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7	Attorneys for Complainant
. 8	BEFORE THE BOARD OF PHARMACY
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA
ļ	STATE OF CALIFORNIA
10	In the Matter of the Accusation Against: Case No. 3893
12	JORGE ARTURO FAUSTO
13	8977 San Carlos South Gate, CA 90280 A C C U S A T I O N
14	Pharmacy Technician License No. TCH 30829
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.
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	2. On or about September 21, 1999, the Board of Pharmacy issued Pharmacy Technician
22	License No. TCH 30829 to Jorge Arturo Fausto (Respondent). On August 25, 2011, the license
23	was summarily suspended during term of incarceration, pursuant to Business and Professions
24	Code section 4311. The Pharmacy Technician License expired on July 31, 2011, and has not
25	been renewed.
26	<u>JURISDICTION</u>
27	3. This Accusation is brought before the Board under the authority of the following
28	laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 118, subdivision (b), 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.

STATUTORY PROVISIONS

5. Section 4059, subdivision (a), states:

"A person may not furnish any dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7."

6. Section 4060 states:

"No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.

. . . .

7. Section 4301 states, in pertinent part:

"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.

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"(g)	Knowingly making or signing any certificate or other document	that f	alsely
represents t	the existence or nonexistence of a state of facts.		

"(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.

. . . .

"(1) 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.

. . . .

"(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. . . ."

REGULATORY PROVISIONS

8. California Code of Regulations, title 16, 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

9. Section 125.3 provides 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.

CONTROLLED SUBSTANCES / DANGEROUS DRUGS

- 10. Hydrocodone, with trade names of Lortab, Norco and Vicodin, are Schedule III controlled substances pursuant to Health and Safety Code section 11056(e)(4), and are categorized as dangerous drugs pursuant to section 4022.
- 11. Xanax, a brand name for alprazolam, is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057(d)(1), and is categorized as a dangerous drug pursuant to section 4022.

FIRST CAUSE FOR DISCIPLINE

(Criminal Conviction)

- 12. Respondent is subject to disciplinary action under section 4301, subdivision (l), in that Respondent was convicted of a crime substantially related to the qualifications, functions, and duties of a registered pharmacy technician, as follows.
- a. On or about November 9, 2010, in the criminal proceeding entitled *The People of the State of California v. Jorge Arturo Fausto* (Super. Ct. Los Angeles County, 2010, No. VA109894), Respondent entered a plea of nolo contendere and was convicted of one felony count of violating Health and Safety Codes section 11375(b)(1) [possess controlled substances for sale]. He was sentenced to two (2) years in state prison.
 - 1) The circumstances underlying the conviction are that on or about August 20, 2008, Respondent was arrested by the South Gate Police Department after officers observed Respondent engage in an illegal drug transaction. At the time of his arrest, Respondent was in possession of 1,200 Hydrocodone pills and \$2,650.00 in cash. Respondent admitted

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to the arresting officers that he had stolen the Hydrocodone pills from his employer, Region Square Pharmacy.

- b. On or about May 5, 2010, in the criminal proceeding entitled *The People of the State of California v. Jorge Arturo Fausto* (Super. Ct. Los Angeles County, 2008, No. SA074235), Respondent entered a plea of guilty and was convicted on two (2) felony counts: (1) Penal Code section 487(a) [grand theft]; and (2) Penal Code section 211[second degree robbery]. Respondent was sentenced to six (6) months in jail for the grand theft conviction and two (2) years in prison for the robbery conviction.
 - 1) The circumstances underlying Respondent's grand theft conviction are that on or about November 7, 2008, while working as a pharmacy technician for Regent Square Pharmacy, Respondent placed an unauthorized order for controlled substances using the pharmacy's internet password access. Upon delivery to the pharmacy, Respondent stole the controlled substances, which included more than 1000 Hydrocodone tablets. When confronted by his employer about the unauthorized order and missing narcotics, Respondent admitted to ordering and stealing the drugs and provided his employer with a signed confession on or about November 12, 2008.
 - 2) The circumstances underlying Respondent's conviction for second degree robbery are that on or about February 12, 2009, using his familiarity with pharmacy business practices and a previous employer's internet password access, Respondent placed an order for a large quantity of controlled substances, including 3,000 tablets of Super-Vicodin, 43,200 tablets of Ephedrine¹, and 100 tablets of generic Xanax, to be delivered his former employer the following day. The next day, Respondent laid in wait for the delivery truck and then carjacked the vehicle at gunpoint, kidnapping the driver and, ultimately, robbing the vehicle of its contents. Respondent was arrested for these crimes on or about February 28, 2009, following a police investigation.

¹ Ephedrine is used for making methamphetamine.

SECOND CAUSE FOR DISCIPLINE

(Violating the Pharmacy Law: Unlawful Possession)

13. Respondent is subject to disciplinary action under section 4301, subdivision (o), in conjunction with section 4060, subdivision (a), in that respondent violated the California Pharmacy Law (Bus. and Prof. Code § 4000 et seq.). by unlawfully possessing a controlled substance without a prescription. Complainant refers to and by this reference incorporates the allegations set forth above in paragraph 12, subparagraphs a and b, inclusive, as though set forth fully herein.

THIRD CAUSE FOR DISCIPLINE

(Violating the Pharmacy Law: Unlawful Furnishing)

14. Respondent is subject to disciplinary action under section 4301, subdivision (o), in conjunction with section 4059, subdivision (a), in that respondent violated the California Pharmacy Law (Bus. and Prof. Code § 4000 et seq.) by unlawfully furnishing a controlled substance without a prescription. Complainant refers to and by this reference incorporates the allegations set forth above in paragraph 12, subparagraphs a and b, inclusive, as though set forth fully herein.

FOURTH CAUSE FOR DISCIPLINE

(Dishonesty/Acts of Moral Turpitude)

15. Respondent is subject to disciplinary action under section 4301, subdivision (f), in that Respondent engaged in acts involving moral turpitude, dishonesty, fraud, deceit and/or corruption. Complainant refers to and by this reference incorporates the allegations set forth above in paragraph 12, subparagraphs a and b, inclusive, as though set forth fully herein.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Making False Pharmacy Records)

16. Respondent is subject to disciplinary action under section 4301, subdivision (g), in that Respondent knowingly created and/or caused to be created pharmacy records and documents that falsely represented the existence of a state of facts. Complainant refers to and by this

1	reference incorporates the allegations set forth above in paragraph 12, subparagraphs a and b,
2	inclusive, as though set forth fully herein.
3	SIXTH CAUSE FOR DISCIPLINE
4	(Violation of Drug Statutes)
5	17. Respondent is subject to disciplinary action under section 4301, subdivision (j), in
6	that Respondent violated state and federal laws regulating controlled substances and dangerous
7	drugs. Complainant refers to and by this reference incorporates the allegations set forth above in
8	paragraph 12, subparagraphs a and b, inclusive, as though set forth fully herein.
9	PRAYER
10	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
11	and that following the hearing, the Board issue a decision:
12	1. Revoking or suspending Pharmacy Technician License No. TCH 30829, issued to
13	Jorge Arturo Fausto;
14	2. Ordering Jorge Arturo Fausto to pay the Board the reasonable costs of the
15	investigation and enforcement of this case, pursuant to section 125.3; and
16	3. Taking such other and further action as deemed necessary and proper.
17	DATED: 1/25/12 Preside Skeld
18	VIRGINIA HEROLD Executive Officer
19	Board of Pharmacy Department of Consumer Affairs
20	State of California Complainant
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