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

11 In the Matter of the Accusation Against:

Case No. 3403

12 **NANCY MICHELE GAMBOA**
13 **3988 Louisiana Street**
14 **San Diego, CA 92104**

A C C U S A T I O N

15 **Pharmacy Technician Registration No. TCH**
82115

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 March 5, 2008, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 82115 to Nancy Michele Gamboa (Respondent). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought
25 herein and will expire on January 31, 2010, unless renewed.

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

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5 7. Section 493 of the Code states:

6 Notwithstanding any other provision of law, in a proceeding conducted by a
7 board within the department pursuant to law to deny an application for a license or to
8 suspend or revoke a license or otherwise take disciplinary action against a person who
9 holds a license, upon the ground that the applicant or the licensee has been convicted
10 of a crime substantially related to the qualifications, functions, and duties of the
11 licensee in question, the record of conviction of the crime shall be conclusive
12 evidence of the fact that the conviction occurred, but only of that fact, and the board
13 may inquire into the circumstances surrounding the commission of the crime in order
14 to fix the degree of discipline or to determine if the conviction is substantially related
15 to the qualifications, functions, and duties of the licensee in question. As used in this
16 section, "license" includes "certificate," "permit," "authority," and "registration."

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

20 9. Section 4060 of the Code states:

21 No person shall possess any controlled substance, except that furnished to a
22 person upon the prescription of a physician, dentist, podiatrist, optometrist,
23 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant
24 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a
25 nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to
26 Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist
27 pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
28 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.

10. Section 4115(d) of the Code states in pertinent part that it is unlawful to work
as a pharmacy technician without being licensed by the Board.

11. Section 4301 of the Code states:

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:

1
2 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
3 deceit, or corruption, whether the act is committed in the course of relations as a
4 licensee or otherwise, and whether the act is a felony or misdemeanor or not.

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

7 (l) The conviction of a crime substantially related to the qualifications,
8 functions, and duties of a licensee under this chapter. The record of conviction of a
9 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
10 States Code regulating controlled substances or of a violation of the statutes of this
11 state regulating controlled substances or dangerous drugs shall be conclusive
12 evidence of unprofessional conduct. In all other cases, the record of conviction shall
13 be conclusive evidence only of the fact that the conviction occurred. The board may
14 inquire into the circumstances surrounding the commission of the crime, in order to
15 fix the degree of discipline or, in the case of a conviction not involving controlled
16 substances or dangerous drugs, to determine if the conviction is of an offense
17 substantially related to the qualifications, functions, and duties of a licensee under this
18 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
19 contendere is deemed to be a conviction within the meaning of this provision. The
20 board may take action when the time for appeal has elapsed, or the judgment of
21 conviction has been affirmed on appeal or when an order granting probation is made
22 suspending the imposition of sentence, irrespective of a subsequent order under
23 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
24 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
25 dismissing the accusation, information, or indictment.

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

REGULATORY PROVISIONS

12. Health and Safety Code section 11170 states:

No person shall prescribe, administer, or furnish a controlled substance for himself.

13. Health and Safety Code section 11173(a) states:

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.

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

2 For the purpose of denial, suspension, or revocation of a personal or facility
3 license pursuant to Division 1.5 (commencing with Section 475) of the Business and
4 Professions Code, a crime or act shall be considered substantially related to the
5 qualifications, functions or duties of a licensee or registrant if to a substantial degree
6 it evidences present or potential unfitness of a licensee or registrant to perform the
7 functions authorized by his license or registration in a manner consistent with the
8 public health, safety, or welfare.

9 15. California Code of Regulations, title 16, section 1769(b) states:

10 ...

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

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

16 (2) Total criminal record.

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

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

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

21 COST RECOVERY

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

26 DRUG

27 17. Hydrocodone/APAP is the generic name for Norco, a Schedule III controlled
28 substance pursuant to Health and Safety Code section 11056(e)(4).

29 FIRST CAUSE FOR DISCIPLINE

30 (September 19, 2008 Conviction for Theft of Controlled Substances)

31 18. Respondent is subject to disciplinary action under Code sections 490 and 4301(l) in
32 that she has been convicted of a crime substantially related to the qualifications duties and
33 functions of a pharmacy technician. Respondent was convicted of violating Penal Code section

1 487(b)(3) grand theft, for stealing drugs from the pharmacy where she was employed as a
2 pharmacy technician. The circumstances are as follows:

3 19. Respondent worked as a pharmacy technician at a CVS Pharmacy in San Diego from
4 about October 12, 2004 to July 11, 2008 when she was terminated for several thefts of
5 Hydrocodone/APAP 10-325 (hydrocodone).

6 20. On or about May 22, 2008, a Loss Prevention Specialist (LPS) for CVS Pharmacies
7 reviewed an inventory report for the CVS Pharmacy store in San Diego that employed
8 respondent. The report revealed inventory shortages of hydrocodone totaling 3,639 pills. Based
9 upon the shortages, the LPS installed a hidden camera system in the area where the hydrocodone
10 was located on May 27, 2008.

11 21. The videotape revealed the following:

12 a. On June 1, 2008, respondent is seen taking a bottle of hydrocodone from the
13 shelf and putting into her pants.

14 b. On June 14, 2008, respondent is seen taking a bottle of hydrocodone from the
15 shelf, while talking on a cell phone, and putting the bottle in her pants in full view of the camera.
16 She then pulls her coat down to conceal the bulge.

17 c. On June 17, 2008, respondent is seen putting a bottle of hydrocodone in the left
18 side of her pants.

19 d. On June 24, 2008, respondent is seen taking three bottles of hydrocodone from
20 the shelf. She puts one bottle on a lower shelf and puts two bottles in her pants on the left side.
21 She then exits the drug aisle. A few seconds later she returns and retrieves the third bottle and
22 conceals it in her pants, looks around to see if anyone is watching, and then exits the drug aisle.

23 e. On June 25, 2008, respondent is seen taking a bottle of hydrocodone and
24 putting it into her pants and exiting the drug aisle.

25 f. On June 30, 2008, respondent is seen removing outdated drugs from the
26 pharmacy shelves and placing them in a "returns" box. She is then seen taking two bottles of
27 hydrocodone, which were not outdated, and putting them in the returns box.

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1 g. On July 8, 2008, respondent is seen taking a bottle of hydrocodone, looking to
2 see if anyone is watching, and then putting it in her pants on the left side. Approximately two
3 hours later, respondent returns to the hydrocodone aisle and takes a second bottle and puts it in
4 her pants on the right side and leaves the drug aisle.

5 h. As seen on the videotape, respondent took 1,100 tablets of hydrocodone.

6 22. On July 12, 2008, respondent was arrested for grand theft and unlawful possession of
7 hydrocodone. On September 19, 2008, in a criminal proceeding entitled *People of the State of*
8 *California v. Nancy Michele Gamboa*, in the San Diego Superior Court, case number CD214797,
9 respondent was convicted on her plea of guilty of grand theft. On November 25, 2008, she was
10 sentenced to three years formal probation, to submit to custody for 365 days which is stayed
11 pending successful completion of probation, to pay fines and penalties, to make restitution to the
12 victim, and to complete six months at a Women's Recovery Center, among other things.

13 **SECOND CAUSE FOR DISCIPLINE**

14 (Possession of a Controlled Substance Without a Prescription)

15 23. Respondent is subject to disciplinary action under Code section 4301(o) in that she
16 possessed controlled substances without a prescription in violation of Code section 4060, as set
17 forth above in paragraphs 18 through 22.

18 **THIRD CAUSE FOR DISCIPLINE**

19 (Furnishing of a Controlled Substance Without a Prescription)

20 24. Respondent is subject to disciplinary action under Code section 4301(o) by furnishing
21 a controlled substance to herself without a prescription in violation of Business and Professions
22 Code section 4059, as set forth above in paragraphs 18 through 22.

23 **FOURTH CAUSE FOR DISCIPLINE**

24 (Commission of Acts of Dishonesty and Fraud)

25 25. Respondent is subject to disciplinary action under Code section 4301(f) for obtaining
26 controlled substances through theft and dishonesty, as set forth above in paragraphs 18 through
27 22.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 (Fraud, Deceit or Subterfuge)

3 26. Respondent is subject to disciplinary action under Code section 4301(j) for violating
4 Health and Safety Code sections 11170 and 11173(a), for obtaining controlled substances for
5 herself through fraud, deceit or subterfuge, as set forth above in paragraph 18 through 22.

6 **SIXTH CAUSE FOR DISCIPLINE**

7 (Working Without a License)

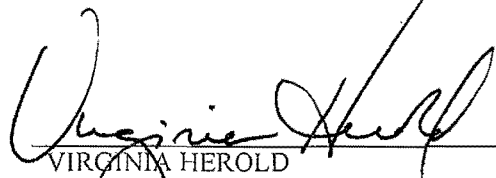
8 27. Respondent is subject to disciplinary action under Code section 1445(e) by working
9 at CVS Pharmacy from August 28, 2007 to March 4, 2008 while her pharmacy technician permit
10 was cancelled due to non-payment of fees.

11 PRAYER

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

- 14 1. Revoking or suspending Pharmacy Technician Registration Number TCH 82115,
15 issued to Nancy Michele Gamboa.
- 16 2. Ordering Nancy Michele Gamboa to pay the Board of Pharmacy the reasonable costs
17 of the investigation and enforcement of this case, pursuant to Business and Professions Code
18 section 125.3;
- 19 3. Taking such other and further action as deemed necessary and proper.

20
21 DATED: 12/21/09



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

28 SD2009804406