

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

In the Matter of the Accusation Against:

TAHMINA SAYED,

Pharmacy Technician Registration No.
TCH 86113,

Respondent.

Case No. 5620

OAH No. 2016060693

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 November 14, 2016.

It is so ORDERED on October 14, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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PROPOSED DECISION

Administrative Law Judge Perry O. Johnson, Office of Administrative Hearings, State of California (OAH), heard this matter on August 4, 2016, in Oakland, California.

Supervising Deputy Attorney General Frank H. Pacoe represented complainant Virginia Herold, Executive Officer, the Board of Pharmacy, Department of Consumer Affairs.

Respondent Tahmina Sayed participated in the administrative adjudication proceeding as a self-represented litigant.

The record was held open in order to afford respondent the opportunity to file with OAH, and serve upon complainant's attorney, copies of exhibits of which she did not possess copies on the date of the hearing. On August 10, 2016, OAH received respondent's exhibits, which were marked as exhibits "A" through "I." On August 11, 2016, OAH received from Supervising Deputy Attorney General Pacoe a letter, which was marked as exhibit "6," and received as argument.

On August 11, 2016, the parties were deemed to have submitted the matter for decision and the record was closed.

FACTUAL FINDINGS

1. On March 21, 2016, complainant Virginia Herold (complainant), in her official capacity as the Executive Officer of the Board of Pharmacy (the board), Department

of Consumer Affairs, made and issued the Accusation against respondent Tahmina Sayed (respondent).

At the hearing of this matter, the Accusation, at page 5, line 5 and line 17 were amended, under the authority of Government Code section 11507, to change "section 503" to "section 508" to the Penal Code.

License Information

2. On September 2, 2008, the board issued Pharmacy Technician Registration No. TCH 86113 to respondent. The registration issued to respondent was in full force and effect at all times relevant to the matters raised in the Accusation. The registration will expire on September 30, 2016, unless renewed, surrendered, or revoked before that date.

Unprofessional Conduct - Record of a Criminal Conviction

3. On February 3, 2015, under Case No. 14F05175, in the Superior Court in and for the County of Sacramento, on a plea of nolo contendere, respondent was convicted of violating Penal Code sections 508 (embezzlement by a clerk, agent or employee), a misdemeanor.

4. The crime for which respondent was convicted on February 3, 2015, is an offense that is substantially related to the qualifications, functions, and duties of a pharmacy technician.

5. Respondent's conviction in February 2015 arose out of her arrest by a Sacramento Police Department police officer on July 24, 2014, for the felony offense of embezzlement by a clerk or employee of a retail store.

On July 24, 2014, a police officer went to the Sacramento Nordstrom department store to receive a report from a Nordstrom Regional Investigator. The police officer learned that the department store's loss prevention unit had focused attention upon respondent because of suspicious transactions that had occurred between June 15 and June 20, 2014, at the Roseville Nordstrom store, and between July 9 and July 21, 2014, at the Sacramento Nordstrom store.

The criminal scheme to which respondent was directly associated pertained to respondent acting as the "ringing cashier" while using her store password PIN number to close transactions purported to represent making refunds for returned store merchandise. The scheme resulted in respondent granting a credit to either gift cards or to her personal Visa debit card for the value of returned store merchandise. But, an audit for returned merchandise relating to respondent's sales accounts was "negative" because the supposed returned merchandise items were missing from the inventory of store merchandise.

After calculations were made, law enforcement officers learned that at the Sacramento Nordstrom store, respondent had executed nine separate acts of embezzlement for a total of \$3,116.85. And, respondent had carried out three acts of embezzlement at the Roseville Nordstrom store for a total of \$1,094.96.

In addition to the acts of embezzlement noted above, the Sacramento police officer learned from Nordstrom investigators that respondent had wrongfully enabled another person to use respondent's employee discount card to complete purchases for a total of \$1,371.03.

On July 24, 2014, Sacramento police officers arrested respondent for the felony violation of Penal Code section 508. After her arrest, respondent made admissions pertaining to her criminal acts, which the police officer recorded in a report as follows:

I have worked for Nordstrom . . . since August 2013.
I only recently started to steal money. I knew it was wrong. I just didn't think I would get caught, and I needed the money.
Since [July 9, 2014,] I have taken money more than [eight] times totaling about \$5,000.

On July 29, 2014, the Sacramento County District Attorney's office filed a Felony Complaint alleging respondent's violation of Penal Code section 508. More than six months after filing the criminal complaint in the superior court, a plea bargain was reached so that a motion in the superior court, under Penal Code section 17, reduced the felony allegation to a misdemeanor. And, respondent made a nolo contendere plea to the misdemeanor crime proscribed by Penal Code section 508.

6. The record developed at the administrative hearing in this matter is not precise as to the nature of the disposition by the superior court of the criminal conviction proceeding on February 3, 2015. From records offered by respondent, however, it can be inferred that the superior court ordered respondent to pay a Restitution Fund fine, a restitution administration fee, a penalty assessment fee and fine, and to pay court installment fines as terms and conditions of probation. Moreover, respondent testified that the superior court placed her on informal probation for a three year period beginning in February 2015. Also, respondent acknowledged that another term or condition of probation involved a requirement that she complete 365 hours of community service, which could be completed over a nine-month period.

Unprofessional Conduct – Commission of an Act Involving Moral Turpitude, Dishonesty, or Fraud

7. On July 24, 2014, law enforcement officers arrested respondent for embezzlement. Respondent made admissions to arresting police officers that she had engaged in stealing money from her employer in an amount she estimated to be approximately \$5,000. Respondent was prosecuted and eventually convicted of violating Penal Code section 508.

8. Respondent's act of embezzlement that was detected on July 24, 2014, involved moral turpitude and acts of dishonesty.

Complainant's Expert Witness

9. Ms. Irina Topp (Inspector Topp) offered reliable and persuasive evidence at the hearing of this matter. By her demeanor while testifying, her attitude toward the proceeding, her clear and unhesitating presentation of evidence as well as her solemn, sincere and conscientious attitude toward the proposed action against respondent, Inspector Topp established herself to be a credible,¹ exceedingly knowledgeable, and trustworthy witness at the hearing of this matter.

10. Inspector Topp is a licensed pharmacist. Over a period of several years, she gained experience in the operations and management of pharmacies. She is aware of the duties and functions of a pharmacy technician.

Inspector Topp persuasively demonstrated that respondent's history of arrest for embezzlement by an employee of a commercial enterprise reflects very poorly on respondent's capacity to act as a faithful and dutiful pharmacy technician.

Inspector Topp established that respondent's records of having a conviction for a theft-type crime operates in underscoring respondent's unprofessional conduct. Inspector Topp stated the board policy that a registered pharmacy technician must exhibit sound judgment. Respondent's acts that led to her February 2015 conviction have a very strong substantial relationship to the duties, functions, and responsibilities of pharmacy technician. The evidence of respondent's unprofessional act, which involved an embezzlement offense, showed that respondent lacked good, sound judgment. Moreover, respondent's criminal conduct indicated a defect in trustworthiness.

Matters in Aggravation

11. While employed by Nordstrom department stores, respondent was not a mere cashier but rather she was an assistant department manager at the Roseville Nordstrom when she embarked on her criminal scheme to embezzle money from her employer.

12. The nature and severity of respondent's crime must be viewed as being serious. Due to the embezzlement of approximately \$5,000, respondent initially confronted a Felony Complaint, which carried a term of confinement in state prison.

Matters in Extenuation

13. When respondent committed the criminal conduct that constituted theft, she was exposed to substantial stress. First, her romantic relationship was "not the best." And,

¹ Government Code section 11425.5, subdivision (b), third sentence.

she was troubled upon learning that her parents' marriage was moving towards a divorce. In addition, the pressure as a college student at Sacramento State University was very burdensome upon respondent. And, of paramount concern was her grave financial problems in 2014.

Matters in Mitigation and Respondent's Background

14. Respondent is approximately 27 years old and she appears to be a mature and intelligent individual.

15. In 2008, respondent graduated from James Logan High School in Union City (Alameda County), California.

16. While a high school student, respondent participated in a work-study program that led to her acquiring registration as a pharmacy technician when she was 18 years old. During the high school training course, respondent fulfilled the requisite hours for the registration by working at a Rite Aid Pharmacy until November 2017, and then working at a Kaiser Permanent Pharmacy until February 2008.

17. In 2012, respondent enrolled at Sacramento State University. By the summer of 2015, respondent carried a course load of 12 units, or four separate courses.

18. Respondent was married on August 13, 2014; however, the marriage was dissolved effective July 10, 2016.

19. Other than the instant Accusation, respondent has no record of disciplinary action or any allegation against her pharmacy technician registration for substantiated unprofessional conduct on her part.

20. The board has no record of having issued respondent a prior warning, a citation, a letter of admonishment, or a correction notice due to any act or omission related to the work of a pharmacy technician.

Matters in Rehabilitation

21. Respondent proclaimed in a forthright and credible manner that she is heartily remorseful for her very bad judgment and her "huge mistake."

22. Since the February 2015 conviction date, respondent has progressed toward attaining full compliance with terms of any criminal probation.

Between the date of her arrest on July 24, 2014, and the conviction date in February 2015, respondent paid to Nordstrom the full restitution of the money (approximately \$5,000) taken by her. Hence, the felony complaint was reduced to a misdemeanor to which she made a nolo contendere plea.

By August 15, 2015, respondent had paid all of the superior court's imposed fines and fees due to the February 2015 conviction.

As to the superior court's order directing respondent to complete 365 hours of community service, she has met that requirement. First in meeting the obligation, she engaged in cleaning a veterinary facility. Then, she finalized the volunteer hours by work at the Sylvan Cemetery District where she removed litter from the grounds of the non-profit cemetery. And, she volunteered in a non-profit gift shop. On January 13, 2016, respondent completed the community service obligation as a term of probation due to the February 2015 conviction.

23. Currently, Chico's FAS, Inc., employs respondent at its women's apparel fashion boutique. Her classification for the business is as "sales lead," which is a manager-type role. She has earned a position of trust and responsibility in that she holds a key to the store's front door and she has the access code for the store's security alarm system. The retail sales corporation has employed respondent since January 13, 2015. She began work at the Folsom store, but she transferred to the Roseville store. In June 2016, she secured another transfer to the Chico's store in Novato (Marin County), California. Currently, respondent works less than 20 hours per week. (In that respondent was hired into her current position about three weeks before the conviction date in February 2015, no evidence exists that Chico's FAS, Inc., has gained knowledge of respondent's conviction record.)

24. On June 30, 2016, respondent moved her residence from Sacramento to Novato, California.

25. As of the date of the hearing in early August 2016, respondent had firm plans to begin the fall semester as a college student at San Francisco State University. Respondent aspires to complete a major in Biology at the university. In the future she plans to attend medical school so as to become a trauma surgeon.

Factual Weakness in Respondent's Presentation of Efforts Toward Rehabilitation

26. Respondent has been on criminal probation since February 2015. Hence between the date of conviction and complainant's issuance of the Accusation on March 21, 2016, less than 14 months had elapsed.

27. Respondent remains on probation due to the February 2015 conviction. (On August 3, 2016, that is one day before the hearing of this matter, respondent filed with the Superior Court for Sacramento County a Petition for Early Termination of Probation under Penal Code section 1203.3. as well as a Petition for Dismissal (Expungement of the Conviction Record) under Penal Code section 1203.4. An endorsed-filed stamp shows that the superior court is "to rule on the Petition(s)" by October 7, 2016.

28. Unless the superior court grants respondent's petition for early termination of probation, the term of probation due to the conviction for embezzlement is not set to expire before February 2018.

Other Matters

29. Respondent called no witness to the hearing of this matter. No person appeared on respondent's behalf to offer evidence pertaining to respondent's reputation in her community for sobriety and integrity. No person came to the hearing of this matter to describe respondent's attitude towards her past criminal action that led to the criminal court proceeding mentioned above.

30. Respondent presented no competent evidence that she has been involved or participated in significant or conscientious community, religious, or privately-sponsored programs designed for social benefit or to ameliorate social problems.

31. Although she has held a pharmacy technician registration since her senior year in high school, respondent has not secured any employment position in the occupation. She claims that her lack of work experience in the occupation has been the barrier to her securing employment position as a pharmacy technician

32. Respondent's criminal acts of embezzlement by an agent or employee of a commercial enterprise operate as a potential harm to the public.

33. Respondent's criminal conduct was intentional and she had knowledge of or knowingly participated in the conduct that led to the criminal conviction.

34. Respondent received a financial benefit from the misconduct that involved embezzlement.

Cost Recovery

35. Complainant incurred costs of investigation and prosecution of the accusation against respondent as follows:

Attorney General's Costs	
By Deputy Attorney General	
Regarding Prosecution Fiscal Years 2015 and 2016	
25.75 hours at \$170 per hour	\$3,127.50
Complainant's Investigative Costs	
Costs for Superior Court, Sacramento Co Records	\$28.00
<u>TOTAL COSTS INCURRED:</u>	<u>\$3,155.50</u>

36. Respondent did not advance a meritorious defense in the exercise of her right to a hearing in this matter. And, respondent cannot be seen, under the facts set out above, to have committed slight or inconsequential misconduct in the context of the Accusation. And, respondent did not raise a "colorable challenge" to complainant's Accusation.

The declaration by the deputy attorney general, regarding the extent of the prosecution, appears to be commensurate with respondent's misconduct. And, Inspector Topp's cost declaration regarding the investigation efforts, which included the preparation of a detailed written report, were reasonable.

At the current time, respondent has limited financial means. She has a part-time job that enables her to work 20 hours per week at the minimum wage rate. And, respondent has embarked on being a full-time student at San Francisco State University.

A basis does not exist to warrant a reduction of the assessment against respondent for the costs of investigation and prosecution incurred by complainant. The imposition upon respondent of the full costs of prosecution will not unfairly penalize respondent, especially when the Order below contemplates that she may pay the costs over an extended period of time so that by a prospective date approximately six months before she files an application with the board for re-licensure. All factors considered, the reasonable and appropriate cost amount to be borne by respondent is \$3,155.50.

37. The reasonable and appropriate cost, as owed by respondent to the board, is \$3,155.50.

Ultimate Findings

38. Respondent engaged in unprofessional conduct by conviction of a crime involving moral turpitude and dishonesty.

39. An insufficient amount of time has passed for the board to determine that respondent has attained rehabilitation from her past conduct in violating the law regarding her arrest for embezzlement, so as to enable her to hold an unrestricted registration as a pharmacy technician.

LEGAL CONCLUSIONS

The Burden and Standard of Proof

1. The Accusation alleged that respondent engaged in misconduct that warrants license discipline. Where an agency representative has filed charges against the holder of a license, as was done in this case, the party filing the charges has the burden of proof. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789.)

A pharmacy technician registration is a professional license that is granted only upon a showing of the licensee's sufficient training and discernible knowledge. The standard of proof in an administrative disciplinary action seeking the suspension or revocation of a professional license is "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Evidence of a charge is clear and convincing so long as there is a "high probability" that the charge is true. (*People v. Mabini* (2001) 92 Cal.App.4th 654, 662.)

Causes for Discipline

FIRST CAUSE FOR DISCIPLINE

UNPROFESSIONAL CONDUCT: CONVICTION OF SUBSTANTIALLY RELATED CRIME

2. Business and Professions Code section 490, subdivision (a), provides, in pertinent part: "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."

Business and Professions Code 4301, subdivision (l), sets forth, in part, that the board shall take action against any holder of a license who is guilty of unprofessional conduct that includes,

[t]he conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under [the Pharmacy Law] 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 [the Pharmacy Law]

California Code of Regulations, title 16, section 1770, provides, "[f]or the purpose of . . . revocation of a personal . . . license . . . 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."

3. Cause exists for discipline against respondent's pharmacy technician registration pursuant to Business and Professions Code section 4301, subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, by reason of the matters set forth in Factual Findings 3 and 4, along with Legal Conclusion 2.

SECOND CAUSE FOR DISCIPLINE-
COMMISSION OF AN ACT INVOLVING MORAL TURPITUDE OR DISHONESTY

4. Business and Professions Code 4301, subdivision (f), provides that the board shall take action against any holder of a license who is guilty of unprofessional conduct that includes, “[t]he 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”

Moral turpitude is “an elusive concept incapable of precise general definition [But, conduct deemed to fall within the term’s meaning involves] an act of baseness, vileness, or depravity in the private and social duties which a [person] owes to his fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man.” (*In re Craig* (1938) 12 Cal.2d 93, 97.) Moral turpitude also has been viewed as “dishonest or immoral” acts, not necessarily a crime. (*In re Higbie* (1972) 6 Cal.3d. 562, 570.) Moral turpitude connotes a disposition involving “general readiness to do evil.” (*People v. Castro* (1985) 38 Cal.3d 301, 314.)

Embezzlement is the fraudulent appropriation of property, including money, by a person to whom it has been entrusted with the intent to defraud the owner of the property. (Pen. Code § 503; Calif. Criminal Defense Practice, Matthew Bender & Company, Inc., 2005, Theft, § 143.01, subd. (b)(3).) “The common law crimes of larceny, embezzlement, and taking under false pretenses have been statutorily combined in California under the rubric of theft - Each of these common law crimes involves an unlawful taking, varying little more than in the method of acquisition.” (Calif. Criminal Defense Practice id., at § 143.01, subd. (a)(1).)

In an embezzlement criminal prosecution action, the defendant is in rightful possession of the property, the crime element of “taking” for the crime of embezzlement occurs when the defendant appropriates for her own purpose property delivered to her for a different, specified purpose. The law is clear that any diversion of property constitutes embezzlement, whether there is a direct, personal benefit or not, as long as the owner is deprived of the use of the property. Embezzlement does not require a defendant’s intent to deprive permanently the owner of the property or money. For embezzlement to manifest place, the fact that the defendant intended to restore the property or actually restores is no defense. Also, evidence of a defendant’s poverty or indebtedness generally is inadmissible to establish a motive to commit theft, because reliance on poverty alone as evidence of motive is deemed unfair to the defendant, and the probative value of the evidence is considered outweighed by the risk of prejudice. (Calif. Criminal Defense Practice id. at § 143.01, subd. (b)(2).) The crime of embezzlement is a crime of theft. It inherently reflects dishonesty.

Respondent’s crime falls into the particularized category of embezzlement as proscribed by Penal Code section 508. The statutory section defines respondent’s crime as, “[e]very clerk, agent, or servant of any person who fraudulently appropriates to his own use,

or secretes with a fraudulent intent to appropriate to his own use, any property of another which has come into his control or care by virtue of his employment as such clerk, agent, or servant, is guilty of embezzlement." A pharmacy technician is generally a "clerk, agent" or employee of a business or enterprising pharmacist. A pharmacy technician is placed in a position where it may be easy to "appropriate to [one's] use," property (controlled substances, other drugs, credit card information, or cash in a cash register) that can come into the control or care of the licensee by virtue of the employment as a "clerk, agent" or employee of a pharmacist or pharmacy business operation.

Respondent's crime, as defined in Penal Code section 508, constitutes moral turpitude and dishonesty. The essence of her bad acts constitutes a cause for license revocation.

5. Cause exists for discipline against respondent's pharmacy technician registration pursuant to Business and Professions Code section 4301, subdivision (f), by reason of the matters set forth in Factual Findings 7 and 8, along with Legal Conclusion 4.

Final Determinations

6. California Code of Regulations, title 16, section 1769, subdivision (c), provides in part:

When considering the suspension or revocation of . . . a personal license on the ground that . . . the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) Evidence, if any, of rehabilitation submitted by the licensee.

Under the Disciplinary Guidelines of the California State Board of Pharmacy, 14 factors are set out for consideration in determining the penalty that may result from an administrative adjudication proceeding. Those factors have been weighed in this matter. In particular, matters that pertain to matters in extenuation, respondent's background as well as matters in mitigation, and matters in rehabilitation, as described in Factual Findings 13 through 25 were considered in making the following Order. And, the matters as set out in Factual Findings 9 through 12, 26 through 34, as well as 38 and 39, which reflect complainant's expert witness's opinion, matters in aggravation, matters indicating

respondent has not been fully rehabilitated, such matters detract from her good qualities and ultimate findings, have been considered in making the following Order.

Costs of Investigation and Prosecution

7. Business and Professions Code section 125.3 prescribes that a “licentiate found to have committed a violation or violations of the licensing act” may be directed “to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.”

The California Supreme Court’s reasoning on the obligation of a licensing agency to fairly and conscientiously impose costs in administrative adjudication in *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45-46, is persuasive and should be considered in this matter. Scrutiny of certain factors, which pertain to the board’s exercise of discretion to analyze or examine factors that might mitigate or reduce costs of investigation and prosecution upon a licensee found to have engaged in unprofessional conduct, are set forth in Factual Finding 36. Also, measured against the concrete presentation by complainant, respondent offered insufficient evidence in her defense. Respondent’s professed matters in mitigation and extenuation are insubstantial when compared to the complainant’s burden in prosecuting this matter and safeguarding the public from unprofessional licensees in the way of absolving the costs incurred by complainant. And, respondent’s employment status, coupled with the amount of time that she may take to pay the full costs, do not warrant a reduction of the overall costs that required respondent to address and eliminate.

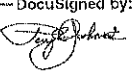
With all factors considered, the costs of prosecution as set forth in Factual Findings 35 and 37, are reasonable in a total amount of \$3,155.50.

ORDER

1. Pharmacy technician registration number TCH 86113, as issued to respondent Tahmina Sayed, is revoked.

2. Respondent shall pay to the board its costs of prosecution and investigation costs in the total amount of \$3,155.50. She must make full payment of the costs by a date not later than six months before the date of any prospective application for registration as a pharmacy technician.

DATED: September 9, 2016

DocuSigned by:

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PERRY O. JOHNSON
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 In the Matter of the Accusation Against:

Case No. 5620

11 **TAHMINA SAYED**
12 **3218 Courthouse Drive**
Union City, CA 94587

ACCUSATION

13 **Pharmacy Technician Registration No. TCH 86113**

14 Respondent.

15
16 Complainant alleges:

17 **PARTIES**

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

20 2. On or about September 2, 2008, the Board of Pharmacy issued Pharmacy Technician
21 Registration Number TCH 86113 to Tahmina Sayed (Respondent). The Pharmacy Technician
22 Registration was in full force and effect at all times relevant to the charges brought herein and
23 will expire on September 30, 2016, unless renewed.

24 **JURISDICTION**

25 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
26 Consumer Affairs, under the authority of the following laws. All section references are to the
27 Business and Professions Code unless otherwise indicated.

1 4. Section 4300 of the Business and Professions Code, in pertinent part, states:

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

3 "(b) The board shall discipline the holder of any license issued by the board, whose default
4 has been entered or whose case has been heard by the board and found guilty, by any of the
5 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 year.

9 "(4) Revoking his or her license.

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

12 . . .

13 5. Section 4301 of the Business and Professions Code, in pertinent part, states:

14 "The board shall take action against any holder of a license who is guilty of unprofessional
15 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

16 Unprofessional conduct shall include, but is not limited to, any of the following:

17 . . .

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

21 . . .

22 "(l) The conviction of a crime substantially related to the qualifications, functions, and
23 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
24 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
25 substances or of a violation of the statutes of this state regulating controlled substances or
26 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
27 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
28 The board may inquire into the circumstances surrounding the commission of the crime, in order

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

11 . . .

12 6. Section 490 of the Business and Professions Code provides, in pertinent part, that a
13 board may suspend or revoke a license on the ground that the licensee has been convicted of a
14 crime substantially related to the qualifications, functions, or duties of the business or profession
15 for which the license was issued.

16 7. Section 493 of the Business and Professions Code states:

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

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

27 8. Section 125.3 of the Business and Professions Code states, in pertinent part, that the
28 Board may request the administrative law judge to direct a licentiate found to have committed a

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

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

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

10 FIRST CAUSE FOR DISCIPLINE

11 (Conviction of a Crime)

12 10. Respondent is subject to disciplinary action under Business and Professions Code
13 section 4301(l) in that she was convicted of a crime substantially related to the qualifications,
14 functions, and duties of a licensee. The circumstances are as follows:

15 11. On or about February 3, 2015 in a criminal proceeding entitled People of the State of
16 California v. Tahmina Sayed, Sacramento County Superior Court Case No. 14F05175,
17 Respondent was convicted by her plea of nolo contendere for violating Penal Code section 508
18 (embezzlement), a misdemeanor.

19 12. On or about July 24, 2014, Sacramento Police Department Officers were dispatched
20 to a Nordstrom retail store to conduct an employee theft investigation. A police officer made
21 contact with the Nordstrom store's investigator and Respondent. The Nordstrom investigator
22 provided the officer with copies of computer refund transactions made by Respondent as well as
23 video surveillance of Respondent working at the store. Respondent's employee number had been
24 flagged by Nordstrom's computer system for suspicious transactions that took place between June
25 15, 2014 and June 30, 2014 at another Nordstrom store and between July 9, 2014 and July 21,
26 2014 at the current Nordstrom store. Nordstrom discovered that Respondent allowed a friend to
27 use her employee discount. According to the Nordstrom investigator, store policy permits the
28 employee discount for the employee only. When the officers made contact with Respondent, she

1 was given her Miranda rights. Respondent said that she understood her rights and told the officer
2 that she had worked at Nordstrom since August of 2013 and she admitted to stealing \$5,000.00
3 from her employer. The total lost revenue from the stores and fraudulent employee discount was
4 approximately \$5,582.87. Respondent was arrested and booked at the county jail for violating
5 Penal Code section 503, (embezzlement).

6 13. On or about February 3, 2015, the court placed Respondent on probation for three
7 years under terms and conditions, which required her to complete 354 hours of community service
8 in the Sacramento County Sheriff's Department Work Release Program. Additionally, the court
9 found that the Respondent lacked the ability to pay a fine and waived the base fine and waived all
10 non-mandatory fees and fines.

11 SECOND CAUSE FOR DISCIPLINE

12 (Unprofessional Conduct – An Act Involving Moral Turpitude, Dishonesty, Fraud)

13 14. Respondent is subject to disciplinary action under Business and Professions Code
14 section 4301(f) for unprofessional conduct in that she committed an act involving moral turpitude,
15 dishonesty, fraud, deceit or corruption. The circumstances are as follows:

16 15. On or about July 24, 2014, Respondent admitted to stealing approximately \$5,000.00
17 from her employer. Respondent was arrested and charged with violating Penal Code section 503,
18 embezzlement.

19 PRAYER

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

22 1. Revoking or suspending Pharmacy Technician Registration Number TCH 86113,
23 issued to Tahmina Sayed

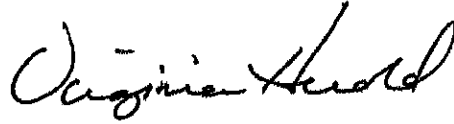
24 2. Ordering Tahmina Sayed to pay the Board of Pharmacy the reasonable costs of the
25 investigation and enforcement of this case, pursuant to Business and Professions Code section
26 125.3;

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

DATED: 3/21/16



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

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