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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 Number 4364

12 **CYNTHIA DAWN GOMEZ**
13 **7531 Poppy Lane**
Fontana, California 92336

ACCUSATION

14 **Intern Pharmacist License Number**
15 **INT 21078**

16 Respondent.

17
18 Complainant Virginia Herold alleges:

19 **PARTIES**

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

22 2. On or about September 11, 2007, the Board issued Intern Pharmacist License Number
23 INT 21078 to respondent Cynthia Dawn Gomez. This intern pharmacist license was in full force
24 and effect at all times relevant to the charges brought in this Accusation and will expire on May
25 31, 2013, unless renewed.

26 **JURISDICTION**

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.

1 4. Section 118, subdivision (b), provides:

2 “The suspension, expiration, or forfeiture by operation of law of a license issued by a board
3 in the department, or its suspension, forfeiture, or cancellation by order of the board or by order
4 of a court of law, or its surrender without the written consent of the board, shall not, during any
5 period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
6 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
7 provided by law or to enter an order suspending or revoking the license or otherwise taking
8 disciplinary action against the licensee on any such ground.”

9 5. Section 4011 provides:

10 “The board shall administer and enforce this chapter and the Uniform Controlled
11 Substances Act (Division 10 (commencing with Section 11000).of the Health and Safety Code).”

12 6. Section 4300 provides, in pertinent part:

13 “(a) Every license issued may be suspended or revoked.”

14 7. Section 4304 provides:

15 “The board may deny, revoke, or suspend any license issued pursuant to Section 4161 for
16 any violation of this chapter or for any violation of Part 5 (commencing with Section 109875) of
17 Division 104 of the Health and Safety Code.”

18 **STATUTORY PROVISIONS**

19 8. Section 4060 provides, in pertinent part:

20 “No person shall possess any controlled substance, except that furnished to a person upon
21 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
22 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-
23 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician
24 assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a
25 pharmacist pursuant to either Section 4052.1 or 4052.2.”

26 ///

1 9. Section 4301 provides, in pertinent part:

2 “The board shall take action against any holder of a license who is guilty of unprofessional
3 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

4 Unprofessional conduct shall include, but is not limited to, any of the following:

5 ...

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

9 ...

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

15 ...

16 “(j) The violation of any of the statutes of this state, of any other state, or of the United
17 States regulating controlled substances and dangerous drugs.

18 ...

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

23 10. Section 4327 provides:

24 “Any person who, while on duty, sells, dispenses or compounds any drug while under the
25 influence of any dangerous drug or alcoholic beverages shall be guilty of a misdemeanor.”

26 11. Health and Safety Code section 11055 provides, in pertinent part:

27 “(a) The controlled substances listed in this section are included in Schedule II.

28 ...

1 “(d) Stimulants. Unless specifically excepted or unless listed in another schedule, any
2 material, compound, mixture, or preparation which contains any quantity of the following
3 substances having a stimulant effect on the central nervous system:

4 “(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers.

5 ...

6 “(3) Dimethylamphetamine (N,N-dimethylamphetamine), its salts, isomers, and salts of its
7 isomers.

8 ...

9 “(6) Methylphenidate.”

10 12. Health and Safety Code section 11170 provides:

11 “No person shall prescribe, administer, or furnish a controlled substance for himself.”

12 **COST RECOVERY**

13 13. Section 125.3 provides, in pertinent part:

14 “(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary
15 proceeding before any board within the department or before the Osteopathic Medical Board,
16 upon request of the entity bringing the proceedings, the administrative law judge may direct a
17 licentiate found to have committed a violation or violations of the licensing act to pay a sum not
18 to exceed the reasonable costs of the investigation and enforcement of the case.”

19 **DRUGS**

20 14. “Amphetamine” is a Schedule II controlled substance pursuant to Health and Safety
21 Code section 11055, subdivision (d)(1).

22 15. “Dextroamphetamine,” also known by the brand names “Dexedrine” and
23 “Dextrostat,” is used to treat attention-deficit hyperactivity disorder and narcolepsy. It is a
24 Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision
25 (d)(1), and a dangerous drug within the meaning of Business and Professions Code section 4022.

26 16. “Dextroamphetamine-Amphetamine ER” and “amphetamine salts,” also known by
27 the brand name “Adderall,” is used to treat attention-deficit hyperactivity disorder and
28 narcolepsy. It is a Schedule II controlled substance pursuant to Health and Safety Code section

1 11055, subdivision (d)(1), and a dangerous drug within the meaning of Business and Professions
2 Code section 4022.

3 17. "Dimethylphenidate," also known by the brand name "Focalin," is used to treat
4 attention-deficit hyperactivity disorder. It is a Schedule II controlled substance pursuant to
5 Health and Safety Code section 11055, subdivision (d)(3), and a dangerous drug within the
6 meaning of Business and Professions Code section 4022.

7 18. "Lisdexamfetamine," also known by the brand name "Vyvase," is used to treat
8 attention-deficit hyperactivity disorder. It is a Schedule II controlled substance pursuant to
9 Health and Safety Code section 11055, subdivision (d)(1), and a dangerous drug within the
10 meaning of Business and Professions Code section 4022.

11 19. "Methylphenidate," also known by the brand names "Concerta," "Methylin,"
12 "Metadate," and "Ritalin," is used to treat attention-deficit hyperactivity disorder. It is a Schedule
13 II controlled substance pursuant to Health and Safety Code section 11055, subdivision (d)(6), and
14 a dangerous drug within the meaning of Business and Professions Code section 4022.

15 FACTUAL BACKGROUND

16 20. On or about July 14, 2011, respondent began as a pharmacist intern at Bertelli's
17 Health Mart Pharmacy #3 in King City, California. On or about July 20, 2011, a pharmacy
18 technician found a manufacturer's bottle of Dextroamphetamine in the storeroom between two
19 binders of pharmacy reports. The bottle contained different pills of Dextroamphetamine,
20 Methylphenidate, Dimethylphenidate, and amphetamine salts. The pharmacy technician reported
21 the bottle to the pharmacist in charge (PIC). While the pharmacy technician and the PIC were
22 investigating the bottle in the storeroom, respondent left the work she was assigned at the
23 pharmacy counter and joined them in the storeroom. She appeared interested in their
24 investigation. The PIC sent respondent back to her work.

25 21. The PIC telephoned another staff pharmacist to ask whether she knew of any
26 problems with medications. That staff pharmacist said that respondent sent her a text message on
27 or about July 14, 2011, stating that she accidentally took home a manufacturer's stock bottle of
28 drugs. The staff pharmacist at the time told respondent to return the drugs the next day. That

1 next day, another pharmacy technician reported to the staff pharmacist that she saw a
2 manufacturer's bottle of Lisdexamphetamine in respondent's purse. The staff pharmacist assumed
3 that this bottle was the drugs that respondent said that she had accidentally taken home.

4 22. After the Dextroamphetamine bottle was found in the storeroom and the PIC was
5 informed of respondent taking drugs home, he asked her to submit to drug testing. Respondent
6 agreed. The initial lab results of respondent's urine sample taken on July 20, 2011, were
7 inconclusive; the lab said it appeared that respondent diluted the sample with toilet water because
8 it was the incorrect color and temperature. The lab sent the sample for additional testing.

9 23. The PIC suspended respondent pending the test results. Respondent told the PIC that
10 she did not tamper with her urine sample. When the PIC asked respondent about the
11 Lisdexamphetamine that was seen in her purse (which he assumed was the drugs that respondent
12 said that she had accidentally taken home and was returning), respondent denied taking
13 Lisdexamphetamine home. Respondent said she took home a NSAID (non-steroidal anti-
14 inflammatory drug). Respondent agreed to another drug test, but refused to take the test with a
15 witness present.

16 24. On or about July 29, 2013, the lab's additional testing determined that respondent's
17 urine sample tested positive for amphetamines. A Controlled Substance Utilization Review and
18 Evaluation System (CURES) report showed no record of respondent having received an
19 amphetamine-related medication during the time of the test.

20 25. The PIC inventoried the pharmacy's Schedule II controlled substances and found the
21 following losses that occurred sometime between July 14 and July 20, 2011:

- 22 • 50 20 mg capsules Lisdexamphetamine
- 23 • 8 20 mg tablets Dimethylphenidate
- 24 • 11 25 mg capsules Dextroamphetamine-Amphetamine ER
- 25 • 7 10 mg tablets amphetamine salts
- 26 • 104 10 mg tablets Dextroamphetamine
- 27 • 6 36 mg tablets Methylphenidate
- 28 • 8 20 mg tablets Methylphenidate

1 • 13 40 mg capsules Methylphenidate

2 26. On or about July 22, 2011, respondent was interviewed by the police. She stated that
3 she could not remember what drugs she accidentally took home on July 14, but believed they
4 were an anti-inflammatory medication. The officer asked about the Lisdexamfetamine in
5 respondent's purse. At first she denied having accidentally taken it home. Respondent then said
6 that it was possible that she accidentally took home Lisdexamfetamine and not a NSAID. She
7 also stated that her urine sample became contaminated when she dropped it in the toilet. She did
8 not take a second drug test at the time because she could not urinate any more. She said she had
9 not used amphetamines and that her only addiction was to alcohol.

10 27. On or about November 11, 2011, respondent was admitted to a residential treatment
11 program for alcohol dependency.

12 28. On or about June 19, 2012, the Board's investigator interviewed respondent.
13 Respondent again stated that her urine sample became contaminated when she dropped it in the
14 toilet. She refused to take a second drug test because she did not want to work for people who did
15 not trust her. She denied taking any drugs from the pharmacy. She said she was on medication
16 when she was working at the pharmacy but refused to state what those medications were.

17 29. When the investigator confronted respondent with her positive drug test, respondent
18 admitted to taking amphetamines a few days before the drug test. She said they were given to her
19 by a friend because respondent was feeling tired. Even though the inventory showed
20 Lisdexamfetamine missing from the pharmacy, respondent maintained that she returned the
21 Lisdexamfetamine that was found in her purse. She again denied taking any drugs from the
22 pharmacy.

23 **CAUSES FOR DISCIPLINE**

24
25 **FIRST CAUSE FOR DISCIPLINE**
26 **Unprofessional Conduct – Act of Moral Turpitude,**
27 **Dishonesty, Fraud, Deceit, or Corruption**
28 **Bus. & Prof. Code, § 4301, subd. (f)**

29 29. The allegations of paragraphs 20-29 are realleged and incorporated by reference as if
fully set forth.

1 30. Respondent has subjected her intern pharmacist license to disciplinary action under
2 section 4301, subdivision (f), for the unprofessional conduct of committing an act of moral
3 turpitude, dishonesty, fraud, deceit, or corruption. As set forth in paragraphs 20-29 above,
4 respondent possessed Lisdexamfetamine without a prescription or any authorization from the
5 pharmacy.

6 **SECOND CAUSE FOR DISCIPLINE**
7 **Unprofessional Conduct – Possession of Controlled Substance**
8 **Bus. & Prof. Code, §§ 4060, 4301, subds. (j) & (o)**

9 31. The allegations of paragraphs 20-29 are realleged and incorporated by reference as if
10 fully set forth.

11 32. Respondent has subjected her intern pharmacist license to disciplinary action under
12 sections 4060 and 4301, subdivisions (j) and (o), for the unprofessional conduct of possession of a
13 controlled substance. As set forth in paragraphs 20-29 above, respondent possessed
14 Lisdexamfetamine without a prescription or any authorization from the pharmacy.

15 **THIRD CAUSE FOR DISCIPLINE**
16 **Unprofessional Conduct – Possession of Controlled Substance**
17 **Bus. & Prof. Code, §§ 4060, 4301, subds. (j) & (o)**

18 33. The allegations of paragraphs 20-29 are realleged and incorporated by reference as if
19 fully set forth.

20 34. Respondent has subjected her intern pharmacist license to disciplinary action under
21 sections 4060 and 4301, subdivisions (j) and (o), for the unprofessional conduct of possession of a
22 controlled substance. As set forth in paragraphs 20-29 above, respondent tested positive for
23 amphetamines and admitted taking amphetamines that were given to her by a friend.

24 **FOURTH CAUSE FOR DISCIPLINE**
25 **Unprofessional Conduct – Self-Administration of a Controlled Substance**
26 **Bus. & Prof. Code, § 4301, subd. (h)**

27 35. The allegations of paragraphs 20-29 are realleged and incorporated by reference as if
28 fully set forth.

36. Respondent has subjected her intern pharmacist license to disciplinary action under
section 4301, subdivisions (h), for the unprofessional conduct of self-administration of a

///

1 controlled substance. As set forth in paragraphs 20-29 above, respondent tested positive for
2 amphetamines and admitted taking amphetamines that were given to her by a friend.

3 **FIFTH CAUSE FOR DISCIPLINE**
4 **Unprofessional Conduct – Self-Administration of a Controlled Substance**
5 **Bus. & Prof. Code, § 4301, subd. (j); Health & Saf. Code, § 11170**

6 37. The allegations of paragraphs 20-29 are realleged and incorporated by reference as if
7 fully set forth.

8 38. Respondent has subjected her intern pharmacist license to disciplinary action under
9 Business and Professions Code section 4301, subdivision (j), and Health and Safety Code section
10 11170, for the unprofessional conduct of self-administration of a controlled substance. As set
11 forth in paragraphs 20-29 above, respondent tested positive for amphetamines and admitted
12 taking amphetamines that were given to her by a friend.

13 **SIXTH CAUSE FOR DISCIPLINE**
14 **Unprofessional Conduct – Under the Influence While on Duty**
15 **Bus. & Prof. Code, §§ 4301, subds. (j) & (o), 4327**

16 39. The allegations of paragraphs 20-29 are realleged and incorporated by reference as if
17 fully set forth.

18 40. Respondent has subjected her intern pharmacist license to disciplinary action under
19 Business and Professions Code sections 4301, subdivisions (h) and (j), and 4327, for the
20 unprofessional conduct of being under the influence while on duty as a pharmacist intern. As set
21 forth in paragraphs 20-29 above, respondent tested positive for amphetamines when respondent
22 was at work and admitted taking amphetamines a few days before the test.

23 **SEVENTH CAUSE FOR DISCIPLINE**
24 **Unprofessional Conduct – Use of Alcoholic Beverages**
25 **Bus. & Prof. Code, § 4301, subd. (h)**

26 41. The allegations of paragraphs 20-29 are realleged and incorporated by reference as if
27 fully set forth.

28 42. Respondent has subjected her intern pharmacist license to disciplinary action under
section 4301, subdivisions (h), for the unprofessional conduct of use of alcoholic beverages to the
extent or in a manner as to be dangerous or injurious to herself, to any other person, to the public,
or to the extent that the use impaired her ability to conduct with safety to the public the practice of

1 a pharmacist intern. As set forth in paragraphs 20-29 above, respondent admitted that she had an
2 addiction to alcohol and went to a residential treatment program for alcohol dependency.
3 Respondent's alcohol use was to an extent or in a manner as to be dangerous or injurious to
4 herself, to any other person, to the public, or to the extent that the use impaired her to conduct
5 with safety to the public the practice of a pharmacist intern.

6 **PRAYER**

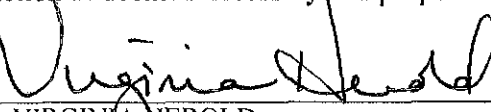
7 WHEREFORE, complainant requests that a hearing be held on the matters alleged in this
8 Accusation, and that following the hearing, the Board issue a decision:

9 1. Revoking or suspending Intern Pharmacist License Number INT 21078 issued to
10 Cynthia Dawn Gomez;

11 2. Ordering Cynthia Dawn Gomez to pay the Board the reasonable costs of the
12 investigation and enforcement of this case pursuant to Business and Professions Code section
13 125.3; and

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

15 DATED: 3/21/13



16 VIRGINIA HEROLD
17 Executive Officer
18 Board of Pharmacy
19 Department of Consumer Affairs
20 State of California
21 *Complainant*

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