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7  
8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:	Case No. 3144
12 MICHAEL MICHMALI 1840 Woodview Ct 13 Ceres, CA 95357	<b>ACCUSATION</b>
14 Pharmacy Technician License No. TCH 61671	
15 Respondent.	

16  
17 Complainant alleges:

18 PARTIES

- 19 1. Virginia Herold (Complainant) brings this Accusation solely in her official  
20 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 21 2. On or about March 24, 2005, the Board of Pharmacy issued Pharmacy  
22 Technician License Number TCH 61671 to Michael Michmali (Respondent). The Pharmacy  
23 Technician License was in full force and effect at all times relevant to the charges brought herein.  
24 It will expire on December 31, 2010, unless renewed.

25 JURISDICTION

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



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

3 (l) The conviction of a crime substantially related to the qualifications, functions,  
4 and duties of a licensee under this chapter.

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

9 8. Section 490 of the Code provides, in pertinent part, that the Board may  
10 suspend or revoke a license when it finds that the licensee has been convicted of a crime  
11 substantially related to the qualifications, functions or duties of the license.

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

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

19 10. Section 4059 of the Code, in pertinent part, prohibits furnishing of any  
20 dangerous drug or dangerous device except upon the prescription of an authorized prescriber.

21 11. Section 4060 of the Code provides, in pertinent part, that no person shall possess  
22 any controlled substance, except that furnished upon a valid prescription/drug order.

23 12. Section 4324 of the Code, in pertinent part, makes it unlawful for a person  
24 to falsely make, alter, forge, utter, publish, pass, or attempt to pass, as genuine, a prescription for a  
25 drug, or to have in his or her possession a drug secured by a forged prescription.

26 13. Health and Safety Code section 11150 provides, in pertinent part, that no  
27 person other than an authorized prescriber shall write or issue a prescription.

28 ///

1           14.    Health and Safety Code section 11157 provides that no person shall issue a  
2 prescription that is false or fictitious in any respect.

3           15.    Health and Safety Code section 11170 provides that no person shall  
4 prescribe, administer, or furnish a controlled substance for himself or herself.

5           16.    Health and Safety Code section 11173, subdivision (a), provides that no  
6 person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the  
7 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,  
8 or subterfuge; or (2) by the concealment of a material fact.

9           17.    Health and Safety Code section 11175 makes it unlawful for any person to  
10 obtain or possess a prescription that does not comply with the Uniform Controlled Substances Act  
11 [Health & Safety Code, § 11000 et seq.], to obtain a controlled substance by means of such non-  
12 compliant prescription, or to possess a controlled substance obtained by such a prescription.

13           18.    Health and Safety Code section 11350, in pertinent part, makes it unlawful  
14 to possess any controlled substance listed in Schedule II (Health and Safety Code section 11055),  
15 subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

16           19.    Health and Safety Code section 11351, in pertinent part, makes it unlawful  
17 to possess or purchase for sale, *inter alia*, any narcotic drug in Schedules III-V.

18           20.    Health and Safety Code section 11368, in pertinent part, makes it unlawful  
19 to forge or alter a prescription, to issue or utter an altered prescription, to issue or utter a  
20 prescription bearing a forged or fictitious signature for any narcotic drug, to obtain a narcotic drug  
21 by any forged, fictitious, or altered prescription, or to possess any narcotic drug secured by a  
22 forged, fictitious, or altered prescription.

23           21.    Health and Safety Code section 11550, in pertinent part, makes it unlawful  
24 for any person to use or be under the influence of, *inter alia*, any narcotic drug in Schedules III-V,  
25 except when administered by or under the direction of an authorized licensee.

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



1 a. On or about April 25, 2007, Respondent called in a prescription transfer of  
2 150 tablets of **Hydrocodone with APAP** (10/325, generic **Norco**) for patient O.B.<sup>1</sup> from the RX  
3 Unlimited Pharmacy to a Walgreens Pharmacy, and then picked up the prescription;

4 b. On or about May 1, 2007, Respondent called in a prescription transfer of  
5 150 tablets of **Hydrocodone with APAP** (10/325, generic **Norco**) for patient M.O. from the RX  
6 Unlimited Pharmacy to a Walgreens Pharmacy, and then picked up the prescription;

7 c. On or about May 1, 2007, Respondent called in a prescription transfer of  
8 150 tablets of **Hydrocodone with APAP** (10/325, generic **Norco**) for patient A.M. from the RX  
9 Unlimited Pharmacy to a Walgreens Pharmacy, and then picked up the prescription;

10 d. On or about May 4, 2007, Respondent called in a prescription transfer of  
11 150 tablets of **Hydrocodone with APAP** (10/325, generic **Norco**) for patient D.H. from the RX  
12 Unlimited Pharmacy to a Walgreens Pharmacy, and then picked up the prescription;

13 e. On or about May 10, 2007, Respondent called in a prescription transfer of  
14 150 tablets of **Hydrocodone with APAP** (10/325, generic **Norco**) for patient M.S. from the RX  
15 Unlimited Pharmacy to a Walgreens Pharmacy, and then picked up the prescription; and

16 f. On or about May 10, 2007, Respondent called in a prescription transfer of  
17 50 tablets of **Hydrocodone with APAP** (10/325, generic **Norco**) for patient L.V. from the RX  
18 Unlimited Pharmacy to a Walgreens Pharmacy, and then attempted to pick up the prescription.

19 28. On or about May 10, 2007, Respondent was arrested by the San Francisco  
20 Police as he attempted to pick up the prescription for patient L.V. Respondent was found to be in  
21 possession of items including: eight (8) empty pill bottles with labels and patient names other  
22 than Respondent's; six (6) Walgreens Personal Prescription Information Sheets for patients O.B.,  
23 M.O., A.M., D.H., M.S., and L.V.; five (5) Walgreens receipts for prescriptions, all for purchases  
24 of **Hydrocodone with APAP** (10/325, generic **Norco**); one (1) completed telephone prescription  
25 form in the name of patient O.B., written on RX Unlimited letterhead; one (1) bottle containing  
26 151 tablets of **Hydrocodone with APAP** (10/325, generic **Norco**); one (1) bottle containing 45  
27 tablets of **Hydrocodone with APAP** (5/500, generic **Vicodin**); one (1) tablet of **Hydrocodone**  
28 **with APAP** (10/500, generic **Lortab**); and one (1) bottle of prescription cough syrup.

1           29.     During interview(s) with San Francisco Police, Respondent admitted to an  
2 addiction to **Hydrocodone with APAP** products, including **Norco**, **Vicodin**, and their generics.  
3 He further admitted to calling in fraudulent transfer prescriptions and then picking them up, as  
4 described in paragraph 26 above. He admitted to consuming the controlled substances acquired in  
5 this manner, except for approximately thirty (30) tablets furnished to Respondent's friends.

6           30.     Based on the conduct described in paragraphs 26 to 29 above, on or about  
7 October 1, 2007, in a criminal case titled *People v. Michael Michmali*, Case No. 2335766 in San  
8 Francisco County Superior Court, Respondent was charged with twelve (12) felonies: five (5)  
9 counts of violating Penal Code section 459 (Burglary - Commercial, 2<sup>nd</sup> Degree); six (6) counts of  
10 violating Health and Safety Code section 11368 (Generating and/or Using Forged or Altered  
11 Prescriptions for Controlled Substances); and one (1) count of violating Health and Safety Code  
12 section 11351 (Possession or Purchase for Sale of Controlled Substances).

13           31.     On a date sometime between on or about March 24, 2008 and on or about  
14 April 4, 2008, Respondent was employed for one day as a pharmacy technician at Reliable Drug  
15 pharmacy (PHY 46431) in San Francisco, CA. Respondent was terminated the same day.

16           32.     On or about April 4, 2008, Respondent returned to Reliable Drug, walked in  
17 and out of the pharmacy area, and attempted to leave with a large bottle containing tablets of a  
18 **Hydrocodone with APAP** product (**Vicodin** or its generic). He was apprehended by the staff of  
19 the pharmacy, and was subsequently apprehended and arrested by the San Francisco Police.

20           33.     Based on the conduct described in paragraphs 31 to 32 above, on or about  
21 April 10, 2008, in a criminal case titled *People v. Michael Michmali*, Case No. 2362682 in San  
22 Francisco County Superior Court, Respondent was charged with two (2) felonies: one (1) count of  
23 violating Penal Code section 459 (Burglary - Commercial, 2<sup>nd</sup> Degree); and one (1) count of  
24 violating Penal Code section 496(a) (Receiving or Buying Stolen Property - **Hydrocodone**). In  
25 addition, pursuant to Penal Code section 12022.1, each count contained an additional allegation  
26 that the felony was committed while he was on a release from custody in a felony offense.

27           34.     On or about May 21, 2008, a Protective Order in Criminal Proceeding was  
28 issued in Case No. 2362682 ordering Respondent to stay 150 yards away from Reliable Drug.









1 TWELFTH CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct)

3 49. Respondent is subject to discipline under section 4301 of the Code in that  
4 Respondent, as described in paragraphs 26 to 48 above, engaged in unprofessional conduct.

5  
6 PRAYER

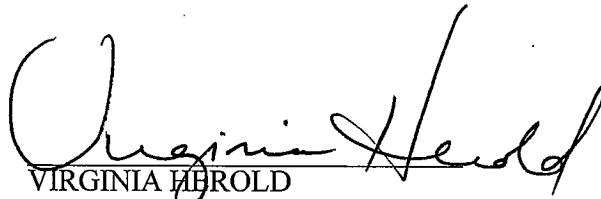
7 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
8 alleged, and that following the hearing, the Board of Pharmacy issue a decision:

9 A. Revoking or suspending Pharmacy Technician License Number TCH  
10 61671, issued to Michael Michmali (Respondent);

11 B. Ordering Respondent to pay the Board reasonable costs of investigation and  
12 enforcement of this case, pursuant to Business and Professions Code section 125.3;

13 C. Taking such other and further action as deemed necessary and proper.

14 DATED: 3/25/09

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

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