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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. 3498

11 **EMILY MARIA LAZARO**
12 532 North N St., #C
13 Lompoc, CA 90621

A C C U S A T I O N

14 Pharmacy Technician Registration No. TCH 33870

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 (Board).

21 2. On or about July 11, 2000, the Board issued Pharmacy Technician Registration No.
22 TCH 33870 to Emily Maria Lazaro (Respondent). The Pharmacy Technician Registration was in
23 full force and effect at all times relevant to the charges brought herein and will expire on
24 May 31, 2010, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board under the authority of the following
27 laws. All section references are to the Business and Professions Code unless otherwise indicated.

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1 STATUTORY PROVISIONS

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

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

9 6. Section 4060 provides that no person shall possess any controlled substance, except
10 that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist,
11 veterinarian, or other authorized licensee.

12 7. Section 4300, subdivision (a), states that “[e]very license issued may be suspended or
13 revoked.”

14 8. Section 4301 states, in pertinent part:

15 "The board shall take action against any holder of a license who is guilty of unprofessional
16 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
17 Unprofessional conduct shall include, but is not limited to, any of the 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 otherwise, and
21 whether the act is a felony or misdemeanor or not.

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

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

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

....

"(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating 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 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. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

....

"(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter 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.

....

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1 "(q) Engaging in any conduct that subverts or attempts to subvert an investigation of the
2 board. . . ."

3 9. Section 4324, subdivision (a), states:

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

8 **REGULATORY PROVISIONS**

9 10. California Code of Regulations, title 16, section 1770 states:

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

16 **COST RECOVERY**

17 11. Section 125.3 provides, in pertinent part, that the Board may request the
18 administrative law judge to direct a licentiate found to have committed a violation or violations of
19 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
20 enforcement of the case.

21 **CONTROLLED SUBSTANCES / DANGEROUS DRUGS**

22 12. Norco is the brand name for the combination narcotic, Hydrocodone and
23 Acetaminophen. Acetaminophen is a Schedule III controlled narcotic substance pursuant to
24 Health and Safety Code section 11056(e)(4) and a dangerous drug pursuant to section 4022.
25 Acetaminophen is a Schedule III controlled substance as designated in Health and Safety Code
26 section 11056(e)(2) and is categorized as a dangerous drug pursuant to section 4022.

27 13. Vicodin, trade name for a combination drug containing hydrocodone bitartrate
28 (opioid analgesic) and acetaminophen, is a Schedule III controlled substance as defined in Health

1 and Safety Code section 11056(e)(7) and is categorized as a dangerous drug according to
2 section 4022.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Conviction of Substantially Related Crime)**

5 14. Respondent is subject to disciplinary action under sections 490, 4300 and 4301,
6 subdivision (l), on the grounds of unprofessional conduct, in conjunction with California Code of
7 Regulations, title 16, section 1770, in that on or about January 6, 2009, Respondent was convicted
8 of a crime substantially related to the qualifications, functions or duties of a pharmacy technician
9 which to a substantial degree evidences her present or potential unfitness to perform the functions
10 authorized by her license or registration in a manner consistent with the public health, safety, or
11 welfare. The circumstances of the conviction are that:

12 a. On or about January 6, 2009, after pleading nolo contendere to two (2)
13 misdemeanors, Count 2 violating Penal Code section 508 [embezzlement by employee] and
14 Count 3 violating Health and Safety Code section 11350 [possession of controlled substances] in
15 the criminal proceeding entitled *The People of the State of California v. Emily Maria Lazaro*
16 (Super. Ct. Santa Barbara County, 2008, No. 1288186), Respondent was convicted on Count 2,
17 and on Count 3, she was placed on deferred entry of judgment. On Count 2, the Court sentenced
18 Respondent to one (1) day in jail, placed her on three (3) years probation, and reserved
19 jurisdiction regarding the issue of restitution. On Count 3, the Court ordered Respondent to
20 attend a three (3) year PC1000 diversion program.

21 b. The circumstances underlying the conviction are that on or about May 20, 2008,
22 when Respondent was working as a pharmacy technician at Public Health Pharmacy – Lompoc,
23 Respondent fraudulently processed a deceased patient's refill prescription for 30 Norco 10mg
24 tablets, and on or about June 6, 2008, she fraudulently processed an incarcerated patient's
25 illegitimately obtained physician refill prescription for 60 Vicodin 5mg tablets. On or about
26 July 24, 2008, on a filed DEA Form 106, Report of Theft or Loss of Controlled Substances,
27 Respondent's employer identified the 90 tablets loss as employee pilferage. On or about
28 September 11, 2008, Respondent admitted to both incidents of theft, admitted to committing

1 similar thefts on at least six (6) other occasions, and informed investigating authorities that after
2 filling each prescription, she took the controlled substances home and sold them for \$3.00 a
3 tablet. Subsequently, on or about September 11, 2008, Respondent resigned from her job.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Possession of Controlled Substances, Illegally)**

6 15. Respondent is subject to disciplinary action under sections 4300 and 4301,
7 subdivisions (j) and (o), in conjunction with section 4060, on the grounds of unprofessional
8 conduct, in that Respondent possessed controlled substances and dangerous drugs, without valid
9 prescriptions. Complainant refers to and by this reference incorporates the allegations set forth
10 above in paragraph 14, subparagraphs (a) and (b), inclusive, as though set forth fully.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Fraudulent Prescriptions)**

13 16. Respondent is subject to disciplinary action under sections 4300 and 4301,
14 subdivisions (g), (j) and (o), in conjunction with section 4324, subdivision (a), on the grounds of
15 unprofessional conduct, in that Respondent fraudulently processed prescriptions for controlled
16 substances and dangerous drugs. Complainant refers to and by this reference incorporates the
17 allegations set forth above in paragraphs 14 - 15, inclusive, as though set forth fully.

18 **FOURTH CAUSE FOR DISCIPLINE**

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

20 17. Respondent is subject to disciplinary action under sections 4300 and 4301,
21 subdivision (f), on the grounds of unprofessional conduct, in that Respondent committed acts
22 involving moral turpitude, dishonesty, fraud, deceit, or corruption. Complainant refers to and by
23 this reference incorporates the allegations set forth above in paragraphs 14 - 16, inclusive, as
24 though set forth fully.

25 **FIFTH CAUSE FOR DISCIPLINE**

26 **(Dangerous Use of Controlled Substances/Dangerous Drugs)**

27 18. Respondent is subject to disciplinary action under sections 4300 and 4301,
28 subdivision (h), on the grounds of unprofessional conduct, in that Respondent used dangerous

1 drugs to the extent or in a manner as to be dangerous or injurious to others when she fraudulently
2 obtained controlled substances and dangerous drugs and sold them to others without valid
3 prescriptions. Complainant refers to and by this reference incorporates the allegations set forth
4 above in paragraphs 14 - 17, inclusive, as though set forth fully.

5 **SIXTH CAUSE FOR DISCIPLINE**

6 **(Subvert or Attempt to Subvert a Board Investigation)**

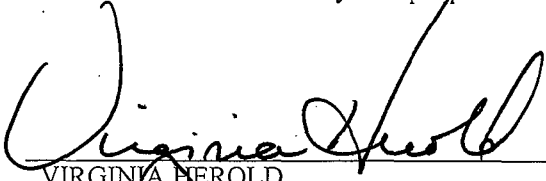
7 19. Respondent is subject to disciplinary action under sections 4300 and 4301,
8 subdivision (q), on the grounds of unprofessional conduct, in that on or about March 2, 2009,
9 Respondent subverted or attempted to subvert an investigation of the board when she failed to
10 present herself as agreed before board investigators. Complainant refers to and by this reference
11 incorporates the allegations set forth above in paragraphs 14 - 18, inclusive, as though set forth
12 fully.

13 **PRAYER**

14 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
15 and that following the hearing, the Board issue a decision:

- 16 1. Revoking or suspending Pharmacy Technician Registration No. TCH 33870, issued
17 to Respondent;
- 18 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
19 enforcement of this case, pursuant to section 125.3; and
- 20 3. Taking such other and further action as deemed necessary and proper.

21
22 DATED: 6/1/10


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

27 LA2009604454
28 4/8/2010dmm
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