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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. 3724

12 **DENISE LAVONE HARDY**
13 **9228 City Lights Drive**
14 **Aliso Viejo, CA 92656**

ACCUSATION

15 **Pharmacy Technician Registration No. TCH**
16 **80089**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about March 13, 2008, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 80089 to Denise Lavone Hardy (Respondent). The Pharmacy
25 Technician Registration was in full force and effect at all times relevant to the charges brought
26 herein and will expire on January 31, 2012, 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 unless otherwise indicated.

4. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, 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 4300, subdivision (a) of the Code states that "Every license issued may be suspended or revoked."

STATUTORY AND REGULATORY PROVISIONS

6. Section 482 of the Code states:

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

- (a) Considering the denial of a license by the board under Section 480; or
- (b) Considering the suspension or revocation of a license under Section 490.

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

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

8. Section 492 of the Code states:

Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking

1 disciplinary action against a licensee or from denying a license for professional
2 misconduct, notwithstanding that evidence of that misconduct may be recorded in
a record pertaining to an arrest.

3 This section shall not be construed to apply to any drug diversion program
4 operated by any agency established under Division 2 (commencing with Section
500) of this code, or any initiative act referred to in that division.

5 9. Section 493 of the Code states:

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

11 As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,'
12 and 'registration.'

13 10. Section 4059 of the Code provides, in pertinent part, that a person may not furnish
14 any dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,
15 veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any
16 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist,
17 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

18 11. Section 4060 of the Code states:

19 No person shall possess any controlled substance, except that furnished to
20 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
21 veterinarian, or naturopathic doctor pursuant to Section 3640.7 or furnished pursuant
22 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a
23 nurse practitioner pursuant to Section 2836.1, or physician assistant pursuant to
24 Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist
25 pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section
26 shall not apply to the possession of any controlled substance by a manufacturer,
27 wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist,
28 veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or
physician assistant, when in stock in containers correctly labeled with the name and
address of the supplier or producer.

26 Nothing in this section authorizes a certified nurse-midwife, a nurse
27 practitioner, a physician assistant, or a naturopathic doctor, to order his or her own
28 stock of dangerous drugs or devices.

1 12. Section 4301 of the Code states:

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

6

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

10

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

16

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

19

20 (l) The conviction of a crime substantially related to the qualifications,
21 functions, and duties of a licensee under this chapter. The record of conviction of a
22 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
23 States Code regulating controlled substances or of a violation of the statutes of this
24 state regulating controlled substances or dangerous drugs shall be conclusive
25 evidence of unprofessional conduct. In all other cases, the record of conviction shall
26 be conclusive evidence only of the fact that the conviction occurred. The board may
27 inquire into the circumstances surrounding the commission of the crime, in order to
28 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 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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13. Title 16, California Code of Regulations, section 1769 states:

(b) When considering the suspension or revocation of a facility or a personal license on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

- (1) Nature and severity of the act(s) or offenses(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) Evidence, if any, of rehabilitation submitted by the licensee.

14. Title 16, California Code of Regulations, section 1770 states:

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

COST RECOVERY

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

DRUG

16. Xanax, a brand name for alprazolam, is a Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(1), and is a dangerous drug pursuant to Business and Professions Code section 4022. Alprazolam tablets are indicated for the management of anxiety disorder or the short-term relief of symptoms of anxiety.

1 FIRST CAUSE FOR DISCIPLINE

2 (November 25, 2009 Conviction for Petty Theft on August 16, 2009)

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

6 a. On or about November 25, 2009, in a criminal proceeding entitled *People of the*
7 *State of California v. Denise Lavone Hardy*, in Orange County Superior Court, case number
8 090SM03993 M A, Respondent was convicted on her plea of guilty for violating Penal Code
9 section 484(a)-488, petty theft, a misdemeanor.

10 b. As a result of the conviction, on or about November 25, 2009, sentencing was
11 continued in order for Respondent to participate in the Deferred Entry of Judgment Misdemeanor
12 Plea Program which required Respondent to complete within 90 days from her entry of the plea,
13 an educational program, provide a DNA sample, pay restitution and all associated costs and fees
14 of the Program, and not commit any new law violations. Upon completion, the District Attorney
15 would move to vacate Respondent's plea, decline to further prosecute the case and recommend
16 that the court dismiss the charge. Respondent did not comply with the terms of the Deferred
17 Entry of Judgment Misdemeanor Plea Program and the latest bench warrant was ordered issued
18 for Respondent on June 25, 2010.

19 c. The facts that led to the conviction were that on or about August 16, 2009,
20 Respondent was shopping at the Pinky Wear Store at 28251 Crown Valley in Laguna Niguel,
21 California. She ripped the security tags off clothing, placed three items of clothing into her purse
22 and was apprehended by the sales clerk's boyfriend. When the Sheriff's Department arrived to
23 investigate, Respondent gave the officer a false name and attempted to conceal her credit cards
24 and other cards issued in her real name in her shoe so that the officer would not learn her identity.
25 At her hearing, Respondent admitted that she "willfully and unlawfully stole the property of
26 Pinky Wear Store, Newport Beach."

1 SECOND CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct-Commission of a Dishonest Act)

3 18. Respondent is subject to disciplinary action under section 4301(f) of the Code in that
4 Respondent committed a dishonest act, namely shoplifting as is more fully set forth in paragraph
5 17 above.

6 THIRD CAUSE FOR DISCIPLINE

7 (Unprofessional Conduct-Use of Controlled Substance)

8 19. Respondent is subject to disciplinary action under section 4301(h) of the Code in that
9 Respondent self-administered a controlled substance. The circumstances are as follows:

10 a. On or about January 22, 2010, the police responded to a report that Respondent and
11 two other individuals were holding straws and passing foil back and forth inside a vehicle at an
12 Arco Gas Station located at 2602 Newport Blvd in Orange County, California. The police
13 questioned the occupants of the vehicle and searched the vehicle and Respondent's purses. In her
14 purses, the police found a piece of folded foil and black residue that formed three lines and straws
15 with white residue on the inside of the straws (some of which were melted at the end). The
16 officer recognized the foil and straws to be opiate smoking devices. Respondent admitted to the
17 officer that the foil and straws belonged to her and that she attempted to smoke half a Xanax pill.

18 b. On or about March 19, 2010, in a criminal proceeding entitled *People of the*
19 *State of California v. Denise Lavon Hardy*, in Orange County Superior Court, case number
20 10HM01411, Respondent pled guilty to violating Health and Safety Code section 11364,
21 possessing controlled substance paraphernalia, a misdemeanor and was granted deferred entry of
22 judgment. Respondent failed to provide proof of enrollment in a drug diversion program pursuant
23 to Penal Code section 1000. A bench warrant was ordered issued for Respondent on April 16,
24 2010.

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct-Violations of the Chapter)**

3 20. Respondent is subject to disciplinary action under Code section 4301(o), for
4 violations of the Pharmacy Act in that on or about January 22, 2010, Respondent furnished to
5 herself and possessed a controlled substance, Xanax, in violation of Code sections 4059 and 4060
6 as is more fully described in paragraph 19 above.

7 **FIFTH CAUSE FOR DISCIPLINE**

8 **(Unprofessional Conduct-Violating Laws Regulating Controlled Substances)**

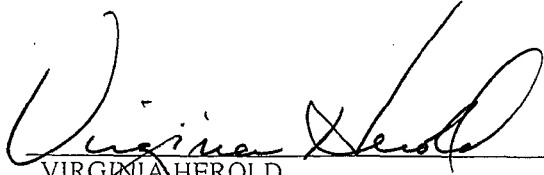
9 21. Respondent is subject to disciplinary action under section 4301(j) of the Code in that
10 on or about January 22, 2010, Respondent violated the California Uniform Controlled Substances
11 Act (Health and Safety Code 11000, et seq.), as is more fully described in paragraph 19 above.

12 **PRAYER**

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

- 15 1. Revoking or suspending Pharmacy Technician Registration Number TCH 80089,
16 issued to Denise Lavone Hardy;
- 17 2. Ordering Denise Lavone Hardy to pay the Board of Pharmacy the reasonable costs of
18 the investigation and enforcement of this case, pursuant to Business and Professions Code section
19 125.3;
- 20 3. Taking such other and further action as deemed necessary and proper.

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23 DATED: 7/15/10


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

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