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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 **TRACY RAPUE**
13 **34-566 Cedar Lane**
Yucaipa, CA 92339
14
15 **Pharmacy Technician License**
No. TCH 30030
16 Respondent.

Case No. 3745

ACCUSATION

18 Complainant alleges:

19 **PARTIES**

- 20
- 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 July 20, 1999, the Board of Pharmacy ("Board") issued Pharmacy
24 Technician License No. TCH 30030 to Tracy Rapue ("Respondent"). The Pharmacy Technician
25 License was in full force and effect at all times relevant to the charges brought herein and will
26 expire on November 30, 2010, unless renewed.

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1 JURISDICTION

2 3. This Accusation is brought before the Board, under the authority of the following
3 laws. All section references are to the Business and Professions Code ("Code") unless otherwise
4 indicated.

5 STATUTORY PROVISIONS

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

10 5. Section 490 states:

11 "(a) In addition to any other action that a board is permitted to take
12 against a licensee, a board may suspend or revoke a license on the ground that the
13 licensee has been convicted of a crime, if the crime is substantially related to the
14 qualifications, functions, or duties of the business or profession for which the
15 license was issued.

16 (b) Notwithstanding any other provision of law, a board may exercise
17 any authority to discipline a licensee for conviction of a crime that is independent
18 of the authority granted under subdivision (a) only if the crime is substantially
19 related to the qualifications, functions, or duties of the business or profession for
20 which the licensee's license was issued.

21 (c) A conviction within the meaning of this section means a plea or
22 verdict of guilty or a conviction following a plea of nolo contendere. Any action
23 that a board is permitted to take following the establishment of a conviction may
24 be taken when the time for appeal has elapsed, or the judgment of conviction has
25 been affirmed on appeal, or when an order granting probation is made suspending
26 the imposition of sentence, irrespective of a subsequent order under the provisions
27 of Section 1203.4 of the Penal Code."

28 6. Section 4300 permits the Board to take disciplinary action to suspend or revoke a
license issued by the Board.

7. Section 4301 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:

.....

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

4

5 (l) The conviction of a crime substantially related to the qualifications, functions, and
6 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
7 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
8 substances or of a violation of the statutes of this state regulating controlled substances or
9 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
10 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
11 The board may inquire into the circumstances surrounding the commission of the crime, in order
12 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
13 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
14 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
15 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
16 of this provision. The board may take action when the time for appeal has elapsed, or the
17 judgment of conviction has been affirmed on appeal or when an order granting probation is made
18 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
19 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
20 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
21 indictment.”

22 **REGULATORY PROVISIONS**

23 8. California Code of Regulations, title 16, section 1770, states:

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

3 **COST RECOVERY**

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

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(Criminal Conviction)**

10 10. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and
11 490 of the Code, in conjunction with California Code of Regulations, title 16, section 1770, in
12 that Respondent was convicted of a crime which is substantially related to the qualifications,
13 functions, or duties of a pharmacy technician, as follows:

- 14 a. On or about January 5, 2009, in the criminal proceeding entitled *The People of the State*
15 *of California vs. Tracy Rapue* (Super. Ct. County of San Bernardino, 2009, No.
16 FSB804285) Respondent was convicted of one felony count of violating Penal Code
17 section 550(b)(1) [insurance fraud]. Respondent was sentenced to 90 days in jail and
18 served 3 days and placed on probation for a period of 36 months with certain terms and
19 conditions. The circumstances surrounding the conviction are that on or about January
20 17, 2008 through April 3, 2008, Respondent unlawfully conspired together with two
21 other suspects to commit insurance fraud. Respondent owns a PT Cruiser that she
22 reported stolen when in fact it had not been stolen but had been given to others.
23 Respondent reported the vehicle stolen to police agencies and to her insurance
24 company, and gave a false statement to her insurance company in support of that claim.

25 **SECOND CAUSE FOR DISCIPLINE**

26 **(Dishonest Acts)**

27 11. Respondent is subject to disciplinary action under section 4301, subdivision (f), in
28 that Respondent committed dishonest acts by conspiring together with two other suspects to

1 commit insurance fraud. Complainant refers to, and by this reference incorporates, the
2 allegations set forth above in paragraph 10, subparagraph (a), inclusive, as though fully set forth.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct)**

5 12. Respondent is subject to disciplinary action under section 4301 on the grounds of
6 unprofessional conduct. Complainant refers to, and by this reference incorporates, the allegations
7 set forth above in paragraph 10, subparagraph (a), inclusive, as though fully set forth.

8 **PRAYER**

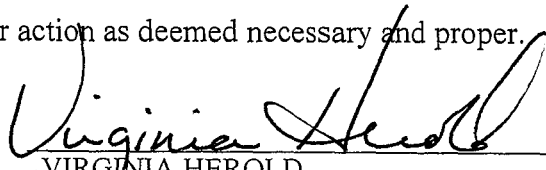
9 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
10 and that following the hearing, the Board issue a decision:

11 1. Revoking or suspending Pharmacy Technician License No. TCH 30030, issued to
12 Tracy Rapue;

13 2. Ordering Tracy Rapue to pay the Board the reasonable costs of the investigation and
14 enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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

16 DATED: 11/2/10



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

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