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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. 3459

12 **CARMEN GONZALEZ**  
13 **27153 Lavender Street**  
14 **Sun City, CA 92585**

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

15 **Pharmacy Technician Registration No.**  
16 **TCH 36174**

17 Respondent.

18  
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about August 16, 2001, the Board of Pharmacy issued Pharmacy Technician  
24 Registration Number TCH 36174 to Carmen Gonzalez (Respondent). The Pharmacy Technician  
25 Registration was in full force and effect at all times relevant to the charges brought herein and  
26 will expire on January 31, 2011, unless renewed.

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(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter....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 if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision....

....

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

7. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

....

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

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

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

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1           8.    Section 482 of the Code states:

2           Each board under the provisions of this code shall develop criteria to evaluate the  
3 rehabilitation of a person when:

4                   (a) Considering the denial of a license by the board under Section 480; or

5                   (b) Considering suspension or revocation of a license under Section 490.

6           Each board shall take into account all competent evidence of rehabilitation furnished by the  
7 applicant or licensee.

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

12           10.   Section 493 of the Code states:

13           Notwithstanding any other provision of law, in a proceeding conducted by a board within  
14 the department pursuant to law to deny an application for a license or to suspend or revoke a  
15 license or otherwise take disciplinary action against a person who holds a license, upon the  
16 ground that the applicant or the licensee has been convicted of a crime substantially related to the  
17 qualifications, functions, and duties of the licensee in question, the record of conviction of the  
18 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,  
19 and the board may inquire into the circumstances surrounding the commission of the crime in  
20 order to fix the degree of discipline or to determine if the conviction is substantially related to the  
21 qualifications, functions, and duties of the licensee in question.

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

24           11.   Section 4313 of the Code states:

25           In determining whether to grant an application for licensure or whether to discipline or  
26 reinstate a license, the board shall give consideration to evidence of rehabilitation. However,  
27 public protection shall take priority over rehabilitation and, where evidence of rehabilitation and  
28 public protection are in conflict, public protection shall take precedence.



1 The LPA said that Respondent had been employed by Albertson's since February 2007 as a  
2 pharmacy technician. The LPA further stated that she had examined several transactions by  
3 Respondent since December 2, 2007 in which Respondent generated gift cards for customers and  
4 then failed to give them the gift cards. Respondent then spent the gift cards at Albertson's on  
5 groceries.

6 17. The LPA was able to locate fourteen cards which were generated by Respondent and  
7 then in turn were redeemed or used to purchase groceries at Albertson's by Respondent. The total  
8 loss to Albertson's was \$500.00. The LPA viewed Respondent on video generating and then  
9 using the gift cards. The LPA showed the officer the transactions she had retrieved and pointed  
10 out the gift card number generated by Respondent, and then matched the gift card number with  
11 the purchase of merchandise and groceries at Albertson's. The LPA was able to track  
12 Respondent's use of the gift cards because Respondent also used her Albertson's customer card  
13 number to receive additional savings, along with the gift card, to make the purchases. The LPA  
14 stated that a total of \$1200.00 worth of gift cards were generated by Respondent, but only  
15 \$500.00 was redeemed for merchandise and/or groceries.

16 18. The LPA provided the officer with transaction evidence of the embezzlement. The  
17 LPA also stated that there was photographic evidence. The officer observed a transaction in  
18 which Respondent swiped a card in the reader when no customer was present. The LPA had  
19 contacted Respondent prior to the officer's arrival, and had interviewed her about the  
20 transactions. Respondent admitted wrongdoing and wrote a statement further admitting to the  
21 embezzlement.

22 19. Respondent was advised of her Miranda rights, waived them, and provided a  
23 statement to the officer. In the statement, Respondent admitted to the embezzlement of gift cards  
24 from the Albertson's pharmacy. Respondent admitted that she would generate gift cards for  
25 customers without a coupon and without the customer's knowledge. When the customer would  
26 return to pick up the prescription, she would purposely leave the gift card in the prescription bag.  
27 She would complete the transaction and give the prescription to the customer. When the  
28 customer left, she would then retrieve the gift card from the prescription bag and place it in her

1 shirt or jacket pocket. Respondent further stated that she would only create one false gift card  
2 transaction per day so the manager or other employees would not notice what she was doing.  
3 Respondent stated that she spent all of the gift cards. Respondent stated that she did not know  
4 why she did it; she was unable to provide the officer with any explanation.

5 20. Respondent was arrested at the conclusion of the interview and charged with a  
6 violation of Penal Code section 503 (embezzlement over \$400.00), a felony.

7 **FIRST CAUSE FOR DISCIPLINE**

8 (February 29, 2008 Criminal Conviction for Embezzlement on or about January 22, 2008)

9 21. Respondent is subject to disciplinary action under Code sections 490, and 4301(l), in  
10 that she was convicted of a crime substantially related to the duties, functions, and qualifications  
11 of a pharmacy technician, as described in paragraphs 14 through 20, above.

12 **SECOND CAUSE FOR DISCIPLINE**

13 (Unprofessional Conduct- Dishonest Act)

14 22. Respondent is subject to disciplinary action under Code section 4301(f) in that she  
15 committed acts involving moral turpitude, dishonesty, deceit or corruption when she embezzled  
16 \$500.00 from her employer and failed to provide customers with gift cards they were entitled to,  
17 instead wrongfully withholding them for her own personal use, as described in paragraphs 14  
18 through 20, above.

19 **THIRD CAUSE FOR DISCIPLINE**

20 (Unprofessional Conduct- Conduct Warranting Denial of Licensure)

21 23. Respondent is subject to disciplinary action under Code section 4301(f) in that she  
22 committed acts involving moral turpitude, dishonesty, deceit or corruption. Specifically, on or  
23 about January 20, 2009, Respondent renewed her Pharmacy Technician Registration and failed to  
24 disclose the criminal conviction detailed above, in paragraphs 14 through 20, on the renewal  
25 application. Respondent marked "NO" to the question asking is she had been convicted of any  
26 crime since the last renewal.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 (Unprofessional Conduct- Conduct Warranting Denial of Licensure)

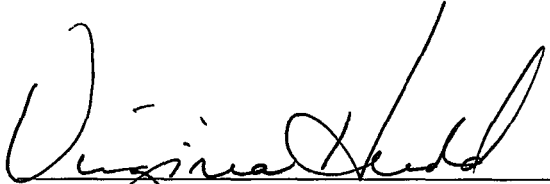
3 24. Respondent is subject to disciplinary action under Code section 4301(p), in that she  
4 committed acts which, if she had committed before she were issued her Pharmacy Technician  
5 Registration, would have warranted the denial of her application for licensure in that she  
6 embezzled \$500.00 from her employer and failed to provide customers with gift cards they were  
7 entitled to, instead wrongfully withholding them for her own personal use, as described in  
8 paragraphs 14 through 20, above.

9 PRAYER

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

- 12 1. Revoking or suspending Original Pharmacy Technician Registration Number TCH  
13 36174, issued to Respondent Carmen Gonzalez.
- 14 2. Ordering Respondent Carmen Gonzalez to pay the Board of Pharmacy the reasonable  
15 costs of the investigation and enforcement of this case, pursuant to Business and Professions  
16 Code section 125.3;
- 17 3. Taking such other and further action as deemed necessary and proper.

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20 DATED: 2/13/10

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

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