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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:

Case No. 4277

12 **DARRELL M. MONTI**
2300 Oakdale Road 90
13 Modesto, CA 95355

ACCUSATION

14 Pharmacy Technician Registration No. TCH 84805
15 Respondent.

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.

21 2. On or about July 28, 2008, the Board of Pharmacy issued Pharmacy Technician
22 Registration Number TCH 84805 to Darrell M. Monti (Respondent). The Pharmacy Technician
23 Registration was in full force and effect at all times relevant to the charges brought herein and
24 expired on May 31, 2012.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
27 Consumer Affairs, under the authority of the following laws. All section references are to the
28 Business and Professions Code unless otherwise indicated.

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

20 . . .

21 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
22 abetting the violation of or conspiring to violate any provision or term of this chapter
23 or of the applicable federal and state laws and regulations governing pharmacy,
24 including regulations established by the board or by any other state or federal
25 regulatory agency.”

26 7. Health and Safety Code section 11173, subdivision (a) states in part:

27 “No person shall obtain or attempt to obtain controlled substances, or procure
28 or attempt to procure the administration of or prescription for controlled substances,
(1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a
material fact. . . .”

29 8. Section 4022 of the Code states:

30 “Dangerous drug” or “dangerous device” means any drug or device unsafe for
31 self-use in humans or animals, and includes the following:

32 (a) Any drug that bears the legend: “Caution: federal law prohibits dispensing
33 without prescription,” “Rx only,” or words of similar import.

34 (b) Any device that bears the statement: “Caution: federal law restricts this
35 device to sale by or on the order of a _____,” “Rx only,” or words of similar
36 import, the blank to be filled in with the designation of the practitioner licensed to use
37 or order use of the device.

38 (c) Any other drug or device that by federal or state law can be lawfully
dispensed only on prescription or furnished pursuant to Section 4006.”

39 9. Section 490 of the Code provides, in pertinent part, that a board may suspend or
40 revoke a license on the ground that the licensee has been convicted of a crime substantially

1 related to the qualifications, functions, or duties of the business or profession for which the
2 license was issued.

3 **COST RECOVERY**

4 10. Section 125.3 of the Code states, 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 **DRUG AT ISSUE**

9 • Hydrocodone APAP, is a Schedule III controlled substance as designated by Health and
10 Safety Code section 11056, subdivision (e)(4).

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(Dishonest Act)**

13 11. Respondent is subject to disciplinary action for unprofessional conduct under section
14 4300, subdivision (a) and section 4301, subdivision (f) in that Respondent admitted that while
15 employed at Safeway Pharmacy in Modesto and Turlock, he stole approximately 4000
16 hydrocodone APAP 10/325 tablets between 2008 through 2010.

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Violation of Law Regulating Controlled Substances)**

19 12. Respondent is subject to disciplinary action for unprofessional conduct under section
20 4300, subdivision (a) and section 4301, subdivision (j) in that Respondent obtained controlled
21 substances in violation of laws regulating controlled substances and dangerous drugs, namely
22 Health and Safety Code section 11173, subdivision (a), as further set forth in paragraph 10,
23 above.

24 **THIRD CAUSE FOR DISCIPLINE**

25 **(Conviction of Crime)**

26 13. Respondent is subject to disciplinary action for unprofessional conduct under section
27 4300, subdivision (a) and section 4301, subdivision (l) as well as section 490 in that on
28 September 14, 2011, Respondent was convicted on his guilty plea to two counts of Penal Code

1 section 487(a) (Grant Theft), felonies. The circumstances are that on or about and between
2 March 1, 2009 and July 1, 2010, Respondent willfully, unlawfully and feloniously took the
3 property of Walgreen's Pharmacy, to wit: Hydrocodone APAP 10/325 tablets which exceeded
4 \$400 in value. Respondent committed these acts while he was employed at the Modesto
5 Walgreen's and continued his thefts once he was transferred to the Turlock Walgreen's location,
6 and as set forth above in paragraphs 10-11.

7 **FOURTH CAUSE FOR DISCIPLINE**

8 **(Violation of Pharmacy Laws)**

9 14. Respondent is subject to disciplinary action for unprofessional conduct under section
10 4300, subdivision (a) and section 4301, subdivision (o) as set forth above in paragraphs 10-12.

11 **PRAYER**

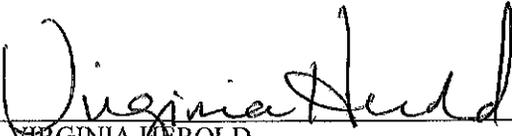
12 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
13 and that following the hearing, the Board of Pharmacy issue a decision:

14 1. Revoking or suspending Pharmacy Technician Registration Number TCH 84805,
15 issued to Darrell M. Monti;

16 2. Ordering Darrell M. Monti to pay the Board of Pharmacy the reasonable costs of the
17 investigation and enforcement of this case, pursuant to Business and Professions Code section
18 125.3;

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

20
21 DATED: 11/2/12


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

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