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

11 In the Matter of the Accusation Against:

Case No. 3337

12 **DONNA LEIGH AVALOS**
13 778 Romelia Way
14 San Jacinto, CA 92583

A C C U S A T I O N

15 **Pharmacy Technician Reg. No. TCH 54402**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about January 19, 2004, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 54402 to Donna Leigh Avalos, also known as Donna Leigh Griffin,
24 also known as Donna Leigh Ingels (Respondent). The Pharmacy Technician Registration was in
25 full force and effect at all times relevant to the charges brought herein and will expire on October
26 31, 2009, unless renewed.

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1 **JURISDICTION**

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

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

9 **STATUTORY PROVISIONS**

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

14 6. Section 4301 of the Code states:

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

18

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

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

24

25 (l) The conviction of a crime substantially related to the qualifications, functions, and
26 duties of a licensee under this chapter. The record of conviction of a violation of Chapter
27 13 (commencing with Section 801) of Title 21 of the United States Code regulating
28 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

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

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

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19 7. Section 4022 of the Code states

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

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

24 (b) Any device that bears the statement: "Caution: federal law restricts this device to
25 sale by or on the order of a _____," "Rx only," or words of similar import, the blank
26 to be filled in with the designation of the practitioner licensed to use or order use of the
27 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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1 9. United States Code, title 21, section 843 states, in pertinent part:

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

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

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7 **REGULATORY PROVISIONS**

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

9

10 (b) When considering the suspension or revocation of a facility or a personal
11 license on the ground that the licensee or the registrant has been convicted of a crime, the
12 board, in evaluating the rehabilitation of such person and his present eligibility for a
license will consider the following criteria:

13 (1) Nature and severity of the act(s) or offense(s).

14 (2) Total criminal record.

15 (3) The time that has elapsed since commission of the act(s) or offense(s).

16 (4) Whether the licensee has complied with all terms of parole, probation,
17 restitution or any other sanctions lawfully imposed against the licensee.

18 (5) Evidence, if any, of rehabilitation submitted by the licensee.

19 20 11. California Code of Regulations, title 16, section 1770 states:

21 For the purpose of denial, suspension, or revocation of a personal or facility license
22 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions
23 Code, a crime or act shall be considered substantially related to the qualifications, functions
24 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
25 registration in a manner consistent with the public health, safety, or welfare.

25 **COST RECOVERY**

26 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
27 administrative law judge to direct a licentiate found to have committed a violation or violations of

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case.

3 DRUGS

4 13. Hydrocodone combined with acetaminophen is a Schedule III controlled substance as
5 designated by Health and Safety Code section 11056, subdivision (e)(4), and is a dangerous drug
6 pursuant to Business and Professions Code section 4022.

7 14. Oxycodone is a Schedule II controlled substance as designated by Health and Safety
8 Code section 11055, subdivision (b)(1)(N), and is a dangerous drug pursuant to Business and
9 Professions Code section 4022.

10 FACTS

11 15. On or about February 19, 2007, a Loss Prevention Manager (LPM) for Albertson's
12 grocery store received a report from the district manager advising him of missing controlled
13 substances from the inventory of a Murrieta Sav-On drug store (located inside an Albertson's
14 grocery store). Upon arrival at the Sav-On, the LPM was informed by the Pharmacy Manager
15 that oxycodone and hydrocodone of various strengths were missing. The LPM viewed closed
16 circuit surveillance videos which depicted Respondent, who was employed as a pharmacy
17 technician, selecting several bottles of oxycodone and hydrocodone on several different dates and
18 placing them in her pants pocket. Respondent would take the bottles to the pharmacy restroom
19 and later exit the restroom and return the bottle to the shelf from her pants pocket.

20 16. On or about February 22, 2007, the LPM interviewed Respondent at the Sav-On in
21 the Store Director's office. Respondent admitted that for the previous four months (from
22 November 2006 to February 2007), she had been stealing approximately 5-10 oxycodone and
23 hydrocodone pills daily. Respondent had been working in a float status at six different Sav-On
24 locations and admitted stealing drugs from each location. Respondent was placed under citizen's
25 arrest and was taken into custody by the Murrieta Police Department. In a subsequent interview
26 following her arrest, Respondent told the detective that she she began abusing pain medications as
27 a result of depression. Respondent said she would remove prescription bottles of hydrocodone
28 and oxycodone from the shelf and go into the restroom. She then would ingest a few pills and

1 conceal a few pills on her person. Respondent estimated she took 5-10 tablets per restroom visit
2 every day that she worked and only stole the medications to satisfy her addiction. Based on an
3 itemization of missing controlled substances from inventory, it was estimated that Respondent
4 stole approximately 1,023 pills at a retail value of \$8,287.77.

5 **FIRST CAUSE FOR DISCIPLINE**

6 **(September 28, 2007 Criminal Conviction for Grand Theft in 2006-2007)**

7 17. Respondent subjected her license to discipline under sections 490 and
8 4301, subdivision (l) of the Code in that she was convicted of a crime that is substantially related
9 to the qualifications, duties, and functions of a pharmacy technician. The circumstances are as
10 follows:

11 a. On or about September 28, 2007, in a criminal proceeding entitled *People*
12 *of the State of California v. Donna Leigh Avalos, aka Donna Leigh Griffin*, in Riverside County
13 Superior Court, case number SWF022305, Respondent was convicted on her plea of guilty for
14 violating Penal Code section 487, subdivision (a), grand theft, a felony.

15 b. As a result of the conviction, on or about February 21, 2008, Respondent
16 was sentenced to 120 days in the custody of the sheriff, with credit for two days, three years
17 formal probation, standard probation terms, and payment of fines, fees, and restitution in the
18 amount of \$700. Respondent was also ordered to submit to a Fourth Amendment waiver and pay
19 the costs associated with her probation.
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22 **SECOND CAUSE FOR DISCIPLINE**

23 **(Unprofessional Conduct - Commission of Acts Involving**
24 **Moral Turpitude, Dishonesty, Fraud, Deceit & Corruption)**

25 18. Respondent is subject to disciplinary action under section 4301, subdivision (f) of the
26 Code in that on or about November 2006 to February 2007, while working as a pharmacy
27 technician, Respondent stole controlled substances and dangerous drugs from her employer, Sav-
28

1 On, using fraud, deceit, and dishonesty, as detailed in paragraphs 15-16, above. Such conduct is
2 substantially related to the qualifications, duties, and functions of a pharmacy technician.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct - Violation of California Statutes Regulating**
5 **Controlled Substances & Dangerous Drugs)**

6 19. Respondent is subject to disciplinary action under section 4301, subdivision (j) of
7 the Code in that on or about November 2006 to February 2007, while working as a pharmacy
8 technician, Respondent knowingly violated Business and Professions Code sections 4022 and
9 4059 regulating controlled substances and dangerous drugs, as detailed in paragraphs 15-16,
10 above. Such conduct is substantially related to the qualifications, duties, and functions of a
11 pharmacy technician.
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13 **FOURTH CAUSE FOR DISCIPLINE**

14 **(Unprofessional Conduct - Violating Federal & State Laws**
15 **& Regulations Governing Pharmacy)**

16 20. Respondent is subject to disciplinary action under section 4301, subdivision (o) of
17 the Code in that on or about November 2006 to February 2007, while working as a pharmacy
18 technician, Respondent violated Title 21 United States Code section 843, subdivision (a)(3),
19 Board of Pharmacy Regulations (California Code of Regulations, Title 16, Section 1700, et seq.),
20 and the California Uniform Controlled Substances Act (Health and Safety Code 11000, et seq.),
21 as detailed in paragraphs 15-16, above.
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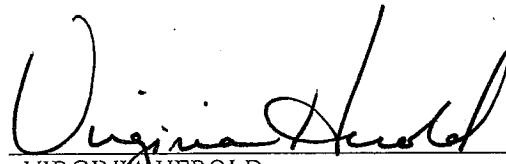
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PRAYER

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 54402, issued to Donna Leigh Avalos, also known as Donna Leigh Griffin, also known as Donna Leigh Ingels;
2. Ordering Donna Leigh Avalos 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: 10/28/09



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

SD2009803924