Whether respondent has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.
- (E) Whether respondent has complied with any terms of parole, probation, restitution, or other sanctions lawfully imposed against respondent.
- (F) Evidence, if any, of rehabilitation submitted by respondent.

11. In this case, respondent was convicted less than one year ago. Although she complied with the terms of her probation and the court dismissed her case under Penal Code section 1385, an insufficient period of time has elapsed to evaluate respondent's rehabilitation. The nature of the act involved the unlawful possession of controlled substances, conduct that specifically conflicts with the duties and responsibilities of a pharmacy technician to properly manage and dispense prescription medication.

12. By shifting all blame to the passenger in her vehicle, respondent fails to acknowledge the wrongfulness of her own conduct. Rehabilitative efforts presuppose admission of the problem. A failure to recognize the problem, its effect on respondent's private life, and its potential effect on her professional practice, heighten the need for discipline. (*In re Kelley* (1990) 52 Cal.3d 487.)

13. Imposing discipline on respondent's registration furthers a particular social purpose: the protection of the public. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757.) The weight of the evidence establishes that revoking respondent's expired registration will best serve and protect the public.

14. The Board is entitled to recover all reasonable costs incurred to investigate and prosecute this matter. (Bus. & Prof. Code, § 125.3.)

15. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Supreme Court enumerated several factors that a licensing agency must consider in assessing costs. An agency must not assess the full costs of investigation and enforcement when to do so would unfairly penalize a respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty. The agency must also consider a respondent's subjective good faith belief in the merits of his or her position and whether the respondent has raised a colorable challenge to the discipline or is unable to pay.

16. Complainant incurred reasonable prosecution costs in the amount of \$2,537.50. (Factual Finding 11.) However, respondent used the hearing process to raise a colorable claim in defense. Ordering respondent to immediately pay costs in addition to revoking her license will be unduly punitive.

17. Accordingly, complainant's costs are allowed in the amount of \$2,537.50, but payment is deferred until such time as respondent successfully petitions the Board for reinstatement of her registration.

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ORDER

Respondent's pharmacy technician registration number TCH 138520 is revoked. Respondent shall pay the amount of \$2,537.50, due and payable to the Board only as a condition precedent to reinstatement of respondent's registration.

DATED: February 10, 2016

DocuSigned by:

Matthew Goldsby

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MATTHEW GOLDSBY
Administrative Law Judge
Office of Administrative Hearings

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

11 In the Matter of the First Amended Accusation
Against:

Case No. 5450

FIRST AMENDED ACCUSATION

12 **EVELYN LISSETTE GUILLEN**
13 4220 N. Lakewood Blvd
Long Beach, CA 90808

14 Pharmacy Technician Registration
15 No. TCH 138520

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

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

22 2. On or about January 28, 2014, the Board issued Pharmacy Technician Registration
23 No. TCH 138520 to Evelyn Lissette Guillen (Respondent). The Pharmacy Technician
24 Registration expired on May 31, 2015, and has not been renewed.

25 **JURISDICTION**

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

STATUTORY PROVISIONS

4. Section 492 states:

"Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division."

5. 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.'"

6. Section 4300, subdivision (a), states that "[e]very license issued may be suspended or revoked."

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1 7. Section 4300.1 states:

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

7 8. Section 4301 states, in pertinent part:

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

11 ...

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

15 ...

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

18 ...

19 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
20 violation of or conspiring to violate any provision or term of this chapter or of the applicable
21 federal and state laws and regulations governing pharmacy, including regulations established by
22 the board or by any other state or federal regulatory agency. . . ."

23 PHARMACY LAW

24 9. Section 4060 states:

25 "No person shall possess any controlled substance, except that furnished to a person upon
26 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
27 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
28 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a

1 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
2 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
3 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
4 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
5 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
6 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
7 labeled with the name and address of the supplier or producer.

8 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a
9 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and
10 devices."

11 DRUG STATUTES

12 10. Health and Safety Code section 11007 states:

13 " "Controlled substance," unless otherwise specified, means a drug, substance, or immediate
14 precursor which is listed in any schedule in Section 11054, 11055, 11056, 11057, or 11058."

15 11. Health and Safety Code section 11173, subdivision (a), provides that it is illegal to
16 possess a controlled substance without a valid prescription.

17 12. United States Code Service, title 21, section 844 states, in pertinent part:

18 "(a) Unlawful acts; penalties. It shall be unlawful for any person knowingly or
19 intentionally to possess a controlled substance unless such substance was obtained directly, or
20 pursuant to a valid prescription.

21 ...

22 (c) "Drug, narcotic, or chemical offense" defined. As used in this section, the term " drug,
23 narcotic, or chemical offense" means any offense which proscribes the possession, distribution,
24 manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute,
25 manufacture, cultivate, sell or transfer any substance the possession of which is prohibited under
26 this title."

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REGULATORY PROVISION

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

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

COST RECOVERY

14. Section 125.3 states, in pertinent part, that the 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.

CONTROLLED SUBSTANCE / DANGEROUS DRUG

15. Alprazolam is a Schedule IV controlled substance under Health and Safety Code section 11057(d) and a dangerous drug pursuant to section 4022. Alprazolam is a generic name for Xanax, Invirase, Crixivan, Serzone and Alprazolam Intensol.

16. Cocaine is a Schedule II controlled substance under as designated in Health and Safety Code section 11055(b)(6) and a dangerous drug pursuant to section 4022.

17. Heroin, a semisynthetic drug derived from morphine is a Schedule I controlled substance as designated by Health and Safety Code section 11054(c)(11).

18. Marijuana is a hallucinogenic Schedule I controlled substance under State and federal law (Health & Saf. Code § 11054 subd. (d)(13); and 21 U.S.C. § 812) and a dangerous drug pursuant to section 4022.

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1 FIRST CAUSE FOR DISCIPLINE

2 (Possession of Controlled Substances/Dangerous Drugs)

3 19. Respondent is subject to disciplinary action under sections 4300, and 4301,
4 subdivision (o), on the grounds of unprofessional conduct, for violating section 4060, in that on or
5 about November 19, 2014, Respondent violated or attempted to violate the Pharmacy law when
6 she was found in possession of controlled substances or dangerous drugs, as follows:

7 a. On or about November 19, 2014 Respondent was found in possession of 0.39 gg
8 Cocaine, 0.60 gg Heroin, 0.25 gg Alprazolam, and 13.30 gg Marijuana, controlled substances and
9 dangerous drugs, without valid prescriptions.

10 b. Subsequently on or about February 11, 2015, after pleading nolo contendere with a
11 finding of guilty, Respondent was convicted of one misdemeanor count of violating Health and
12 Safety Code section 11350 [possession of a controlled substance] in the criminal proceeding
13 entitled *The People of the State of California v. Evelyn Guillen* (Super. Ct. L.A. County, 2015,
14 No. 4CA30124). The Court placed Respondent on 12 months of formal diversion, and ordered to
15 complete a three-month Teen Challenge in-patient program. On or about June 11, 2015,
16 Respondent met and completed the terms of formal diversion and the matter was dismissed
17 pursuant to Penal Code section 1385.

18 SECOND CAUSE FOR DISCIPLINE

19 (Violating Drug Statutes)

20 20. Respondent is subject to disciplinary action under sections 4300, 4301,
21 subdivision (j), on the grounds of unprofessional conduct, in that on or about November 19, 2014,
22 Respondent violated Health and Safety Code section 11173, subdivision (a), and United States
23 States Code Service, title 21, section 844, when she was in possession of Cocaine, Heroin,
24 Alprazolam and Marijuana, controlled substances and dangerous drugs, without valid
25 prescriptions. Complainant refers to and by this reference incorporates the allegations set forth
26 above in paragraph 19, inclusive, as though set forth fully.

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1 THIRD CAUSE FOR DISCIPLINE

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

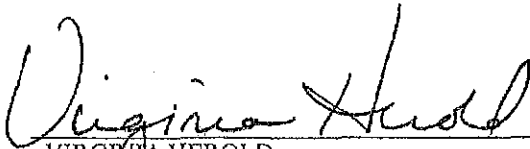
3 21. Respondent is subject to disciplinary action under sections 4300 and 4301,
4 subdivision (f), on the grounds of unprofessional conduct, in that Respondent committed acts
5 involving moral turpitude, dishonesty, fraud, deceit, or corruption when she was in possession of
6 Cocaine, Heroin, Alprazolam and Marijuana, controlled substances and dangerous drugs, without
7 valid prescriptions. Complainant refers to and by this reference incorporates the allegations set
8 forth above in paragraphs 19 through 20, inclusive, as though set forth fully.

9 PRAYER

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

- 12 1. Revoking or suspending Pharmacy Technician Registration No. TCH 138520, issued
13 to Evelyn Lissette Guillen;
- 14 2. Ordering Evelyn Lissette Guillen to pay the Board the reasonable costs of the
15 investigation and enforcement of this case, pursuant to section 125.3; and
- 16 3. Taking such other and further action as deemed necessary and proper.

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18
19 DATED: 1/12/16


20 VIRGINIA HEROLD
21 Executive Officer
22 Board of Pharmacy
23 Department of Consumer Affairs
24 State of California
25 Complainant

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9 **DEPARTMENT OF CONSUMER AFFAIRS**
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11 In the Matter of the Accusation Against:

Case No. 5450

12 **EVELYN LISSETTE GUILLEN**
4220 N. Lakewood Blvd
13 Long Beach, CA 90808

ACCUSATION

14 Pharmacy Technician Registration No. TCH
138520.

15 Respondent.
16

17
18
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about January 28, 2014, the Board issued Pharmacy Technician Registration
24 No. TCH 138520 to Evelyn Lissette Guillen (Respondent). The Pharmacy Technician
25 Registration expired on May 31, 2015, and has not been renewed.

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.

1 STATUTORY PROVISIONS

2 4. Section 490 provides that a board may suspend or revoke a license on the ground that
3 the licensee has been convicted of a crime substantially related to the qualifications, functions, or
4 duties of the business or profession for which the license was issued.

5 5. Section 492 states:

6 "Notwithstanding any other provision of law, successful completion of any diversion
7 program under the Penal Code, or successful completion of an alcohol and drug problem
8 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of
9 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2
10 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that
11 division, from taking disciplinary action against a licensee or from denying a license for
12 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a
13 record pertaining to an arrest.

14 "This section shall not be construed to apply to any drug diversion program operated by any
15 agency established under Division 2 (commencing with Section 500) of this code, or any initiative
16 act referred to in that division."

17 6. Section 493 states:

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

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

28 ///

1 7. Section 4300, subdivision (a), states that "[e]very license issued may be suspended or
2 revoked."

3 8. Section 4300.1 states:

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

9 9. Section 4301 states, in pertinent part:

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

13

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

17

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

20

21 "(l) The conviction of a crime substantially related to the qualifications, functions, and
22 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
23 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
24 substances or of a violation of the statutes of this state regulating controlled substances or
25 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
26 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
27 The board may inquire into the circumstances surrounding the commission of the crime, in order to
28 fix the degree of discipline or, in the case of a conviction not involving controlled substances or

1 dangerous drugs, to determine if the conviction is of an offense substantially related to the
2 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
3 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
4 of this provision. The board may take action when the time for appeal has elapsed, or the
5 judgment of conviction has been affirmed on appeal or when an order granting probation is made
6 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
7 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
8 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
9 indictment.

10

11 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
12 violation of or conspiring to violate any provision or term of this chapter or of the applicable
13 federal and state laws and regulations governing pharmacy, including regulations established by the
14 board or by any other state or federal regulatory agency. . . ."

15 **PHARMACY LAW**

16 10. Section 4060 states:

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

28 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a physician

1 assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and
2 devices."

3 DRUG STATUTES

4 11. Health and Safety Code section 11007 states:

5 "Controlled substance," unless otherwise specified, means a drug, substance, or immediate
6 precursor which is listed in any schedule in Section 11054, 11055, 11056, 11057, or 11058."

7 12. Health and Safety Code section 11173, subdivision (a), provides that it is illegal to
8 possess a controlled substance without a valid prescription.

9 13. United States Code Service, title 21, section 844' states, in pertinent part:

10 "(a) Unlawful acts; penalties. It shall be unlawful for any person knowingly or intentionally
11 to possess a controlled substance unless such substance was obtained directly, or pursuant to a
12 valid prescription . . .

13 "(c) "Drug, narcotic, or chemical offense" defined. As used in this section, the term " drug,
14 narcotic, or chemical offense" means any offense which proscribes the possession, distribution,
15 manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute,
16 manufacture, cultivate, sell or transfer any substance the possession of which is prohibited under
17 this title."

18 REGULATORY PROVISION

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

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

26 COST RECOVERY

27 15. Section 125.3 states, in pertinent part, that the Board may request the administrative
28 law judge to direct a licentiate found to have committed a violation or violations of the licensing

1 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
2 case.

3 **CONTROLLED SUBSTANCE / DANGEROUS DRUG**

4 16. Alprazolam is a Schedule IV controlled substance under Health and Safety Code
5 section 11057(d) and a dangerous drug pursuant to section 4022. Alprazolam is a generic name
6 for Xanax, Invirase, Crixivan, Serzone and Alprazolam Intensol.

7 17. Cocaine is a Schedule II controlled substance under as designated in Health and Safety
8 Code section 11055(b)(6) and a dangerous drug pursuant to section 4022.

9 18. Heroin, a semisynthetic drug derived from morphine is a Schedule I controlled
10 substance as designated by Health and Safety Code section 11054(c)(11).

11 19. Marijuana is a hallucinogenic Schedule I controlled substance under State and federal
12 law (Health & Saf. Code § 11054 subd. (d)(13); and 21 U.S.C. § 812) and a dangerous drug
13 pursuant to section 4022.

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Conviction of a Substantially Related Crime)**

16 20. Respondent is subject to disciplinary action under sections 490, 4300, and 4301,
17 subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, on the
18 grounds of unprofessional conduct, in that Respondent was convicted of a crime substantially
19 related to the qualifications, functions or duties of a registered pharmacy technician, as follows:

20 a. On or about February 11, 2015, after pleading nolo contendere with a finding of
21 guilty, Respondent was convicted of one misdemeanor count of violating Health and Safety Code
22 section 11350 [possession of a controlled substance] in the criminal proceeding entitled *The*
23 *People of the State of California v. Evelyn Guillen* (Super. Ct. L.A. County, 2015,
24 No. 4CA30124). The Court placed Respondent on 12 months of formal diversion, and ordered to
25 complete a three-month Teen Challenge in-patient program.

26 b. The circumstances underlying the conviction are that on or about November 19, 2014,
27 Respondent was found in possession of 0.39 gg Cocaine, 0.60 gg Heroin, 0.25 gg Alprazolam
28 and 13.30 gg Marijuana.

1 SECOND CAUSE FOR DISCIPLINE

2 (Possession of Controlled Substances/Dangerous Drugs)

3 21. Respondent is subject to disciplinary action under sections 4300, and 4301,
4 subdivision (o), on the grounds of unprofessional conduct, for violating section 4060, in that on or
5 about November 19, 2014, Respondent violated or attempted to violate the Pharmacy law when
6 she was in possession of Cocaine, Heroin, Alprazolam and Marijuana, controlled substances and
7 dangerous drugs, without valid prescriptions. The crime or act is substantially related to the
8 qualifications, functions, or duties of registered pharmacy technician. Complainant refers to and by
9 this reference incorporates the allegations set forth above in paragraph 20, inclusive, as though set
10 forth fully.

11 THIRD CAUSE FOR DISCIPLINE

12 (Violating Drug Statutes)

13 22. Respondent is subject to disciplinary action under sections 4300, 4301, subdivision (j),
14 on the grounds of unprofessional conduct, in that on or about November 19, 2014, Respondent
15 violated Health and Safety Code section 11173, subdivision (a), and United States Code
16 Service, title 21, section 844, when she was in possession of Cocaine, Heroin, Alprazolam and
17 Marijuana, controlled substances and dangerous drugs, without valid prescriptions. Complainant
18 refers to and by this reference incorporates the allegations set forth above in paragraph 20,
19 inclusive, as though set forth fully.

20 FOURTH CAUSE FOR DISCIPLINE

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

22 23. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision
23 (f), on the grounds of unprofessional conduct, in that Respondent committed acts involving moral
24 turpitude, dishonesty, fraud, deceit, or corruption when she was in possession of Cocaine, Heroin,
25 Alprazolam and Marijuana, controlled substances and dangerous drugs, without valid
26 prescriptions. Complainant refers to and by this reference incorporates the allegations set forth
27 above in paragraphs 20 through 22, inclusive, as though set forth fully.

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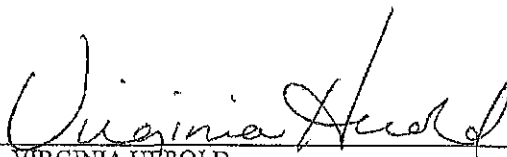
PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration No. TCH 138520, issued to Evelyn Lissette Guillen;
2. Ordering Evelyn Lissette Guillen 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:

9/11/15



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

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