

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 JOSHUA A. ROOM  
Deputy Attorney General  
4 State Bar No. 214663  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
Telephone: (415) 703-1299  
6 Facsimile: (415) 703-5480  
*Attorneys for Complainant*

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

10 In the Matter of the Accusation Against:

Case No. 3357

11 **JAYNA F. MANTO**  
12 **aka Jaynalee F. Manto**  
13 **5737 Everwood Court**  
**Richmond, California 94806**

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

14 Pharmacy Technician License No. TCH 73450

15 Respondent.

16  
17 Complainant alleges:

18 PARTIES

- 19 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 21 2. On or about December 11, 2006, the Board of Pharmacy issued Pharmacy Technician  
22 License Number TCH 73450 to Jayna F. Manto (Respondent). The License was in full force and  
23 effect at all times relevant to the charges brought herein. On or about September 15, 2008, on  
24 request from the Board of Pharmacy under Penal Code section 23, an order entered in Contra  
25 Costa County Superior Court, Case No. 02-299320-2, prohibited Respondent from continuing to  
26 practice as a Pharmacy Technician during the pendency of the criminal and/or subsequent license  
27 discipline proceedings, and required Respondent to return all originals and copies of her License  
28 to the Board of Pharmacy. The License will expire on May 31, 2010, unless renewed.

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 (Code) unless otherwise indicated.

5 4. Section 4011 of the Code provides that the Board shall administer and enforce both  
6 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances  
7 Act [Health & Safety Code, § 11000 et seq.].

8 5. Section 4300(a) of the Code provides that every license issued by the Board may be  
9 suspended or revoked.

10 6. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration,  
11 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a  
12 disciplinary action during the period within which the license may be renewed, restored, reissued  
13 or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not  
14 renewed within three years following its expiration may not be renewed, restored, or reinstated  
15 and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of  
16 the Code provides that any other license issued by the Board may be canceled by the Board if not  
17 renewed within 60 days after its expiration, and any license canceled in this fashion may not be  
18 reissued but will instead require a new application to seek reissuance.

19 STATUTORY AND REGULATORY PROVISIONS

20 7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action  
21 against any holder of a license who is guilty of “unprofessional conduct,” defined to include, but  
22 not be limited to, any of the following:

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

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

28 ///

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

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

5 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
6 violation of or conspiring to violate any provision or term of this chapter or of the applicable  
7 federal and state laws and regulations governing pharmacy, including regulations established by  
8 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 suspend or  
10 revoke a license when it finds that the licensee has been convicted of a crime substantially related  
11 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 license  
14 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a  
15 crime or act shall be considered substantially related to the qualifications, functions or duties of a  
16 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a  
17 licensee or registrant to perform the functions authorized by her license or registration in a  
18 manner consistent with the public health, safety, or welfare.”

19 10. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous  
20 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 any  
22 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 to falsely  
24 make, alter, forge, utter, publish, pass, or attempt to pass, as genuine, a prescription for a drug, or  
25 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 person other  
27 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 prescribe,  
4 administer, or furnish a controlled substance for himself or herself.

5 16. Health and Safety Code section 11173, subdivision (a), provides that no person shall  
6 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 obtain or  
10 possess a prescription that does not comply with the Uniform Controlled Substances Act [Health  
11 & Safety Code, § 11000 et seq.], to obtain a controlled substance by means of such non-compliant  
12 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 to possess  
14 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 to possess  
17 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 to forge or  
19 alter a prescription, to issue or utter an altered prescription, to issue or utter a prescription bearing  
20 a forged or fictitious signature for any narcotic drug, to obtain a narcotic drug by any forged,  
21 fictitious, or altered prescription, or to possess any narcotic drug secured by a forged, fictitious, or  
22 altered prescription.

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

26 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

27 22. Section 4021 of the Code states:  
28

1       “Controlled substance’ means any substance listed in Chapter 2 (commencing with Section  
2 11053) of Division 10 of the Health and Safety Code.”

3       23. Section 4022 of the Code states, in pertinent part:

4       “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use,  
5 except veterinary drugs that are labeled as such, and includes the following:

6       “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without  
7 prescription,’ ‘Rx only,’ or words of similar import.

8       ...

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

11       24. **Norco, Vicodin, Vicodin ES, Lortab, and Lorcet** are among the brand names for  
12 compounds of varying dosages of acetaminophen (aka APAP) and **hydrocodone**, a Schedule III  
13 controlled substance as designated by Health and Safety Code section 11056(e)(4) and dangerous  
14 drug as designated by Business and Professions Code section 4022. The varying compounds are  
15 also known generically as **Hydrocodone with APAP**. These are narcotic drugs.

16       25. **Phenergan with Codeine** is a brand name for a compound of the antihistamine  
17 **promethazine**, a dangerous drug as designated by Business and Professions Code section 4022,  
18 and **codeine**, a Schedule V controlled substance as designated by Health and Safety Code section  
19 11058 and a dangerous drug as designated by Business and Professions Code section 4022. In its  
20 generic form it is also known as **Promethazine with Codeine**. It is a narcotic drug.

21                                   FACTUAL BACKGROUND

22       26. Between on or about June 11, 2007 and on or about July 17, 2008, Respondent was  
23 employed as a pharmacy technician at a Lucky Pharmacy (PHY 48509) in San Pablo, California.  
24 In that position, she had access to controlled substances and dangerous drugs.

25       27. Between in or about March 2008 and in or about June 2008, Respondent made use of  
26 that access to divert/steal controlled substances and dangerous drugs. Specifically, Respondent  
27 forged/created fraudulent prescription documents in the name(s) of fictitious patients, and signed  
28 the names of the fictitious patients in the customer log while stealing/diverting the drugs.

1 28. By this and/or other methods of theft from the pharmacy, Respondent admitted to  
2 taking/diverting at least thirty-two (32) bottles, containing one hundred (100) tablets each, of  
3 **Hydrocodone with APAP** (or name brand versions), and forty (40) bottles, containing sixteen  
4 (16) ounces (one pint) of liquid syrup each, of **Phenergan with Codeine** or **Promethazine with**  
5 **Codeine**. An audit conducted by Lucky for the period from February 23, 2007 to July 22, 2008  
6 revealed shortages/losses for that period of 5,524 tablets of **Hydrocodone with APAP** and  
7 26,260 mls (56 one pint bottles) of **Phenergan** or **Promethazine with Codeine** syrup. During  
8 interviews with loss prevention and/or with police, Respondent admitted to stealing the drugs for  
9 purposes of sale outside of the pharmacy, without prescription, for financial gain.

10 FIRST CAUSE FOR DISCIPLINE

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

12 29. Respondent is subject to discipline under section 4301(f) of the Code in that  
13 Respondent, as described in paragraphs 26 to 28 above, committed numerous acts involving  
14 moral turpitude, dishonesty, fraud, deceit, or corruption.

15 SECOND CAUSE FOR DISCIPLINE

16 (Creation/Signature of False Documents)

17 30. Respondent is subject to discipline under section 4301(g) of the Code in that  
18 Respondent, as described in paragraphs 26 to 28 above, created and/or signed documents that  
19 falsely represented the existence or nonexistence of a state of facts.

20 THIRD CAUSE FOR DISCIPLINE

21 (Conviction of Substantially Related Crime(s))

22 31. Respondent is subject to discipline under section 4301(l) and/or section 490 of the  
23 Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of  
24 substantially related crime(s), in that on or about March 27, 2009, in a criminal case titled *People*  
25 *v. Jaynalee Fajilagutan Manto*, Case No. 02-299320-2 in Contra Costa County Superior Court,  
26 Respondent was convicted of one (1) count of violating Penal Code section(s) 487(a)/508 (Grand  
27 Theft – Embezzlement) a felony, and one (1) count of violating Business and Professions Code  
28 section 4324(a) (Passing a Forged Prescription), a felony. The conviction was entered as follows:

1 a. On or about July 17, 2008, based on the conduct described in paragraphs 26 to  
2 28 above, Respondent was arrested and subsequently charged in *People v. Jaynalee Fajilagutan*  
3 *Manto*, Case No. 02-299320-2 in Contra Costa County Superior Court, with one (1) count of  
4 violating Penal Code section(s) 487(a)/508 (Grand Theft – Embezzlement) a felony, thirteen (13)  
5 counts (Two to Fourteen) of violating Business and Professions Code section 4324(a) (Passing a  
6 Forged Prescription), all felonies, and three (3) counts (Fifteen to Seventeen) of violating Health  
7 and Safety Code section 11351 (Possessing Controlled Substances for Sale), all felonies;

8 b. On or about March 27, 2009, Respondent pleaded no contest and was found  
9 guilty of Count One (Penal Code section(s) 487(a)/508 [Grand Theft – Embezzlement]), a felony,  
10 and Count Two (Business and Professions Code section 4324(a) [Passing a Forged Prescription]),  
11 also a felony. The remaining counts (Three to Seventeen) were dismissed by motion of the DA.  
12 Imposition of sentence was suspended in favor of a period of formal probation of three (3) years,  
13 on terms and conditions including 180 days in jail (2 days credit) or electronic home detention,  
14 counseling as directed by probation, search conditions, abstention from use, fines and fees, and a  
15 prohibition on acting as a fiduciary for any other person.

16 FOURTH CAUSE FOR DISCIPLINE

17 (Furnishing of Controlled Substance)

18 32. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section  
19 4059 of the Code, and/or Health and Safety Code section 11170 in that Respondent, as described  
20 in paragraphs 26 to 28 above, furnished to herself or another without a valid prescription, and/or  
21 conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.

22 FIFTH CAUSE FOR DISCIPLINE

23 (Possession of Controlled Substance)

24 33. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section  
25 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described  
26 in paragraphs 26 to 28 above, possessed, conspired to possess, and/or assisted in or abetted  
27 possession of, a controlled substance, without a prescription.

28 ///

1 SIXTH CAUSE FOR DISCIPLINE

2 (Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

3 34. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,  
4 and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs  
5 26 to 28 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a  
6 controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

7 SEVENTH CAUSE FOR DISCIPLINE

8 (Making, Uttering and/or Using False or Forged Prescriptions)

9 35. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section  
10 4324 of the Code, and/or Health and Safety Code section(s) 11157 and/or 11368, in that  
11 Respondent, as described in paragraphs 26 to 28 above, falsely made, altered, forged, uttered,  
12 published, passed, or attempted to pass, a false, forged, fictitious or altered prescription for a  
13 (narcotic) drug, had in her possession a (narcotic) drug secured by a false, forged, fictitious or  
14 altered prescription, or conspired and/or assisted in or abetted any of these acts.

15 EIGHTH CAUSE FOR DISCIPLINE

16 (Issuance and/or Use of Invalid Prescription(s))

17 36. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,  
18 and/or Health and Safety Code section(s) 11150 and/or 11175, in that Respondent, as described in  
19 paragraphs 26 to 28 above, issued prescriptions without authority to do so, obtained or possessed  
20 an invalid prescription, obtained or possessed a controlled substance by means of such invalid  
21 prescription, or conspired and/or assisted in or abetted any of these acts.

22 NINTH CAUSE FOR DISCIPLINE

23 (Possession or Purchase of Controlled Substance for Sale)

24 37. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,  
25 and/or Health and Safety Code section(s) 11351, in that Respondent, as described in paragraphs  
26 26 to 28 above, possessed or purchased a narcotic drug for sale, or conspired and/or assisted in or  
27 abetted such possession or purchase for sale.

28 ///



1 TENTH CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct)

3 38. Respondent is subject to discipline under section 4301 of the Code in that  
4 Respondent, as described in paragraphs 26 to 37 above, engaged in unprofessional conduct.

5  
6 PRAYER

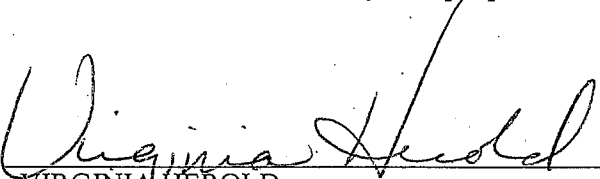
7 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
8 and that following the hearing, the Board of Pharmacy issue a decision;

9 1. Revoking or suspending Pharmacy Technician License Number TCH 73450, issued  
10 to Jayna F. Manto (Respondent);

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

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

14  
15 DATED: 7/8/09

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

22  
23  
24  
25  
26  
27  
28 SF2008200610  
20208444.doc