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

12 In the Matter of the Accusation Against:

Case No. 3323

13 JAIME P. EDGE
9312 Comstock Drive
14 Huntington Beach, CA 92646

A C C U S A T I O N

15 Pharmacy Technician Registration
16 No. TCH 78753

Respondent.

18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about October 20, 2007, the Board of Pharmacy issued Pharmacy
24 Technician Registration Number TCH 78753 to Jaime P. Edge (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 June 30, 2009, unless renewed.

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1 JURISDICTION

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

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

9 5. Section 4300, subdivision (a) of the Code states that "Every license issued
10 may be suspended or revoked."

11 STATUTORY PROVISIONS

12 6. Section 4301 of the Code states:

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

17

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

21 (g) Knowingly making or signing any certificate or other document that
22 falsely represents the existence or nonexistence of a state of facts.

23

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

26

27 (l) The conviction of a crime substantially related to the qualifications,
28 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

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

11

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

17 (p) Actions or conduct that would have warranted denial of a license.

18

19 7. Section 4022 of the Code states

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

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

24 (b) Any device that bears the statement: "Caution: federal law restricts this
25 device to sale by or on the order of a _____," "Rx only," or words of similar
26 import, the blank to be filled in with the designation of the practitioner licensed to
27 use or order use of the device.

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

8. Section 4059 of the Code states, in pertinent part, that a person may not
furnish any dangerous drug except upon the prescription of a physician, dentist, podiatrist,
optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not
furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist,
optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

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9. Section 4060 of the Code states:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished 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 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 (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 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, 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.

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

10. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. 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 which 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 sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or

(3) Done any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.

....

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

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12. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by 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 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, 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 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 the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

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

13. United States Code, title 21, section 843 states, in pertinent part:

(a) It shall be unlawful for any person knowingly or intentionally --

....

(3) to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge;

....

REGULATORY PROVISIONS

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

For the purpose of denial, suspension, or revocation of a personal or 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 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.

15. California Code of Regulations, title 16, section 1769 states:

....

(b) When considering the suspension or revocation of a facility or a personal license on the ground that the licensee or 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.

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(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.

COST RECOVERY

16. Section 125.3 of the Code 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.

DRUG

17. OxyContin, the brand name for the controlled-release oral formulation of oxycodone, is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (b)(1)(N), and is a dangerous drug pursuant to Business and Professions Code section 4022.

FIRST CAUSE FOR DISCIPLINE

(December 8, 2008 Criminal Conviction for

Second Degree Commercial Burglary on May 23, 2008)

18. Respondent subjected her license to discipline under sections 490 and 4301, subdivision (l) of the Code in that she was convicted of a crime that is substantially related to the qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

a. On or about December 8, 2008, in a criminal proceeding entitled *People of the State of California v. Jaime Edge*, in Orange County Superior Court, case number 08WM11306, Respondent was convicted on her plea of guilty for violating Penal Code section 459-460, subdivision (b), second degree burglary of a commercial structure, reduced to a misdemeanor as part of the plea agreement.

b. As a result of the conviction, on or about December 8, 2008, Respondent was sentenced to three years informal probation, 160 hours of community service,

1 and payment of fees and restitution in the amount of \$120.00. Respondent was ordered to return
2 on March 9, 2009, for a probation review hearing. Respondent failed to appear and a bench
3 warrant was issued and remains in effect. Respondent's probation was revoked on March 9,
4 2009.

5 c. The facts that led to the conviction were that on or about June 1,
6 2008, Patient J.K. presented a new prescription for OxyContin at a CVS Pharmacy in Huntington
7 Beach (Store #9491). During the processing of the prescription, the pharmacy technician
8 received a rejection notice from the insurance company because it had already been filled on
9 May 23, 2008, at another Huntington Beach CVS Pharmacy (Store #8850), and it was too soon
10 for a refill. Patient J.K. never used Store #8850 to fill her prescriptions. After reviewing the
11 prescription signature logs from Store #8850, Patient J.K. stated it was not her signature on the
12 log. The original hard copy of Patient J.K.'s prescription dated April 25, 2008 was missing from
13 the pharmacy's prescriptions files. Based upon the computer records, it was determined that
14 Respondent, who worked as a pharmacy technician at the CVS Pharmacy Store #9491, generated
15 a new prescription with a new number under Patient J.K.'s name on May 23, 2008, and then
16 inactivated the prescription.

17 d. The following day, on June 2, 2008, Respondent's supervisor
18 questioned Respondent. Respondent told her supervisor that she generated the new prescription
19 under Patient J.K.'s name to check if the patient's insurance would cover it.

20 e. On June 3, 2008, after viewing video surveillance from CVS
21 Pharmacy Store #8850, it was discovered that on May 23, 2008, Respondent's husband and four-
22 year-old child went to Store #8850 with Patient J.K.'s original hard copy prescription dated
23 April 25, 2008, which was stolen from Store #9491. Respondent's husband obtained 100
24 OxyContin 40 mg. tablets with the prescription stolen by Respondent. In a written statement to
25 investigators, Respondent admitted she and her husband conspired to steal the OxyContin for the
26 purpose of re-selling them for \$1,000 because they were having financial difficulties. The
27 estimated cost of the 100 OxyContin tablets was \$528.99.

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1 and the California Uniform Controlled Substances Act (Health and Safety Code 11000, et seq.),
2 as detailed in paragraph 18, above.

3 **FIFTH CAUSE FOR DISCIPLINE**

4 **(Conduct That Would Have Warranted Denial of a License)**

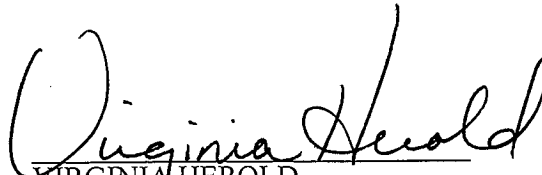
5 23. Respondent is subject to disciplinary action under section 4301,
6 subdivision (p) of the Code in that on or about May 23, 2008, while working as a pharmacy
7 technician, Respondent fraudulently generated a prescription for controlled substances and
8 illegally obtained controlled substances using a stolen prescription, and was subsequently
9 convicted for second degree commercial burglary. Such egregious conduct would have
10 warranted the denial a pharmacy technician registration under section 480, subdivisions (a)(1)
11 and (a)(2) of the Code.

12 **PRAYER**

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

- 15 1. Revoking or suspending Pharmacy Technician Registration Number TCH
16 78753, issued to Jaime P. Edge;
- 17 2. Ordering Jaime P. Edge to pay the Board of Pharmacy the reasonable
18 costs of the investigation and enforcement of this case, pursuant to Business and Professions
19 Code section 125.3;
- 20 3. Taking such other and further action as deemed necessary and proper.

21
22 DATED: 5/14/09

23
24 
25 VIRGINIA HEROLD
26 Executive Officer
27 Board of Pharmacy
28 Department of Consumer Affairs
State of California
Complainant