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8
9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA
11

12 In the Matter of the Accusation Against:

Case No. 4282

13 **DONOVAN KYLE GONZALES**
8481 Holder Street
14 Buena Park, CA 90620

A C C U S A T I O N e

15 **Pharmacy Technician Registration No. 109943**
Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1.e Virginia Herold (Complainant) brings this Accusation solely in her official
20 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

21 2.e On or about January 20, 2011, the Board of Pharmacy issued Pharmacy
22 Technician Registration Number 109943 to Donovan Kyle Gonzales (Respondent). The
23 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges
24 brought herein and will expire on October 31, 2012, unless renewed.

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 (Code) unless otherwise indicated.

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9. Section 4301 of the Code 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:

....

(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.

....

(l) 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. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

....

REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1769, states:

....

(b) When considering the suspension or revocation of a facility or a personal license on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.

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1 (3) The time that has elapsed since commission of the act(s) or
2 offense(s).

3 (4) Whether the licensee has complied with all terms of parole,
4 probation, restitution or any other sanctions lawfully imposed against the licensee.

5 (5) Evidence, if any, of rehabilitation submitted by the licensee.

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

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

14 **COST RECOVERY**

15 12. Section 125.3 of the Code states, 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
17 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
18 enforcement of the case.

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(September 30, 2011 Criminal Convictions for Petty Theft and**
21 **Falsely Reporting A Crime on July 7, 2011)**

22 13. Respondent has subjected his license to discipline under Code sections 490 and
23 4301, subdivision (l) in that he was convicted of a crime that is substantially related to the
24 qualifications, functions, and duties of a licensed pharmacy technician. The circumstances are as
25 follows:

26 a. On or about September 30, 2011, in a criminal proceeding entitled *The*
27 *People of the State of California vs. Donovan Kyle Gonzales*, in Orange County Superior Court,
28 Case Number 11NM15946, Respondent was convicted on his plea of guilty to violating Penal
Code (PC) sections 484 subdivision (a)/488, petty theft, and PC section 148.5 subdivision (a),
falsely reporting a crime, both misdemeanors. Charges for violation of PC sections 487,

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1 subdivision (a), grand theft of property with a value over \$950.00, and 508, embezzlement, were
2 dismissed pursuant to a plea bargain.

3 b. As a result of the convictions, on or about September 30, 2011,
4 Respondent was sentenced to three years informal probation and ordered to serve 20 days in the
5 Orange County Jail or perform 20 days of service with the California Department of
6 Transportation, in lieu of jail. Respondent was also ordered to pay \$200.00 in fines, \$140.00 in
7 fees, and restitution.

8 c. The facts that led to the conviction are that on or about the weekend before
9 July 7, 2011, Respondent and a co-conspirator planned a robbery during Respondent's nightly
10 money drop off in his job for Papa John's Pizza at a bank in Buena Park, California. On or about
11 July 7, 2011, with a bank bag containing approximately \$697.00, Respondent drove to the bank,
12 approached and unlocked the night deposit box, looked around, and returned to his parked
13 vehicle. When the co-conspirator arrived, Respondent got out of the car with the bank bag and
14 approached the night deposit box. The co-conspirator ran up to Respondent, pushed him away
15 from the night drop, grabbed the bank bag, and ran away. Respondent then called 911 to report a
16 robbery and to request assistance. Respondent admitted to setting up the ruse after an
17 investigator told him that the entire sequence of the alleged robbery was recorded through the
18 bank's surveillance cameras.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Unprofessional Conduct - Commission of Any Act Involving Moral Turpitude, Dishonesty,
21 Fraud, Deceit, or Corruption)**

22 14. Respondent has subjected his license to discipline under Code section 4301,
23 subdivision (f), in that on or about July 7, 2011, he conspired to defraud his employer of the
24 day's receipts by setting up a robbery for his personal gain, and falsely reported a robbery to the
25 police, which constitute acts involving moral turpitude, dishonesty, fraud, deceit, and corruption,
26 as detailed in paragraph 13, above.

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PRAYER

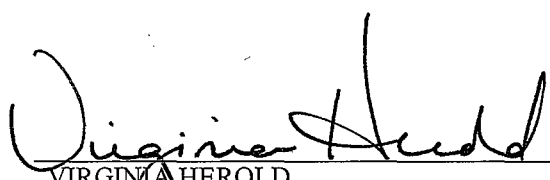
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Pharmacy Technician Registration Number 109943, issued to Donovan Kyle Gonzales;

2. Ordering Donovan Kyle Gonzales to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 6/1/12



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

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