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1 EDMUND G. BROWN JR.
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JUSTIN R. SURBER

4 Deputy Attorney General
State Bar No. 226937
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 355-5437
6 Facsimile: (415) 703-5480
Attorneys for Complainant

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

10 In the Matter of the Accusation Against:

Case No. 3407

11 **PATRICIA FERNANDEZ**
12 1969 Tate Street, Apt. C104
13 East Palo Alto, CA 94303

ACCUSATION

14 **Pharmacy Technician License No. TCH**
15 **82566**

16 Respondent.

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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 June 2, 2008, the Board of Pharmacy issued Pharmacy Technician
23 License Number TCH 82566 to Patricia Fernandez (Respondent). The Pharmacy Technician
24 License was in full force and effect at all times relevant to the charges brought herein and will
25 expire on June 30, 2010, 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. All section references are to the Business and Professions Code ("Code") unless otherwise indicated.

4. Section 4300 of the Code states:

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

"(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

"(1) Suspending judgment.

"(2) Placing him or her upon probation.

"(3) Suspending his or her right to practice for a period not exceeding one year.

"(4) Revoking his or her license.

"(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

..."

"(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure."

5. 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:

"(a) Gross immorality.

..."

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

4 "..."

5 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous
6 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
7 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
8 to the extent that the use impairs the ability of the person to conduct with safety to the public the
9 practice authorized by the license.

10 "..."

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

13 "..."

14 "(l) The conviction of a crime substantially related to the qualifications, functions, and
15 duties of a licensee under this chapter. . . [T]he record of conviction shall be conclusive evidence
16 only of the fact that the conviction occurred. The board may inquire into the circumstances
17 surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of
18 a conviction not involving controlled substances or dangerous drugs, to determine if the
19 conviction is of an offense substantially related to the qualifications, functions, and duties of a
20 licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo
21 contendere is deemed to be a conviction within the meaning of this provision. The board may
22 take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed
23 on appeal or when an order granting probation is made suspending the imposition of sentence,
24 irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to
25 withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of
26 guilty, or dismissing the accusation, information, or indictment.

27 "..."

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

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6 6. Section 4324 of the Code states:

7 "(a) Every person who signs the name of another, or of a fictitious person, or falsely makes,
8 alters, forges, utters, publishes, passes, or attempts to pass, as genuine, any prescription for any
9 drugs is guilty of forgery and upon conviction thereof shall be punished by imprisonment in the
10 state prison, or by imprisonment in the county jail for not more than one year."

11 7. Section 490 of the Code states:

12 "(a) In addition to any other action that a board is permitted to take against a licensee, a
13 board may suspend or revoke a license on the ground that the licensee has been convicted of a
14 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
15 or profession for which the license was issued.

16 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
17 discipline a licensee for conviction of a crime that is independent of the authority granted under
18 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
19 of the business or profession for which the licensee's license was issued.

20 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
21 conviction following a plea of nolo contendere. Any action that a board is permitted to take
22 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
23 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
24 made suspending the imposition of sentence, irrespective of a subsequent order under the
25 provisions of Section 1203.4 of the Penal Code.

26 "(d) The Legislature hereby finds and declares that the application of this section has been
27 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th
28 554, and that the holding in that case has placed a significant number of statutes and regulations

1 in question, resulting in potential harm to the consumers of California from licensees who have
2 been convicted of crimes. Therefore, the Legislature finds and declares that this section
3 establishes an independent basis for a board to impose discipline upon a licensee, and that the

4 amendments to this section made by Senate Bill 797 of the 2007-08 Regular Session do not
5 constitute a change to, but rather are declaratory of, existing law.

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

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

13 DANGEROUS DRUGS

14 9. Section 4022 of the Code states:

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

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

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

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

24 10. Flagyl is the brand name for metronidazole and is a dangerous drug as defined by
25 section 4022 of the code.

26 11. Promethazine is a dangerous drug as defined by section 4022 of the code.

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1 COSTS

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

6 FACTUAL ALLEGATIONS

7 13. On June 20, 2008 The Board of Pharmacy (BoP) received a letter from Orriette
8 Quandt, Director of Pharmacy Compliance, Longs Drugs Stores. The letter informed the BoP that
9 Respondent had be terminated from Longs Drug Store #292 for theft, unauthorized discounts,
10 under charging a fellow employee for merchandise, and typing a fraudulent prescription.

11 14. From about December 1, 2007 until June 2008 stole approximately \$1200 in
12 merchandise from her employer, Longs Drugs. The stolen merchandise included the prescription
13 medication promethazine. During this same time period, Respondent gave unauthorized
14 discounts to a fellow employee and her personal friends. Respondent fraudulently approved a
15 refill of the prescription drug Flagyl by using a co-worker's name. Respondent did not have a
16 prescription for the refill but indicated she did.

17 15. On or about June 12, 2008 Respondent a signed statement in which she admitted
18 stealing general merchandise, under charging a fellow employee for merchandise, stealing
19 promethazine, and typing a fraudulent Flagyl prescription.

20 16. On or about June 12, 2008 Respondent admitted to police she stole over \$1200 in
21 merchandise from Longs including promethazine.

22 17. On or about September 23, 2008, before Santa Clara County Superior Court, Case No.
23 BB835072, Respondent was convicted on a plea of nolo contendere, of violating Penal Code
24 sections 484-488, petty theft. The circumstances are described in paragraph 14, above.

25 18. On or about May 5, 2009, before Alameda County Superior Court, Case No. 231746-9,
26 Respondent was convicted on a plea of nolo contendere, of violating Vehicle Code section
27 23152(b), driving a vehicle with a blood alcohol level of .08 percent or higher. The
28 circumstances leading to Respondent's conviction are as follows:

1 19. On or November 16, 2008, Respondent was driving northbound on interstate 880.
2 Respondent was pulled over by the California Highway Patrol after she was observed swerving
3 both within and in-between lanes. The California Patrol Officer smelled a strong odor of

4 alcoholic beverage emitting from respondent's vehicle. Respondent admitted she drank both beer
5 and wine earlier. Respondent was unable to perform field sobriety tests as explained and
6 demonstrated. A preliminary alcohol screening device test revealed Respondent had BAC of
7 .137/.144 percent. Respondent was arrested and an implied consent breath test revealed
8 Respondent's BAC was .12 percent.

9 FIRST CAUSE FOR DISCIPLINE

10 (Gross Immorality)

11 20. Respondent is subject to disciplinary action under section 4301(a) of the code in that
12 Respondent was involved in acts of gross immorality. The circumstances are described in
13 paragraph 12, above.

14 SECOND CAUSE FOR DISCIPLINE

15 (Forged Prescription)

16 21. Respondent is subject to disciplinary action under section 4301(o) and (j) of the code
17 in that Respondent violated Section 4324 of the code by forging a prescription for Flagyl. The
18 circumstances are described in paragraph 12, above.

19 THIRD CAUSE FOR DISCIPLINE

20 (Unprofessional Conduct- moral turpitude, dishonesty, deceit)

21 22. Respondent is subject to disciplinary action under section 4301(f) of the code in that
22 Respondent was involved in acts of moral turpitude, dishonesty, or deceit. The circumstances are
23 described in paragraph 12, above.

24 FOURTH CAUSE FOR DISCIPLINE

25 (Conviction)

26 23. Respondent is subject to disciplinary action under sections 490 and 4301(l) of the
27 code in that Respondent was involved convicted of a crime that is substantially related to the
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1 duties, functions, or qualifications of a Pharmacy Technician. The circumstances are described in
2 paragraph 17, above.

3 FIFTH CAUSE FOR DISCIPLINE

4 (Dangerous or Injurious Use of Alcohol)

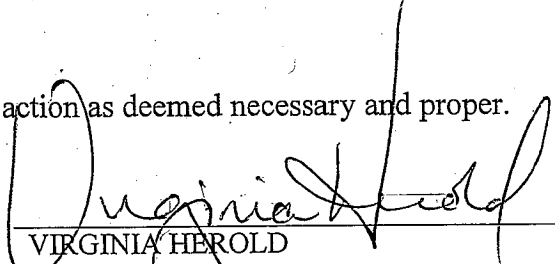
5 24. Respondent is subject to disciplinary action under section 4301(h) of the code in that
6 Respondent used alcohol to an extent that dangerous or injurious to herself. The circumstances
7 are described in paragraph 18-19, above.

8 PRAYER

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

- 11 1. Revoking or suspending Pharmacy Technician License Number TCH 82566, issued
12 to Patricia Fernandez Patricia Fernandez.
- 13 2. Ordering Patricia Fernandez to pay the Board of Pharmacy the reasonable costs of the
14 investigation and enforcement of this case, pursuant to Business and Professions Code section
15 125.3;
- 16 3. Taking such other and further action as deemed necessary and proper.

17 DATED: 9/29/09

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19 VIRGINIA HEROLD
20 Executive Officer
21 Board of Pharmacy
22 Department of Consumer Affairs
23 State of California
24 Complainant

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23 accusation.rtf