

1 KAMALA D. HARRIS  
Attorney General of California  
2 KAREN B. CHAPPELLE  
Supervising Deputy Attorney General  
3 THOMAS L. RINALDI  
Deputy Attorney General  
4 State Bar No. 206911  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2581  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*

7  
8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation and First  
11 Amended Petition to Revoke Probation  
12 Against:

13 **ERIC T. RIVERA**  
21409 Weiser Ave.,  
14 Carson, CA 90745

15 **Original Pharmacy Technician Registration**  
No. TCH 79772

16 Respondent.

Case No. 4017

ACCUSATION AND FIRST AMENDED  
PETITION TO REVOKE PROBATION

17  
18 Complainant alleges:

19 PARTIES

20 1. Virginia Herold (Complainant) brings this Accusation and First Amended Petition to  
21 Revoke Probation solely in her official capacity as the Executive Officer of the Board of  
22 Pharmacy, Department of Consumer Affairs.

23 2. On or about December 17, 2009, the Board of Pharmacy issued Original Pharmacy  
24 Technician Registration Number TCH 79772 to Eric T. Rivera (Respondent). The Original  
25 Pharmacy Technician Registration (Registration) was in effect at all times relevant to the charges  
26 brought herein and will expire on April 30, 2013, unless renewed.

27 3. In a disciplinary action entitled "In the Matter of Statement of Issues Against Eric  
28 Rivera," Case No. 3284, the Board of Pharmacy, issued a decision, effective December 16, 2009,

1 in which Respondent was issued a Registration that was immediately revoked. However, the  
2 revocation was stayed and Respondent's Registration placed on probation for a period of three (3)  
3 years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is  
4 incorporated by reference.

#### 5 JURISDICTION

6 4. This Accusation and First Amended Petition to Revoke Probation is brought before  
7 the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the  
8 following laws. All section references are to the Business and Professions Code unless otherwise  
9 indicated.

10 5. Section 4011 of the Code provides that the Board shall administer and enforce both  
11 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances  
12 Act [Health & Safety Code, § 11000 et seq.].

#### 13 STATUTORY PROVISIONS

14 6. Section 4300 of the Code states, in pertinent part, that:

15 "(a) Every license issued [by the Board of Pharmacy] may be suspended or revoked.

16 (d) The board may initiate disciplinary proceedings to revoke or suspend any probationary  
17 certificate of licensure for any violation of the terms and conditions of probation. Upon  
18 satisfactory completion of probation, the board shall convert the probationary certificate to a  
19 regular certificate, free of conditions."

20 7. Section 4301 of the Code states, in pertinent part, that:

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

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

27 ...

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

6 ...  
7 (j) The violation of any of the statutes of this state, of any other state, or of the United  
8 States regulating controlled substances and dangerous drugs.

9 ...  
10 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
11 violation of or conspiring to violate any provision or term of [the Pharmacy Law] or of the  
12 applicable federal and state laws and regulations governing pharmacy, including regulations  
13 established by the board or by any other state or federal regulatory agency.”

#### 14 COST RECOVERY PROVISION

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

#### 19 CONTROLLED SUBSTANCES

20 9. “Vicodin”, “Norco”, and “Lortab” are brand names for Hydrocodone and  
21 Acetaminophen and are Schedule III controlled substances as designated by Health and Safety  
22 Code section 11056(e) and classified as dangerous drugs pursuant to Business and Professions  
23 Code section 4022.

24 10. “Suboxone” (buprenorphine) is a Schedule III narcotic as designated by 21 Code of  
25 Federal Regulations section 1308.13(e)(2)(i) and is categorized as a dangerous drug pursuant to  
26 section 4022 of the Code.

1 11. Alprazolam is Schedule IV controlled substance as designated by Health and Safety  
2 Code section 11057(d)(1) and is categorized as a dangerous drug pursuant to section 4022 of the  
3 Code.

4 **ACCUSATION**

5 **FIRST CAUSE FOR DISCIPLINE**

6 **(Theft of Controlled Substances)**

7 10. Respondent is subject to discipline pursuant to section 4301, subdivisions (f) and (o)  
8 in that over a several month period, Respondent stole controlled substances from Rite-Aid  
9 Pharmacy, while employed as a registered pharmacy technician. Specifically, following an  
10 investigation by Rite-Aid Loss Prevention personnel which included video-taped footage of the  
11 thefts, Respondent admitted that he had stolen pills consisting of various strengths of Vicodin,  
12 Alprazolam, Norco, Lortab and Suboxone over an eight month period, which he would then sell  
13 to a third party for resale.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Violation of Drug Laws)**

16 11. Respondent is subject to discipline pursuant to sections 4301, subdivision (j), in that  
17 he violated Health and Safety Code section 11351 by possessing controlled substances for sale, as  
18 further described in paragraph no. 11 above.

19 **THIRD CAUSE FOR DISCIPLINE**

20 **(Dangerous Use of Alcohol)**

21 12. Respondent is subject to discipline pursuant to section 4301, subdivision (h), in that  
22 on or around January 21, 2012, he used alcohol in a manner dangerous to himself and/or others by  
23 operating a motor vehicle at a time when his blood alcohol level was .15%.

24 **FIRST AMENDED PETITION TO REVOKE PROBATION**

25 **FIRST CAUSE TO REVOKE PROBATION**

26 **(Failure to Obey All Laws)**

27 13. At all times after the effective date of the Decision and Order imposing probation on  
28 Respondent's Registration, term and condition no. 2 stated, in pertinent part:

1 **Obey All Laws.** Respondent shall obey all state and federal laws and regulations...

2 14. Respondent's probation is subject to revocation in that he violated Term and  
3 Condition of Probation No. 2 by committing the acts described in paragraph nos. 11-13 above.

4 SECOND CAUSE TO REVOKE PROBATION

5 **(Failure to Submit to Drug Testing)**

6 15. At all times after the effective date of the Decision and Order imposing probation on  
7 Respondent's Registration, term and condition no. 5 stated:

8 **Cooperate with Board Staff.** Respondent shall cooperate with the board's inspection  
9 program and with the board's monitoring and investigation of respondent's compliance with the  
10 terms and conditions of his probation. Failure to cooperate shall be considered a violation of  
11 probation.

12 16. At all times after the effective date of the Decision and Order imposing probation on  
13 Respondent's Registration, term and condition no. 15 provided, in pertinent part:

14 **Random Drug Screening.** Respondent at his own expense, shall participate in random  
15 drug testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair  
16 follicle testing, or other drug screening program as directed by the Board or its designee.  
17 Respondent may be required to participate in testing for the entire probation period and the  
18 frequency of testing will be determined by the Board or its designee. At all times respondent  
19 shall fully cooperate with the Board or its designee, and shall, when directed, submit to such tests  
20 and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled  
21 substances as the Board or its designee may direct. Failure to timely submit to testing as directed  
22 shall be considered a violation of probation.

23 17. Respondent's probation is subject to revocation in that he violated Term and  
24 Condition of Probation Nos. 5 and 15 as follows:

25 a. Respondent failed to call in to determine if he was required to submit for testing  
26 on the following dates: January 27-February 12, 2010; March 28, 2010; April 4, 2010; April 9,  
27 2010; April 18, 2010; April 24, 2010; May 4, 2010; May 23, 2010; May 28, 2010; June 6, 2010;  
28 June 13, 2010; August 14, 2010; and October 9, 2010.

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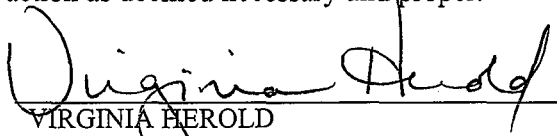
b. Respondent failed to submit to drug testing as required on the following dates:  
February 11, 2010; August 31, 2010; September 27, 2010; September 29, 2010; November 16,  
2010; November 24, 2010; and November 29, 2010.

PRAYER

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

- 1. Revoking the probation that was granted by the Board of Pharmacy in Case No. 3284  
and imposing the disciplinary order that was stayed, thereby revoking Original Pharmacy  
Technician Registration No. TCH 79772 issued to Eric T. Rivera;
- 2. Revoking or suspending Original Pharmacy Technician Registration No. TCH 79772  
issued to Eric T. Rivera;
- 3. Ordering Respondent to pay the Board the reasonable costs of the investigation and  
enforcement of this case, pursuant to section 125.3 of the Code;
- 4. Taking such other and further action as deemed necessary and proper.

DATED: 2/29/12



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

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