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

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13 In the Matter of the Accusation Against:

Case No. 3295

14 EMMANUEL ROMERO  
7288 Font Avenue  
15 Riverside, CA 92509

**A C C U S A T I O N**

16 Pharmacy Technician Registration  
No. TCH 51614

17

Respondent.

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19 Complainant alleges:

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**PARTIES**

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

23 2. On or about October 3, 2003, the Board of Pharmacy issued Pharmacy Technician  
24 Registration Number TCH 51614 to Emmanuel Romero (Respondent). The Pharmacy  
25 Technician registration was in full force and effect at all times relevant to the charges brought  
26 herein and will expire on March 31, 2011, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws of the Business and Professions Code:

4. Section 4300(a) of the Code states in pertinent part:

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

5. Section 118(b) of the Code provides that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the licensee may be renewed, restored, reissued or reinstated.

STATUTORY PROVISIONS

6. Section 4301 of the Code 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 any other 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

1 or when an order granting probation is made suspending the imposition of  
2 sentence, irrespective of a subsequent order under Section 1203.4 of the Penal  
3 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.

4 7. Section 4059 of the Code states:

5 (a) A person may not furnish any dangerous drug, except upon the  
6 prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or  
naturopathic doctor pursuant to Section 3640.7.

7 . . . .

8 8. Section 4060 of the Code states:

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

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

18 9. Section 490 of the Code provides, in pertinent part, that a board may  
19 suspend or revoke a license on the ground that the licensee has been convicted of a crime  
20 substantially related to the qualifications, functions, or duties of the business or profession for  
21 which the license was issued.

22 10. Section 493 of the Code states:

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

1 As used in this section, "license" includes "certificate," "permit,"  
2 "authority," and "registration."

3 11. Health & Safety Code (H&S Code) section 11170 states that "[n]o person shall  
4 prescribe, administer, or furnish a controlled substance for himself."

5 12. H&S Code section 11173 states in pertinent part that no person shall obtain a  
6 controlled substance by fraud, deceit, subterfuge or concealment of a material fact.

7 **REGULATORY PROVISIONS**

8 13. 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  
11 business and Professions Code, a crime or act shall be considered substantially  
12 related to the qualifications, function or duties of a licensee or registrant if to a  
13 substantial degree it evidences present or potential unfitness of a licensee or  
14 registrant to perform the functions authorized by this license or registration in a  
15 manner consistent with the public health, safety, or welfare.

16 **COST RECOVERY**

17 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request  
18 the administrative law judge to direct a licentiate found to have committed a violation or  
19 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
20 and enforcement of the case.

21 **DRUG**

22 15. Hydrocodone/APAP is a narcotic Schedule III controlled substance, pursuant to  
23 H&S Code section 11056(e)(4).

24 **FIRST CAUSE FOR DISCIPLINE**

25 **(Unprofessional Conduct: Acts of Dishonesty, Fraud and Deceit)**

26 16. Respondent is subject to disciplinary action under section 4301(f) for acts of  
27 dishonesty, fraud or deceit, as more particularly alleged below:

28 a. On October 22, 2007, Respondent was employed as a pharmacy technician at  
Pharmacy Express in Riverside, California and had been working there for almost four years.

b. On or about October 22, 2007, Respondent admitted to his employer that he had  
been stealing bottles of Hydrocodone/APAP from Pharmacy Express for the last two years.

1 Respondent ordered large quantities of Hydrocodone/APAP for Pharmacy Express. Once the  
2 Hydrocodone/APAP was delivered to the pharmacy, Respondent took the boxes of medication to  
3 the bathroom or storage room, placed the medications in a bag and later placed the bag of  
4 medications in his car. Respondent admitted that he began taking two bottles a week and then  
5 increased the amount after a few weeks. Respondent also admitted to his employer that he  
6 consumed 50 to 60 Hydrocodone/APAP pills a day for pain in his lower back.

7 c. Pharmacy Express initiated an audit of the Hydrocodone/APAP purchased and  
8 dispensed at Pharmacy Express during the time period Respondent was stealing  
9 Hydrocodone/APAP from Pharmacy Express. The Board also initiated an audit which showed  
10 that there were 42,546 tablets of Hydrocodone/APAP that were missing and that could not be  
11 accounted for between April 25, 2006 and November 10, 2007. On November 18, 2007,  
12 Respondent admitted to police that he was responsible for taking all of the Hydrocodone/APAP  
13 that was identified as missing in the audits.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Unprofessional Conduct: Possession of a Controlled Substance W/O Prescription)**

16 17. Respondent is subject to disciplinary action under section 4301(j) in conjunction  
17 with section 4060 for possession of a controlled substance without a legitimate prescription, as  
18 more particularly alleged in paragraphs 16(a), (b) and (c) above and incorporated herein by  
19 reference.

20 **THIRD CAUSE FOR DISCIPLINE**

21 **(Unprofessional Conduct: Illegal Furnishing of a Controlled Substance to Oneself)**

22 18. Respondent is subject to disciplinary action under section 4301(j) in conjunction  
23 with section 4059(a) and H&S Code section 11170 for illegally furnishing a controlled substance  
24 to himself, as more particularly alleged in paragraphs 16(a), (b) and (c) above and incorporated  
25 herein by reference.

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**FOURTH CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct: Obtaining a Controlled Substance by Fraud, Subterfuge)**

19. Respondent is subject to disciplinary action under section 4301(j) in conjunction with H&S Code section 11173(a) for obtaining a controlled substance by fraud, deceit, subterfuge or concealment of a material fact, as more particularly alleged in paragraphs 16(a), (b) and (c) above and incorporated herein by reference.

**FIFTH CAUSE FOR DISCIPLINE**

**(May 22, 2008 Criminal Conviction - Grand Theft from January 2006 to November 2007 )**

20. Respondent is subject to disciplinary action under section 4301(l) for conviction for a crime substantially related to the qualifications, functions, or duties of a pharmacy technician, as more particularly alleged below:

a. On or about May 22, 2008, in Riverside County Superior Court Case No. RIF141687, Respondent pled guilty to a violation of Penal Code section 487(a) (grand theft/exceeds \$400), a felony.

b. The facts and circumstances surrounding the conviction are that Respondent stole approximately 42,546 Hydrocodone/APAP pills from his employer Express Pharmacy as set forth in paragraphs 16(a), (b) and (c) above and incorporated herein by reference.

c. Respondent was sentenced to serve 120 days in jail, placed on formal probation for 36 months and ordered to pay various fines and restitution.

**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 51614, issued to Emmanuel Romero;

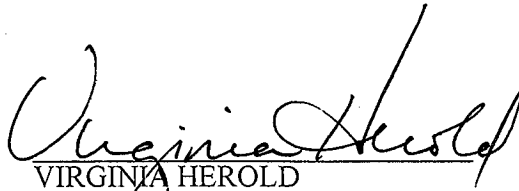
2. Ordering Emmanuel Rombero to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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

DATED: 10/29/09



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

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