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

11 In the Matter of the Accusation Against:

Case No. 4270

12 **JESSICA MAE SWINK**
1764 N. Sycamore Avenue, Apt. 106
13 Hollywood, CA 90028

A C C U S A T I O N

14 Pharmacy Technician Registration No. TCH 98767

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1.o 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 (Board).

21 2.o On or about March 15, 2010, the Board issued Pharmacy Technician Registration No. 0
22 TCH 98767 to Jessica Mae Swink (Respondent). The Pharmacy Technician Registration was in
23 full force and effect at all times relevant to the charges brought herein, but expired on February
24 29, 2012, and is delinquent.

25 **JURISDICTION**

26 3.o 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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1 **STATUTORY PROVISIONS**

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

6 5. Section 492 states:

7 "Notwithstanding any other provision of law, successful completion of any diversion
8 program under the Penal Code, or successful completion of an alcohol and drug problem
9 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of
10 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2
11 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that
12 division, from taking disciplinary action against a licensee or from denying a license for
13 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a
14 record pertaining to an arrest.

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

18 6. Section 4059, subdivision (a), states:

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

23 7. Section 4060 states:

24 "No person shall possess any controlled substance, except that furnished to a person upon
25 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
26 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
27 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
28 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,

1 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
2 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
3 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
4 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
5 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
6 labeled with the name and address of the supplier or producer.

7 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a
8 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and
9 devices."

10 8. Section 4100, subdivision (a), states that "[w]ithin 30 days after changing his or her
11 address of record with the board. . . according to law,. . . a technician. . . shall notify the executive
12 officer of the board of the change of address..."

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

15 10. Section 4301 states, in pertinent part:

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.

1

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

4

5 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
6 violation of or conspiring to violate any provision or term of this chapter or of the applicable
7 federal and state laws and regulations governing pharmacy, including regulations established by
8 the board or by any other state or federal regulatory agency. . . ."

9 **REGULATORY PROVISIONS**

10 11. California Code of Regulations, title 16, section 1770, states:

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

17 **COST RECOVERY**

18 12. Section 125.3 provides that the Board may request the administrative law judge to
19 direct a licentiate found to have committed a violation or violations of the licensing act to pay a
20 sum not to exceed the reasonable costs of the investigation and enforcement of the case.

21 **CONTROLLED SUBSTANCES / DANGEROUS DRUGS**

22 13. Alprazolam is a Schedule IV controlled substance pursuant to Health and Safety Code
23 section 11057(d)(1) and Code of Federal Regulations, section 1308.14, subdivision (c)(1), and a
24 dangerous drug pursuant to Business and Professions Code section 4022

25 **KAISER PERMANENTE PHARMACY**

26 14. On or about April 15, 25, and 27, 2011, while Respondent was employed as a
27 pharmacy technician at Kaiser Permanente Pharmacy, 444 W. Glenoaks Boulevard, Glendale
28 California 91202, Respondent stole at least thirty-six (36) tablets of Alprazolam, and possessed

1 the tablets without authorization as required by law. Respondent's theft was established by her
2 own admission and video taped surveillance at the pharmacy.

3 **FIRST CAUSE FOR DISCIPLINE**

4 ***(Unlawful Possession of Controlled Substances)***

5 15. Respondent is subject to disciplinary action under section 4301, subdivision (j), on
6 the grounds of unprofessional conduct, for violating sections 4059, subdivision (a), and 4060 and
7 Health and Safety Code section 11057, subdivision (d)(1), in that, on or about April 15, 25, and
8 27, 2011, she possessed and/or furnished to herself thirty-six (36) tablets of Alprazolam, a
9 controlled substance and dangerous drug, without a valid prescription. Complainant refers to and
10 by this reference incorporates the allegations set forth above in paragraph 14, as though set forth
11 fully.

12 **SECOND CAUSE FOR DISCIPLINE**

13 ***(Act Involving Moral Turpitude, Dishonesty, Fraud or Deceit)***

14 16. Respondent is subject to disciplinary action under section 4301, subdivision (f), in
15 conjunction with California Code of Regulations, title 16, section 1770, on the grounds of
16 unprofessional conduct, in that, on or about April 15, 25, and 27, 2011, Respondent committed
17 acts involving moral turpitude, dishonesty, fraud or deceit when she stole thirty-six (36) tablets of
18 Alprazolam from Kaiser Permanente Pharmacy. These acts are substantially related to the
19 qualifications, functions or duties of the licensee since to a substantial degree they evidence
20 present or potential unfitness of the licensee to perform the functions authorized by her license in
21 a manner consistent with the public health, safety, or welfare Complainant refers to and by this
22 reference incorporates the allegations set forth above in paragraph 14, as though set forth fully.

23 **THIRD CAUSE FOR DISCIPLINE**

24 ***(Unlawful Furnishing of a Controlled Substance)***

25 17. Respondent is subject to disciplinary action under sections 4301, subdivision (h), and
26 4059, subdivision (a), in conjunction with Health and Safety Code section 11170, on the grounds
27 of unprofessional conduct, in that, on or about April 15, 25, and 27, 2011, Respondent furnished
28 controlled substances to herself without a valid prescription when she stole thirty-six (36) tablets

1 of Alprazolam from Kaiser Permanente Pharmacy. Complainant refers to and by this reference
2 incorporates the allegations set forth above in paragraph 14, as though set forth fully.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 *(Failure to Notify Board of Change of Address)*

5 18. Respondent is subject to disciplinary action under section 4100, subdivision (a), in
6 conjunction with California Code of Regulations, title 16, section 1704, on the grounds that
7 during the course of the Board's investigation of Respondent for the acts herein alleged, it was
8 discovered that she no longer resides at her address of record. Respondent failed to provide a
9 change of address to the Board in violation of Pharmacy Law.

10 **FIFTH CAUSE FOR DISCIPLINE**

11 *(Unprofessional Conduct / Violating Pharmacy Law)*

12 19. Respondent is subject to disciplinary action under section 4301, subdivision (o), in
13 that Respondent committed acts of unprofessional conduct violating pharmacy law. Complainant
14 refers to and by this reference incorporates the allegations set forth above in paragraph 14 -18,
15 inclusive, as though set forth fully.

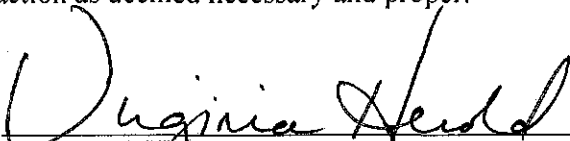
16 **PRAYER**

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

- 19 1. Revoking or suspending Pharmacy Technician Registration No. TCH 98767, issued
20 to Respondent;
- 21 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
22 enforcement of this case, pursuant to section 125.3; and
- 23 3. Taking such other and further action as deemed necessary and proper.

24
25 DATED: _____

9/6/13

26 

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