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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. 3227

12 **ALEJANDRA PALOMERA**  
14928 Ryan Street  
13 Sylmar, California 91342

**ACCUSATION**

14 Pharmacy Technician Registration  
Number TCH 61961

Respondent.

17 Virginia Herold ("Complainant") alleges:

18 **PARTIES**

19 1. Complainant brings this Accusation solely in her official capacity as the  
20 Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

21 **Pharmacy Technician Registration**

22 2. On or about April 5, 2005, the Board of Pharmacy issued Pharmacy  
23 Technician Registration Number TCH 61961 to Alejandra Palomera ("Respondent"). The  
24 pharmacy technician registration will expire on June 30, 2010.

25 **STATUTORY PROVISIONS**

26 3. Business and Professions Code ("Code") section 4202, subdivision (d),  
27 states that the Board may suspend or revoke a registration issued pursuant to this section on any  
28 ground specified in Section 4301.

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- 4. Code section 4300 states, in pertinent part:
  - (a) Every license issued may be suspended or revoked.
  - (b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:
    - (1) Suspending judgment.
    - (2) Placing him or her upon probation.
    - (3) Suspending his or her right to practice for a period not exceeding one year.
    - (4) Revoking his or her license.
    - (5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

- 5. Code section 4301 states, in pertinent part:
 

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

  - (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.
  - (j) The violation of any of the statutes of this state or of the United States regulating controlled substances and dangerous drugs . . .
  - (l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

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

5 6. Code section 4022 states:

6 "Dangerous drug" or "dangerous device" means any drug or device unsafe  
7 for self-use in humans or animals, and includes the following:

8 (a) Any drug that bears the legend: "Caution: federal law prohibits  
9 dispensing without prescription, "RX only," or words of similar import.

10 (b) Any device that bears the statement: "Caution: federal law restricts this  
11 device to sale by or on the order of a-----," "RX only," or words of similar  
12 import, the blank to be filled in with the designation of the practitioner licensed to  
13 use or order use of the device.

14 (c) Any other drug or device that by federal or state law can be lawfully  
15 dispensed only on prescription or furnished pursuant to Section 4006.

16 7. Bus. & Prof. Code section 4059, subdivision (a), states:

17 A person may not furnish any dangerous drug, except upon the  
18 prescription of a physician, dentist, podiatrist, optometrist, or veterinarian. A  
19 person may not furnish any dangerous device, except upon the prescription of a  
20 physician, dentist, podiatrist, optometrist, or veterinarian.

21 8. Code section 4060 states, in pertinent part:

22 No person shall possess any controlled substance, except that furnished to  
23 a person upon the prescription of a physician, dentist, podiatrist, or veterinarian,  
24 or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant  
25 to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician  
26 assistant pursuant to Section 3502.1. This section shall not apply to the  
27 possession of any controlled substance by a manufacturer, wholesaler, pharmacy,  
28 physician, podiatrist, dentist, veterinarian, certified nurse-midwife, nurse  
practitioner, or physician assistant, when in stock in containers correctly labeled  
with the name and address of the supplier or producer.

9. Health and Safety Code section 11350, subdivision (a), states:

Except as otherwise provided in this division, every person who possesses  
any controlled substance specified in subdivision (b), (c), or (e), or paragraph (1)  
of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of  
subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section  
11055, or specified in subdivision (h) of Section 11056, or (2) any controlled  
substance classified in Schedule III, IV, or V which is a narcotic drug, unless  
upon the written prescription of a physician, dentist, podiatrist, or veterinarian  
licensed to practice in this state, shall be punished by imprisonment in the state  
prison.

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10. Health and Safety Code section 11173, subdivision (a), states:

(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

**COST RECOVERY**

11. Code section 125.3 states, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

**CONTROLLED SUBSTANCE**

12. "Vicodin," "Vicodin ES," and "Norco" are brand names of Hydrocodone combined with acetaminophen, which is a Schedule III controlled substance, as designated by Health and Safety Code section 11056, subdivision (e)(4) and a dangerous drug under Code section 4022.

13. "Xanax," a brand of alprazolam, is a Schedule IV controlled substance as designated by Health and Safety Code section 11057, subdivision (d)(1) and a dangerous drug under Code section 4022 in that under federal or state law it requires a prescription.

**FACTUAL BACKGROUND**

14. At the end of February 2007, Vons Pharmacy #2111, located in Newhall, California, suspected that Respondent, employed at that facility as a registered pharmacy technician, was taking Lorcet tablets. The pharmacy installed covert cameras and Respondent was caught on tape taking two white bottles of Lorcet tablets from the Lorcet section, placing them into a cardboard box, and taking the cardboard box to the back of the pharmacy where the employees kept their personal belongings. Respondent then exited the pharmacy, where she was stopped by a loss prevention officer. During a detailed interview, Respondent admitted that between approximately September 2006, and March 2007, during the course of her employment with the pharmacy, she took approximately 900 Lorcet 10/650 tablets, 400 Norco 10/325 tablets, 100 Vicodin ES tablets, as well as Xanax #300 tablets from pharmacy supplies.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Criminal Conviction)**

3 15. Respondent is subject to disciplinary action pursuant to Code section  
4 4301, subdivision (l), on the grounds of unprofessional conduct, in that on or about May 31,  
5 2007, in the criminal proceeding entitled *People vs. Alejandra Palomera* (Super. Ct., Los  
6 Angeles Cty., 2007, Case No. PA055983), Respondent was convicted by the court following her  
7 plea of nolo contendere of a violation of Penal Code section 487, subdivision (a) (grand theft,  
8 property over \$400), a misdemeanor. The circumstances of the crime are more particularly set  
9 forth in paragraph 14, above. Such conduct is substantially related to the qualifications,  
10 functions, and duties of a registered pharmacy technician.

11 **SECOND CAUSE FOR DISCIPLINE**

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

13 16. Respondent is subject to disciplinary action pursuant to Code section  
14 4301, subdivision (f), on the grounds of unprofessional conduct, in that between approximately  
15 September 2006, to March 2007, while employed as a registered pharmacy technician at Vons  
16 Pharmacy #2111, Respondent committed acts involving moral turpitude, dishonesty, fraud,  
17 deceit or corruption. Respondent took approximately 900 Lorcet 10/650 tablets, 400 Norco  
18 10/325 tablets, 100 Vicodin ES tablets, as well as Xanax #300 tablets from pharmacy supplies  
19 without lawful authority, as more particularly set forth in paragraph 14, above.

20 **THIRD CAUSE FOR DISCIPLINE**

21 **(Violations of State Laws Regulating Controlled Substances)**

22 17. Respondent is subject to disciplinary action pursuant to Code section  
23 4301, subdivision (j), on the grounds of unprofessional conduct, in that between approximately  
24 September 2006, to March 2007, while employed at Vons Pharmacy #2111, as a registered  
25 pharmacy technician, Respondent violated the following state laws regulating controlled  
26 substances:

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1 a. Respondent possessed approximately 900 Lorcet 10/650 tablets, 400  
2 Norco 10/325 tablets, 100 Vicodin ES tablets, as well as Xanax #300 tablets without lawful  
3 prescriptions for the medications from a physician, dentist, podiatrist, optometrist, or  
4 veterinarian, in violation of Code section 4060 and Health & Safety Code section 11350,  
5 subdivision (a).

6 b. Respondent obtained approximately 900 Lorcet 10/650 tablets, 400 Norco  
7 10/325 tablets, 100 Vicodin ES tablets, as well as Xanax #300 tablets by fraud deceit,  
8 misrepresentation, or subterfuge by removing the drugs from pharmacy supplies, in violation of  
9 Health and Safety Code section 11173, subdivision (a).

10 **FOURTH CAUSE FOR DISCIPLINE**

11 **(Furnishing Controlled Substances Without a Prescription)**

12 18. Respondent is subject to disciplinary action pursuant to Code section  
13 4301, subdivision (o), on the grounds of unprofessional conduct, in that between approximately  
14 September 2006, to March 2007, while employed at Vons Pharmacy #2111, as a registered  
15 pharmacy technician, Respondent violated or attempted to violate, Code section 4059,  
16 subdivision (a), by furnishing the following controlled substances to herself from the inventory  
17 of the pharmacy without a prescription: approximately 900 Lorcet 10/650 tablets, 400 Norco  
18 10/325 tablets, 100 Vicodin ES tablets, as well as Xanax #300 tablets.

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PRAYER

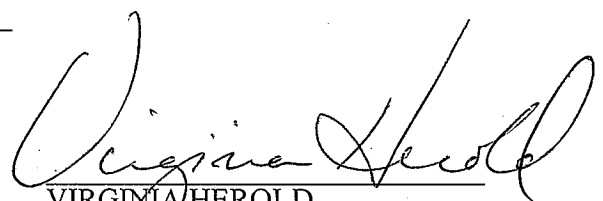
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Pharmacy Technician Registration Number TCH 61961, issued to Alejandra Palomera;

2. Ordering Alejandra Palomera to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,

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

DATED: 10/22/09



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

DOJ Matter ID: LA2008602053  
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