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

11 In the Matter of the Accusation Against:  
12 **PATRICIA ESTELLA ACOSTA**  
15811 Casmir Avenue  
13 Gardena, CA 90249  
Pharmacy Technician Registration No. TCH 4497

Case No. 3576

**ACCUSATION**

14 Respondent.

15  
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.  
21 2. On or about February 8, 1993, the Board of Pharmacy (Board) issued Pharmacy  
22 Technician Registration Number TCH 4497 to Patricia Estella Acosta (Respondent). The  
23 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges  
24 brought herein and will expire on April 30, 2012, 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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STATUTORY PROVISIONS

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

5. Section 480 states, in pertinent part:

"(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken 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 the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another."

6. Section 4022 states:

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

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

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

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

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1           7.    Section 4051, subdivision (a), states:

2           "(a) Except as otherwise provided in this chapter, it is unlawful for any person to  
3 manufacture, compound, furnish, sell, or dispense any dangerous drug or dangerous device, or to  
4 dispense or compound any prescription pursuant to Section 4040 of a prescriber unless he or she  
5 is a pharmacist under this chapter."

6           8.    Section 4059, subdivision (a) states, in pertinent part:

7           "[A] person may not furnish any dangerous drug except upon the prescription of a  
8 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor."

9           9.    Section 4060 states, in pertinent part:

10          "No person shall possess any controlled substance, except that furnished to a person upon  
11 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or [other authorized  
12 health care professional]."

13          10.   Section 4300, subdivision (a), states that "[e] very license issued may be suspended or  
14 revoked."

15          11.   Section 4301 states:

16          "The board shall take action against any holder of a license who is guilty of unprofessional  
17 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.  
18 Unprofessional conduct shall include, but is not limited to, any of the following:

19           ....

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

23           ....

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 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.

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

**CONTROLLED SUBSTANCES / DANGEROUS DRUGS**  
**PROVISIONS**

12. "Hydrocodone is a Schedule II controlled narcotic substance pursuant to Health and Safety Code section 11055, subdivision (b)(J), and a dangerous drug pursuant to Business and Professions Code section 4022. Preparations containing hydrocodone in combination with other non-narcotic medicinal ingredients are in Schedule III.

14. "Viagra" is a brand name of sildenafil citrate, a treatment for erectile dysfunction. It is categorized as a dangerous drug pursuant to Business and Professions Code section 4022.

**COST RECOVERY**

13. Section 125.3 provides, in pertinent part, that the Board may request that the administrative law judge direct a licentiate found to have committed a violation or violations of

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1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
2 enforcement of the case.

3 **FIRST CAUSE FOR DISCIPLINE**

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

5 14. Respondent is subject to disciplinary action under section 4301, subdivision (l), as a  
6 result of her conviction of a crime that is substantially related to the qualifications, functions, and  
7 duties of a registered pharmacy technician. On or about August 4, 2009, after pleading nolo  
8 contendere, Respondent was convicted of one felony count of violating Penal Code section 487,  
9 subdivision (a) [grand theft], in the criminal proceeding entitled *The People of the State of*  
10 *California v. Patricia Estella Acosta* (Super. Ct. Los Angeles County, 2009, No. YA075113).  
11 Respondent was sentenced to 30 days in jail and placed on three years probation. She was also  
12 ordered to pay \$2,679.60 in victim restitution. The underlying factual circumstances revolve  
13 around Respondent's arrest by officers of the Gardena Police Department, which occurred on or  
14 about April 1, 2009, and followed an eight-month investigation conducted by the Loss Prevention  
15 Manager of the CVS Pharmacy in Gardena, California, where Respondent worked as a pharmacy  
16 technician. As part of this investigation, the Loss Prevention Manager arranged for video  
17 surveillance, which revealed Respondent removing hydrocodone pills on five separate days when  
18 there were no hydrocodone sales. Respondent admitted taking 40 bottles of hydrocodone and one  
19 bottle of Viagra, and further admitted selling those controlled substances to an unidentified third  
20 party. The purchase value of the stolen controlled substances was \$2,679.60.

21 **SECOND CAUSE FOR DISCIPLINE**

22 **(Violating State Laws Regulating Controlled Substances)**

23 15. Respondent is subject to disciplinary action under section 4301, subdivision (j), for  
24 violating section 4051, subdivision (a), which provides that only licensed pharmacists may  
25 dispense or furnish dangerous drugs. Complainant refers to and incorporates all the allegations  
26 contained in paragraph 14, as though set forth fully.

27 16. Respondent is subject to disciplinary action under section 4301, subdivision (j), for  
28 violating section 4059, subdivision (a), which provides that it is unlawful to dispense or furnish

1 dangerous drugs without a valid prescription. Complainant refers to and incorporates all the  
2 allegations contained in paragraph 14, as though set forth fully.

3 17. Respondent is subject to disciplinary action under section 4301, subdivision (j), for  
4 violating section 4060, which provides that it is unlawful to possess any controlled substance  
5 without a valid prescription.

6 **THIRD CAUSE FOR DISCIPLINE**

7 **(Dangerous Use of a Controlled Substance)**

8 18. Respondent is subject to disciplinary action under section 4301, subdivision (h), for  
9 using the controlled substance hydrocodone in a manner that was dangerous to herself and others.  
10 In a signed statement that Respondent provided to the Board on or about September 15, 2009,  
11 Respondent informed the Board, under penalty of perjury, that she was addicted to hydrocodone,  
12 and was stealing approximately 30 10-mg. tablets for self-use every few weeks.

13 **FOURTH CAUSE FOR DISCIPLINE**

14 **(Dishonesty and/or Fraudulent Conduct)**

15 19. Respondent is subject to disciplinary action under section 4301, subdivision (f), for  
16 engaging in dishonesty and/or fraudulent conduct.

17 a. Respondent engaged in repeated acts of dishonesty and fraudulent conduct when she  
18 stole 40 bottles of hydrocodone and one bottle of Viagra, together valued at \$2,679.60, over a  
19 five-month period, from the CVS pharmacy where was employed.

20 b. Respondent engaged in further dishonesty when she gave two completely different  
21 versions of the underlying facts, which contradict each other and, therefore, cannot possibly both  
22 be true. Respondent informed the CVS Pharmacy Loss Prevention Manager and the Gardena  
23 Police Department that she was selling the stolen dangerous drugs to finance the defense of her  
24 incarcerated son, but she later informed the Board under penalty of perjury that she was taking the  
25 pills only for herself to feed her addiction to hydrocodone.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Committing Acts That Would Warrant the Denial of a License)**

3 20. Respondent is subject to disciplinary action under section 4301, subdivision (p), in  
4 conjunction with section 480, subdivision (a)(1), in that Respondent's felony grand theft  
5 conviction would warrant the denial of an applicant's license. Complainant refers to and  
6 incorporates all the allegations contained in paragraph 14, as though set forth fully.

7 21. Respondent is subject to disciplinary action under section 4301, subdivision (p), in  
8 conjunction with section 480, subdivision (a)(2), in that Respondent's dishonesty and/or  
9 fraudulent acts would warrant the denial of an applicant's license. Complainant refers to and  
10 incorporates all the allegations contained in paragraph 19, including its subparagraphs, as though  
11 set forth fully.

12 **SIXTH CAUSE FOR DISCIPLINE**

13 **(Violating Provisions of the Business and Professions Code)**

14 22. Respondent is subject to disciplinary action under section 4301, subdivision (o), in  
15 that Respondent has violated numerous provisions of the Business and Professions Code.  
16 Complainant refers to and incorporates all the allegations contained in paragraphs 14 through 21,  
17 inclusive, as though set forth fully.

18 **PRAYER**

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

21 1. Revoking or suspending Pharmacy Technician Registration Number TCH 4497,  
22 issued to Respondent;

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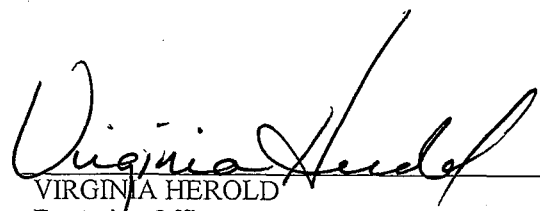
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2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and

3. Taking such other and further action as deemed necessary and proper.

DATED: 6/9/10



VIRGINIA HEROLD  
Executive Officer  
Board of Pharmacy  
Department of Consumer Affairs  
State of California  
*Complainant*

LA2010500697