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

10 In the Matter of the Accusation Against:
11 **DAVID F. DIAZ**
12 **1947 Norwalk Ave**
13 **Los Angeles, CA 90041**
14 **Pharmacy Technician Registration No. TCH**
92998
15 Respondent.

Case No. 4388

A C C U S A T I O N

16
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 August 4, 2009, the Board of Pharmacy issued Pharmacy Technician
22 Registration Number TCH 92998 to David F. Diaz (Respondent). The Pharmacy Technician
23 Registration was in full force and effect at all times relevant to the charges brought herein and
24 will expire on January 31, 2013, 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 unless otherwise indicated.

1 4. Section 4060 of the Code states:

2 "No person shall possess any controlled substance, except that furnished to a person upon
3 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
4 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
5 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
6 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
7 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
8 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
9 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
10 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
11 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
12 labeled with the name and address of the supplier or producer.

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

16 5. Section 4301 of the Code states:

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

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

25

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

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

4 "(a) Every license issued may be suspended or revoked.

5 "(b) The board shall discipline the holder of any license issued by the board, whose default
6 has been entered or whose case has been heard by the board and found guilty, by any of the
7 following methods:

8 "(1) Suspending judgment.

9 "(2) Placing him or her upon probation.

10 "(3) Suspending his or her right to practice for a period not exceeding one year.

11 "(4) Revoking his or her license.

12 "(5) Taking any other action in relation to disciplining him or her as the board in its
13 discretion may deem proper.

14 ...

15 7. Section 118 of the Code states:

16 "(a) The withdrawal of an application for a license after it has been filed with a board in the
17 department shall not, unless the board has consented in writing to such withdrawal, deprive the
18 board of its authority to institute or continue a proceeding against the applicant for the denial of
19 the license upon any ground provided by law or to enter an order denying the license upon any
20 such ground.

21 "(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a
22 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by
23 order of a court of law, or its surrender without the written consent of the board, shall not, during
24 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
25 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
26 provided by law or to enter an order suspending or revoking the license or otherwise taking
27 disciplinary action against the licensee on any such ground.

28

1 "(c) As used in this section, board includes an individual who is authorized by any
2 provision of this code to issue, suspend, or revoke a license, and 'license' includes 'certificate,'
3 'registration,' and 'permit.'"

4 8. Section 125.3 of the Code provides, in pertinent part, that the
5 Board/Registrar/Director may request the administrative law judge to direct a licentiate found to
6 have committed a violation or violations of the licensing act to pay a sum not to exceed the
7 reasonable costs of the investigation and enforcement of the case.

8 9. Health and Safety Code section 11350, subdivision (a) provides that:

9 Except as otherwise provided in this division, every person who possesses (1) any
10 controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of
11 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or
12 specified in subdivision (b) or (c) of Section 11055 or specified in subdivision (h) of Section
13 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic
14 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian
15 licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of
16 Section 1170 of the Penal Code.

17 DRUG CLASSIFICATION

18 10. Hydrocodone is a Schedule II controlled narcotic substance pursuant to Health and
19 Safety Code section 11056(e)(4) and a dangerous drug pursuant to Business and Professions Code
20 section 4022.

21 BACKGROUND

22 11. On or around January 30, 2012, the Board received an initial notice of controlled
23 substance theft from CVS Pharmacy (CVS.) The notification followed an investigation by CVS
24 that was conducted after it was determined that several hundred hydrocodone tablets were
25 missing from the pharmacy's inventory. During the course of that investigation, covert cameras
26 were installed in the pharmacy. Through the video surveillance that followed, Respondent was
27 observed placing a bottle containing controlled substances in his pocket on two separate
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1 occasions. When confronted with the thefts by loss prevention personnel, Respondent admitted to
2 taking an unknown quantity of hydrocodone tablets from the pharmacy.

3 FIRST CAUSE FOR DISCIPLINE

4 (Possession of Controlled Substances)

5 12. Respondent is subject to disciplinary action under section 4301, subdivision (j), in
6 that he violated section 4060 and Health and Safety Code section 11350(a) by possessing
7 controlled substances without a lawful prescription. Complainant refers to and by this reference
8 incorporates the allegations set forth above in paragraph 11 as though set forth fully.

9 SECOND CAUSE FOR DISCIPLINE

10 (Dishonest Acts)

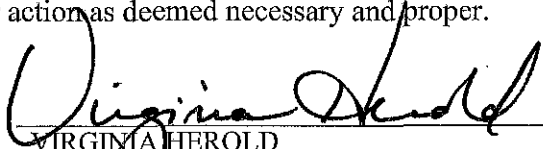
11 13. Respondent is subject to disciplinary action under section 4301, subdivision (f) in that
12 he committed acts of dishonesty by stealing two bottles of controlled substances from his
13 employer, CVS Pharmacy. Complainant refers to and by this reference incorporates the
14 allegations set forth above in paragraph 11 as though set forth fully.

15 PRAYER

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

- 18 1. Revoking or suspending Pharmacy Technician Registration Number TCH 92998,
19 issued to David F. Diaz;
- 20 2. Ordering David F. Diaz to pay the Board of Pharmacy the reasonable costs of the
21 investigation and enforcement of this case, pursuant to Business and Professions Code section
22 125.3; and
- 23 3. Taking such other and further action as deemed necessary and proper.

24 DATED: 12/14/12


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