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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. 3549

11 **JAN PERRY DAYAO**
12 26 Belle Avenue
13 San Francisco, CA 94132

A C C U S A T I O N

14 **Pharmacy Technician Registration No. TCH**
64006

15 Respondent.

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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 July 30, 2005, the Board of Pharmacy issued Pharmacy Technician
22 Registration Number TCH 64006 to Jan Perry Dayao (Respondent). The Pharmacy Technician
23 Registration was in full force and effect at all times relevant to the charges brought herein and
24 will expire on July 31, 2011, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
27 Consumer Affairs, under the authority of the following laws. All section references are to the
28 Business and Professions Code unless otherwise indicated.

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4. Section 4300 of the Code states:

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

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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:

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

"(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

1 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
2 indictment.

3 6. Section 4059 of the Code states, in pertinent part, that a person may not furnish any
4 dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,
5 veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any
6 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist,
7 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

8 7. Section 4060 of the Code states:

9 "No person shall possess any controlled substance, except that furnished to a person upon
10 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
11 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-
12 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician
13 assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a
14 pharmacist pursuant to either Section 4052.1 or 4052.2. This section shall not apply to the
15 possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist,
16 physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-
17 midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled
18 with the name and address of the supplier or producer.

19 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a
20 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and
21 devices."

22 8. Code section 4021 states:

23 "'Controlled substance' means any substance listed in Chapter 2 (commencing with Section
24 11053) of Division 10 of the Health and Safety Code."

25 9. Code section 4022 provides:

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

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

3 “(b) Any device that bears the statement: ‘Caution: federal law restricts this device
4 to sale by or on the order of a _____,’ ‘Rx only,’ or words of similar import . . .

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

7 10. Section 490(a) of the Code states:

8 “In addition to any other action that a board is permitted to take against a licensee, a board
9 may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if
10 the crime is substantially related to the qualifications, functions, or duties of the business or
11 profession for which the license was issued.”

12 11. 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 his license or registration in a manner
18 consistent with the public health, safety, or welfare.”

19 COSTS

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

24 DRUGS INVOLVED

25 13. Hydrocodone (AKA “Vicodin” “Norco” “Vicoprofen” when mixed with
26 Acetaminophen or Ibuprofen), is a Schedule III controlled substance as designated by Health and
27 Safety Code section 11056, subdivision (e)(4), and a dangerous drug within the meaning of Code
28 section 4022.

1 14. Diazepam is a schedule IV controlled substance pursuant to Health and Safety Code
2 Section 11057(d)(9).

3 15. Alprazolam (AKA Xanax) is a Schedule IV controlled substance as designated by
4 Health and Safety Code section 11057, subdivision (d)(1),

5 FACTUAL BACKGROUND

6 16. From about February 2009 until about May 2009, Respondent stole Alprazolam,
7 Diazepam, and several different mixtures containing Hydrocodone, from his employer Rite Aid.
8 Respondent sold the drugs to an unknown individual at a pool hall.

9 17. On or about August 13, 2009, in San Francisco County Superior Court Case No.
10 2419031, Respondent was convicted of felony embezzlement in violation of Penal Code §508(f).
11 The circumstances are described in Paragraph 16, above.

12 FIRST CAUSE FOR DISCIPLINE

13 (Moral Turpitude, Dishonesty, and/or Deceit)

14 18. Respondent is subject to disciplinary action under section 4301(f) of the Code in that
15 Respondent committed moral turpitude, dishonesty, and/or deceit. The circumstances are
16 described in Paragraph 16 above.

17 SECOND CAUSE FOR DISCIPLINE

18 (Violation of Drug Laws)

19 19. Respondent is subject to disciplinary action under section 4301(j) of the Code in that
20 Respondent violated section 4059 of the Code by furnishing controlled substances and drugs
21 without a prescription. The circumstances are described in Paragraph 16 above.

22 THIRD CAUSE FOR DISCIPLINE

23 (Violation of Drug Laws)

24 20. Respondent is subject to disciplinary action under section 4301(j) of the Code in that
25 Respondent violated section 4060 of the Code by possessing controlled substances and dangerous
26 drugs without a prescription. The circumstances are described in Paragraph 16 above.

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1 FOURTH CAUSE FOR DISCIPLINE

2 (Conviction)

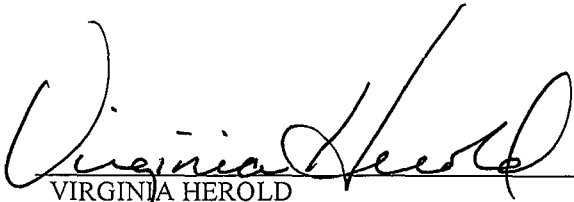
3 21. Respondent is subject to disciplinary action under sections 4301(l) and 490 of the
4 Code in that Respondent was convicted of a crime that is substantially related to the
5 qualifications, functions, and duties of a pharmacy technician. The circumstances are described
6 in Paragraph 17 above.

7 PRAYER

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

- 10 1. Revoking or suspending Pharmacy Technician Registration Number TCH 64006,
11 issued to Jan Perry Dayao.
- 12 2. Ordering Jan Perry Dayao to pay the Board of Pharmacy the reasonable costs of the
13 investigation and enforcement of this case, pursuant to Business and Professions Code section
14 125.3;
- 15 3. Taking such other and further action as deemed necessary and proper.

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18 DATED: 6/3/10


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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