

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

In the Matter of the Accusation Against:

MELISSA CAROLYN GRAY,

Pharmacy Technician Registration Number
TCH 107620

Respondent.

Case No. 5766

OAH No. 2016080917

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 February 9, 2017.

It is so ORDERED on January 10, 2017.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

BEFORE THE
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In the Matter of the Accusation
Against:

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Pharmacy Technician License
No. TCH 107620

Respondent.

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PROPOSED DECISION

Ji-Lan Zang, Administrative Law Judge, Office of Administrative Hearings, State of California heard this matter on November 10, 2016, in Los Angeles, California.

Kate Messana, Deputy Attorney General, represented Virginia Herold (complainant), Executive Officer, Board of Pharmacy (Board), Department of Consumer Affairs.

Melissa Carolyn Gray (respondent) appeared and represented herself.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on November 10, 2016.

FACTUAL FINDINGS

1. On December 8, 2010, the Board issued Pharmacy Technician Registration Number TCH 107620 (license) to respondent. Respondent's license was in full force and effect at all times relevant herein, and expires on December 31, 2016, unless renewed. There is no history of prior discipline against the license.

2. On July 19, 2016, complainant filed the Accusation in her official capacity. On August 3, 2016, respondent timely filed a Notice of Defense and a Request for Hearing.

3. On January 9, 2014, respondent was convicted on her guilty plea of violating Nevada Revised Statutes sections 205.060, burglary, and 205.740, credit card forgery, both felonies. (Nevada District Court, Clark County, case number C-13-294990-1.)

4. The facts and circumstances surrounding respondent's convictions are that respondent attempted to withdraw \$845.99 as a cash advance from a forged credit card. Specifically, on November 14, 2013, respondent went to the cashier cage inside a Las Vegas casino. She gave a credit card to the lead cashier and asked for \$845.99 as a cash advance. The lead cashier suspected that the credit card was fraudulent and notified security. After respondent was detained by the casino security, the arresting officer from the Las Vegas Metropolitan police arrived and confirmed that the credit card was, in fact, forged. Respondent was arrested on the scene for burglary and credit card forgery.

5. For her convictions of burglary and credit card forgery, imposition of sentence was suspended, and respondent was placed on formal probation for five years under terms and conditions, including incarceration in jail for one month and confinement under house arrest for one month, payment of \$178 in fines and assessments, and participation in substance abuse and mental health evaluations within 90 days of the conviction.

6. Respondent has served her time in jail and completed her confinement under house arrest. In compliance with the criminal court orders, respondent underwent a mental health evaluation within 90 days of her conviction and completed eight months of anger management as a result of the evaluation. The evidence did not establish whether respondent has paid all of the fines and assessments. Respondent's probation is scheduled to expire on January 9, 2019.

7. At the administrative hearing, Board Inspector Michael Capili testified regarding the qualifications, functions, and duties of a pharmacy technician. Mr. Capili has been a Board inspector for the past two years. Previously, he worked as a dispensing pharmacist for approximately 14 years. Mr. Capili explained that pharmacy technicians act as assistants to pharmacists and share the same responsibilities and duties as pharmacists. Tasks performed by a pharmacy technician include receiving prescriptions; obtaining information from the patient, such as date of birth and address; and pouring, counting, and labeling medication. Pharmacy technicians are also expected to assist patients at the cash register by handling payments and transactions involving cash, checks or credit cards. Mr. Capili emphasized that honesty and integrity are important character traits for pharmacy technicians because pharmacy technicians have access to confidential patient information and controlled substances which can be diverted and sold at a premium price.

8. Respondent is a 33-year-old woman. She obtained her certificate as a pharmacy technician from Northwest College in 2010. Respondent completed a two-month externship at the University of Southern California in 2010 before obtaining employment as a pharmacy technician at Kindred Hospital. She worked at Kindred Hospital for approximately two years before resigning in order to become a full-time caretaker for her mother.

9. At the administrative hearing, respondent discussed her convictions in a candid manner. Respondent admitted that she had attempted to withdraw a cash advance with the credit card knowing that it was fraudulent. Respondent recounted that, at the time of the incident which led to her conviction, her mother had just suffered a stroke. Respondent had quit her job as a pharmacy technician in order to care for her ailing mother. Respondent felt “lost” and “hung out with the wrong people.” In retrospect, respondent views her attempt to withdraw money with the fraudulent credit card as a “horrible choice.”

10. After her conviction, respondent underwent a mental health evaluation in compliance with the terms of her probation. The recommendation from the mental health evaluation was for respondent to attend anger management. In 2014, respondent completed eight months of anger management classes and counseling at North Valley Anger Management Consultants. As a result of the counseling, respondent has learned to “think things through” and to manage her underlying emotions before “acting out.”

11. Respondent asserted that she loved her job as a pharmacy technician because she enjoyed helping people. Respondent was also proud of the fact that she was the only one to have graduated high school in her family. She stated that her license as a pharmacy technician is the only education she had obtained beyond high school, and that it would be “devastating” for her to lose the license. Although she is currently not working as pharmacy technician, respondent seeks to return to work in a hospital setting as a pharmacy technician.

12. Respondent expressed her sincere remorse for her crime and grew visibly emotional when she testified about the consequences of her actions. Respondent cried as she recalled how she was unable to take care of her mother when she was incarcerated for a month in Nevada. Respondent had learned through this experience to be “grateful.” She stated that it would be a “privilege” to be able to retain her license and to be able to practice as a pharmacy technician.

13. Complainant submitted evidence of the costs of investigation and enforcement of this matter, summarized as follows: 13.50 hours of legal services at rates ranging from \$120 to \$170 per hour for total costs claimed of \$2,232.50. These costs are reasonable.

14. Respondent earns approximately \$1,200 in monthly income as an In Home Supportive Services (IHSS) worker for her mother. She pays \$950 per month in rent. Respondent sometimes must obtain loans from friends and family in order to cover her rent because IHSS often pays her late. Additionally, respondent incurred \$5,155.95 in costs for her supervised probation, for which she is paying \$25 per month in installment payments.

LEGAL CONCLUSIONS

1. The standard of proof for the Bureau to prevail on the Accusation is clear and convincing evidence to a reasonable certainty. (See *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) Clear and convincing evidence requires proof that is

so clear as to leave no substantial doubt and that is sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478, 487.)

2. Business and Professions Code section 4301, in pertinent part, provides:

The Board shall take action against any holder of a license who is guilty of unprofessional conduct ... 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.

[¶] ... [¶]

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee.

3. California Code of Regulations, title 16, section 1770 provides that "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."

4. Respondent's convictions for burglary and credit card forgery are substantially related to the qualifications, functions, and duties of a pharmacy technician. As Mr. Capili's testimony demonstrated, honesty and integrity are essential characteristics of a pharmacy technician because a pharmacy technician has unrestricted access to confidential patient information and to controlled substances. Respondent's convictions for burglary and credit card forgery inherently involve dishonesty. Therefore, they constitute cause to discipline respondent's license under Business and Professions Code section 4301, subdivision (l).

5. Based on Factual Findings 3 through 7, cause exists to suspend or revoke respondent's license as a pharmacy technician pursuant to Business and Professions Code sections 490 and 4301, subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, in that respondent was convicted of crimes which are substantially related to the qualifications, functions, or duties of a pharmacy technician registrant.

6. Based on Factual Findings 3 through 6, cause exists to suspend or revoke respondent's license as a pharmacy technician pursuant to Business and Professions Code section 4301, subdivision (f), in that respondent was convicted of crimes which involve dishonesty.

7. The Board's Disciplinary Guidelines (Rev. 10/2007) (Guidelines) set forth categories of violations and recommended penalties. Violations of section 4301, subdivisions (f) and (l), constituting unprofessional conduct, are Category III violations, where the minimum penalty is revocation stayed, 90 days of actual suspension, and three to five years' probation. The maximum penalty is revocation.

8. The Guidelines specify that, in determining whether the minimum, maximum or an intermediate penalty is to be imposed in a given case, the following factors should be considered: (1) actual or potential harm to the public; (2) actual or potential harm to any consumer; (3) prior disciplinary record; (4) prior warnings; (5) number and or variety of current violations; (6) the nature and severity of the act(s) or offense(s), or crime(s); (7) aggravating evidence; (8) mitigating evidence; (9) rehabilitation evidence; (10) compliance with terms of any criminal sentence, parole, or probation; (11) overall criminal record; (12) if applicable, evidence of dismissal proceedings pursuant to section 1203.4 of the Penal Code; (13) the time that has elapsed since commission of the act(s) or offenses(s); (14) whether the conduct was intentional or negligent; and (15) financial benefit to the respondent from the misconduct. (Guidelines, p. 3.)

9. Applying the Guidelines' recommended discipline and rehabilitation criteria, respondent's license as a pharmacy technician should be disciplined, but outright revocation is not warranted. Respondent has suffered convictions for burglary and credit card forgery that are substantially related to the qualifications, functions, or duties of a pharmacy technician. Respondent's misconduct was moderately serious, in that respondent attempted to withdraw \$845.99 from a credit card which she knew to be fraudulent.¹ Nevertheless, respondent's misconduct was not patient-related, nor did she cause any patient harm. Respondent has no prior record of discipline or warnings with the Board. Respondent has served her time in jail, and she is compliant with her criminal probation. Respondent's convictions and the underlying act occurred approximately three years ago. Respondent is on criminal probation until January 2019, and respondent has not suffered any other arrest or conviction. Little weight, though, is generally given to good behavior while on parole or probation. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

10. However, respondent has accepted full and complete responsibility for her misconduct. Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.)

¹ Complainant's counsel contended during closing argument that additional counts of credit card forgery, which were charged against respondent in the criminal case but eventually dismissed, should be considered as "aggravating circumstances." In support of her contention, complainant's counsel cited to *In re Langford* (1966) 64 Cal.2d 489. However, under *Langford*, dismissed and pending criminal charges may be considered as circumstances surrounding the commission of a crime, only if the underlying facts were established by the evidence. (*Id.* at p. 495.) In this case, the facts which form the basis of the dismissed criminal charges were not established by the evidence. Consequently, the dismissed criminal charges were not considered as aggravating circumstances.

Respondent did not attempt to vitiate or minimize her actions. Rather, she has learned from them. Additionally, respondent has completed eight-months of anger management courses and counseling which have helped her to manage her emotions. Discipline of a Board registrant is not penal in nature. The purpose is not to impose additional punishment on the registrant, but to protect the public. (See e.g. *Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164.) In consideration these factors, it would be consistent with the public interest to allow respondent to retain her license on a probationary basis for five years.

11. Under Business and Professions Code section 125.3, the Board may recover costs "not to exceed the reasonable costs of the investigation and enforcement" of this matter. As set forth in Factual Findings 13, the costs claimed are \$2,232.50.

12. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Supreme Court rejected a constitutional challenge to a cost provision similar to Business and Professions Code section 125.3. In so doing, however, the Court directed the administrative law judge and the agency to evaluate several factors to ensure that the cost provision did not deter individuals from exercising their right to a hearing. Thus, an agency must not assess the full costs where it would unfairly penalize the 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 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; the agency must consider a respondent's ability to pay; and the agency may not assess disproportionately large investigation and prosecution costs when it has conducted a disproportionately large investigation to prove that a respondent engaged in relatively innocuous misconduct. (*Id.* at p. 45).

13. In this case, as set forth in Factual Finding 14, respondent has an income of \$1,200 per month as an IHSS worker for her mother. Respondent's monthly expenses include rent payment in the amount of \$950. These circumstances warrant a 50 percent reduction in actual costs. Therefore, the reasonable costs of investigation and enforcement are \$1,116.25.

ORDER

Pharmacy Technician Registration Number TCH 107620 issued to respondent Melissa Carolyn Gray is revoked; however, the revocation is stayed and respondent is placed on probation for five years upon the following terms and conditions:

1. **Suspension and Certification Prior to Resuming Work.** Pharmacy Technician Registration Number TCH 107620 is suspended for a period of **90 days** commencing on the effective date of this decision. Thereafter, respondent shall remain suspended from working as a pharmacy technician until she is certified as defined by Business and Professions Code section 4202, subdivision (a)(4), and provides satisfactory proof of certification to the Board. Respondent shall not resume working as a pharmacy

technician until notified by the Board. Failure to achieve certification within one (1) year shall be considered a violation of probation. Respondent shall not resume working as a pharmacy technician until notified by the Board.

During suspension, respondent shall not enter any pharmacy area or any portion of any other Board-licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer, or assist any licensee of the Board. Respondent shall not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances. Respondent shall not resume work until notified by the Board.

Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises by the Board in which she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

2. **Obey All Laws.** Respondent shall obey all state and federal laws and regulations. Respondent shall report any of the following occurrences to the Board, in writing, within seventy-two hours of such occurrence:

- a. an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws;
- b. a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment;
- c. a conviction of any crime; or
- d. discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's pharmacy technician license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

Failure to timely report any such occurrence shall be considered a violation of probation.

3. **Report to the Board.** Respondent shall report to the Board quarterly, on a schedule as directed by the Board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions

of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the Board.

4. **Interview with the Board.** Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the Board or its designee, at such intervals and locations as are determined by the Board or its designee. Failure to appear for any scheduled interview without prior notification to Board staff, or failure to appear at two or more scheduled interviews with the Board or its designee during the period of probation, shall be considered a violation of probation.

5. **Cooperate with Board Staff.** Respondent shall cooperate with the Board's inspection program and with the Board's monitoring and investigation of respondent's compliance with the terms and conditions of her probation. Failure to cooperate shall be considered a violation of probation.

6. **Notice to Employers.** During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 5766 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within 30 days of the effective date of this decision, and within 15 days of respondent undertaking any new employment, respondent shall cause her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment), and owner to report to the Board in writing acknowledging that the listed individual(s) has/have read the decision in case number 5766 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the Board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify her direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the decision in case number 5766 in advance of the respondent commencing work at each pharmacy. A record of this notification must be provided to the Board upon request.

Furthermore, within 30 days of the effective date of this decision, and within 15 days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause her direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that he or she has read the decision in case number 5766 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

Failure to timely notify present or prospective employer(s) or to cause that/those employer(s) to submit timely acknowledgements to the Board shall be considered a violation of probation.

“Employment” within the meaning of this provision shall include any full-time, part-time, temporary or relief service or pharmacy management service as a pharmacy technician or in any position for which a pharmacy technician license is a requirement or criterion for employment, whether the respondent is considered an employee, independent contractor or volunteer.

7. **Reimbursement of Board’s Costs.** As a condition precedent to successful completion of probation, respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$1,116.25. Respondent shall make said payments according to a schedule approved by the Board or its designee. There shall be no deviation from this schedule absent prior written approval by the Board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation. The filing of bankruptcy by respondent shall not relieve respondent of her responsibility to reimburse the Board its costs of investigation and prosecution.

8. **Probation Monitoring Costs.** Respondent shall pay any costs associated with probation monitoring as determined by the Board each and every year of probation. Such costs shall be payable to the Board on a schedule as directed by the Board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

9. **Status of License.** Respondent shall, at all times while on probation, maintain an active, current pharmacy technician license with the Board, including any period during which suspension or probation is tolled. Failure to maintain an active, current license shall be considered a violation of probation.

If respondent’s pharmacy technician license expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof due to tolling or otherwise, upon renewal or reapplication respondent’s license shall be subject to all terms and conditions of this probation not previously satisfied.

10. **License Surrender While on Probation/Suspension.** Following the effective date of this decision, should respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender her pharmacy technician license to the Board for surrender. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the respondent’s license history with the Board.

Upon acceptance of the surrender, respondent shall relinquish her pharmacy technician license to the Board within 10 days of notification by the Board that the surrender is accepted. Respondent may not reapply for any license, permit, or registration from the Board for three years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

11. Notification of a Change in Name, Residence Address, Mailing Address or Employment. Respondent shall notify the Board in writing within 10 days of any change of employment. Said notification shall include the reasons for leaving, the address of the new employer, the name of the supervisor and owner, and the work schedule if known. Respondent shall further notify the Board in writing within 10 days of a change in name, residence address and mailing address, or phone number.

Failure to timely notify the Board of any change in employer(s), name(s), address(es), or phone number(s) shall be considered a violation of probation.

12. Tolling of Probation. Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a specific number of hours per calendar month to be determined by the Board or its designee. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation.

Should respondent, regardless of residency, for any reason (including vacation) cease working as a pharmacy technician in California for the specific minimum number of hours per calendar month determined by the Board, respondent must notify the Board in writing within 10 days of cessation of work and must further notify the Board in writing within 10 days of the resumption of the work. Any failure to provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for respondent's probation to remain tolled pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding 36 months.

"Cessation of work" means calendar month during which respondent is not working as a pharmacy technician, as defined in Business and Professions Code section 4115 for at least the minimum hours determined by the Board. "Resumption of work" means any calendar month during which respondent is working as a pharmacy technician as defined by Business and Professions Code section 4115 for at least the minimum number of hours determined by the Board.

13. Violation of Probation. If a respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over respondent, and

probation shall automatically be extended, until all terms and conditions have been satisfied or the Board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

If respondent violates probation in any respect, the Board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed against respondent during probation, the Board shall have continuing jurisdiction, and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

14. **Completion of Probation.** Upon written notice by the Board indicating successful completion of probation, respondent's pharmacy technician license will be fully restored.

DATED: December 8, 2016.

DocuSigned by:
Ji-Lan Zang
C57B808FCCC14EC...

JI-LAN ZANG
Administrative Law Judge
Office of Administrative Hearings

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA L. SUN
Supervising Deputy Attorney General
3 KATHERINE MESSANA
Deputy Attorney General
4 State Bar No. 272953
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2554
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 5766

12 **MELISSA CAROLYN GRAY**

13 1540 Catalina St., #G
14 Burbank, CA 91505

15 Pharmacy Technician Registration No. TCH
107620

A C C U S A T I O N

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity as
21 the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board).
22 2. On or about December 8, 2010, the Board issued Pharmacy Technician Registration
23 Number TCH 107620 to Melissa Carolyn Gray (Respondent). Said registration was in full force
24 and effect at all times relevant to the charges brought herein and will expire on December 31,
25 2016, unless renewed.

26 **JURISDICTION AND STATUTORY PROVISIONS**

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

1 4. Section 4300 of the Code 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,
4 whose default has been entered or whose case has been heard by the board and found
 guilty, by any of the following methods:

5 (1) Suspending judgment.

6 (2) Placing him or her upon probation.

7 (3) Suspending his or her right to practice for a period not exceeding one
8 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 discretion may deem proper.

11 (c) The board may refuse a license to any applicant guilty of
12 unprofessional conduct. The board may, in its sole discretion, issue a probationary
13 license to any applicant for a license who is guilty of unprofessional conduct and who
14 has met all other requirements for licensure. The board may issue the license subject
 to any terms or conditions not contrary to public policy, including, but not limited to,
 the following:

15 (1) Medical or psychiatric evaluation.

16 (2) Continuing medical or psychiatric treatment.

17 (3) Restriction of type or circumstances of practice.

18 (4) Continuing participation in a board-approved rehabilitation program.

19 (5) Abstention from the use of alcohol or drugs.

20 (6) Random fluid testing for alcohol or drugs.

21 (7) Compliance with laws and regulations governing the practice of
 pharmacy.

22 (d) The board may initiate disciplinary proceedings to revoke or suspend
23 any probationary certificate of licensure for any violation of the terms and conditions
24 of probation. Upon satisfactory completion of probation, the board shall convert the
 probationary certificate to a regular certificate, free of conditions.

25 (e) The proceedings under this article shall be conducted in accordance
26 with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the
 Government Code, and the board shall have all the powers granted therein. The action
27 shall be final, except that the propriety of the action is subject to review by the
 superior court pursuant to Section 1094.5 of the Code of Civil Procedure.”

28 ///

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1 5. Section 4301 of the Code provides, in pertinent part:

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

6 ...

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

10 ...

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

 6. Section 490 of the Code states:

 "(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

1 sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of
the Penal Code.

2 (d) The Legislature hereby finds and declares that the application of this
3 section has been made unclear by the holding in *Petropoulos v. Department of Real*
4 *Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a
5 significant number of statutes and regulations in question, resulting in potential harm
6 to the consumers of California from licensees who have been convicted of crimes.
Therefore, the Legislature finds and declares that this section establishes an
independent basis for a board to impose discipline upon a licensee, and that the
amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session
do not constitute a change to, but rather are declaratory of, existing law.”

7 REGULATORY PROVISIONS

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

9 “For the purpose of denial, suspension, or revocation of a personal or
10 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
11 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
12 the functions authorized by his license or registration in a manner consistent with the
public health, safety, or welfare.”

13 COST RECOVERY

14 8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
15 administrative law judge to direct a licentiate found to have committed a violation or violations of
16 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
17 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
18 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
19 included in a stipulated settlement.

20 FIRST CAUSE FOR DISCIPLINE

21 (Substantially Related Criminal Conviction)

22 9. Respondent is subject to disciplinary action under section 490 and section 4301,
23 subdivision (l) of the Code, in conjunction with California Code of Regulations, title 16, section
24 1770 in that Respondent was convicted of a crime substantially related to the qualifications,
25 functions and duties of a pharmacy technician. Specifically, on January 9, 2014, Respondent was
26 convicted of one felony count of violating Nevada Revised Statutes 205.060 [Burglary] and one
27 felony count of violating Nevada Revised Statutes 205.740 [Utter a Forged Credit or Debit Card]
28 in the criminal proceeding entitled *The State of Nevada v. Melissa Carolyn Gray* (Clark County

1 Nevada District Court, C-13-294990-1). The court ordered Respondent to serve a maximum of
2 48 months and a minimum of 12 months in the Nevada Department of Corrections (but suspended
3 the jail sentence) and placed Respondent on probation for a period of 5 years, with terms and
4 conditions. Among other conditions, the court ordered that Respondent undergo substance abuse
5 and mental health evaluations and complete any counseling deemed necessary. On November 14,
6 2013, Respondent went to the cashier cage inside the Stratosphere to get a cash advance on a
7 credit card. The cashier noticed flaws with the card, believed it to be fake, and called security.
8 Police officers arrived and confirmed the card was, in fact, fraudulent.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Act Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

11 10. Respondent is subject to disciplinary action under section 4301, subdivision (f) of the
12 Code in that she committed an act involving moral turpitude, dishonesty, fraud, deceit, or
13 corruption. The conduct is described in more particularity in paragraph 9 above, inclusive, and
14 hereby incorporated by reference.

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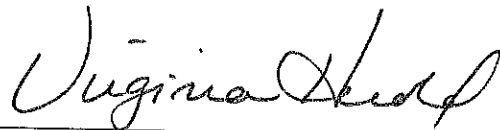
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PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 107620, issued to Melissa Carolyn Gray;
2. Ordering Melissa Carolyn Gray to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: 7/19/16



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

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