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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:

Case No. 4459

11 **GUS A. MEJIA**  
12 **aka GUSTAVO MEJIA CONTRERAS**  
13 **P.O. Box 3517**  
**San Rafael, CA 94912**

**A C C U S A T I O N**

14 **Pharmacy Technician License No. TCH 41474**

15 Respondent.

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 February 20, 2002, the Board of Pharmacy issued Pharmacy Technician  
22 License No. TCH 41474 to Gus A. Mejia aka Gustavo Mejia Contreras (Respondent). The  
23 Pharmacy Technician License was in full force and effect at all times relevant to the charges  
24 brought herein and will expire on September 30, 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 (Code) unless otherwise indicated.

1 4. Section 4011 of the Code provides that the Board shall administer and enforce both  
2 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances  
3 Act [Health & Safety Code, § 11000 et seq.].

4 5. Section 4300(a) of the Code provides that every license issued by the Board may be  
5 suspended or revoked.

6 6. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration,  
7 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a  
8 disciplinary action during the period within which the license may be renewed, restored, reissued  
9 or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not  
10 renewed within three years following its expiration may not be renewed, restored, or reinstated  
11 and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of  
12 the Code provides that any other license issued by the Board may be canceled by the Board if not  
13 renewed within 60 days after its expiration, and if canceled may not be reissued.

14 STATUTORY AND REGULATORY PROVISIONS

15 7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action  
16 against any holder of a license who is guilty of “unprofessional conduct,” defined to include, but  
17 not be limited to, any of the following:

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

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

23 (l) The conviction of a crime substantially related to the qualifications, functions, and duties  
24 of a licensee under this chapter.

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

1 8. Section 490 of the Code provides, in pertinent part, that the Board may suspend or  
2 revoke a license when it finds that the licensee has been convicted of a crime substantially related  
3 to the qualifications, functions or duties of the license.

4 9. California Code of Regulations, title 16, section 1770, states:

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

11 10. Section 4060 of the Code provides, in pertinent part, that no person shall possess any  
12 controlled substance, except that furnished upon a valid prescription/drug order.

13 11. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess  
14 a controlled substance in Schedule I, subdivision(s) (b), (c), or (f)(1), Schedule II, subdivision(s)  
15 (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

#### 16 COST RECOVERY

17 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
18 administrative law judge to direct a licentiate found to have committed a violation of the licensing  
19 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

#### 20 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

21 13. Section 4021 of the Code states:

22 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section  
23 11053) of Division 10 of the Health and Safety Code.”

24 14. Section 4022 of the Code states, in pertinent part:

25 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use,  
26 except veterinary drugs that are labeled as such, and includes the following:

27 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without  
28 prescription,’ ‘Rx only,’ or words of similar import. . . .

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

3           15. **Cocaine** is a Schedule I (in base/rock/crack form) or Schedule II controlled substance  
4 as designated by Health and Safety Code sections 11054(f)(1) and 11055(b)(6) and a dangerous  
5 drug as designated by Business and Professions Code section 4022. It is a narcotic drug.

6   FACTUAL BACKGROUND

7           16. On or about July 6, 2010, Respondent was identified in a report to San Rafael (CA)  
8 Police, by the proprietor(s) of a travel business that Respondent had frequented, as responsible for  
9 the theft of a donation box containing \$305.00. The victim(s) identified Respondent by the photo  
10 identification he used in the business, and said they had video surveillance footage of the theft.  
11 Police investigating the complaint were not able to contact Respondent, and no action was taken.

12           17. On or about July 16, 2010, Respondent was apprehended by store security at a Rite  
13 Aid store in San Rafael after having left the store without paying for nine (9) disposable razors in  
14 his possession, valued at \$112.69. Respondent subsequently admitted the theft to the responding  
15 officer(s) from the San Rafael Police Department, and admitted to an intent to re-sell the razors.

16           18. On or about September 29, 2010, Respondent was apprehended by store security at a  
17 Macy's store in San Rafael after having left the store without paying for two (2) men's watches in  
18 his possession, valued at \$115.00. Respondent advised Macy's security staff that he stole the  
19 watches because he intended to re-sell the items to procure money for medication.

20           19. On or about October 15, 2010, based on the incidents in paragraphs 17 and 18 above,  
21 Respondent was charged, by First Amended Complaint in *People v. Gustavo Mejia Contreras*,  
22 Case No. CR171325A in Marin County Superior Court, with two counts of violating Penal Code  
23 section 490.5 (Petty Theft from a Merchant), both misdemeanors. On or about January 24, 2011,  
24 Respondent was granted diversion (12 months) on specified terms and conditions as an alternative  
25 to proceeding with the prosecution. On or about May 23 and/or November 23, 2011, Respondent  
26 was terminated from diversion due to non-compliance and criminal proceedings were reinstated.  
27 On or about November 23, 2011, the charges in this case were dismissed pursuant to a Harvey  
28 waiver (considered for sentencing), pursuant to action in Case No. CR178155A (see below).

1           20. On or about January 4, 2011, Respondent was interrupted by San Francisco Police in  
2 the midst of a transaction in which he exchanged/sold or purchased/bought base (rock/crack)  
3 **cocaine** for cash. A search of his person discovered two off-white rock-like substances wrapped  
4 in clear plastic, which were subsequently determined to be rock **cocaine** weighing 0.4 grams.

5           21. On or about January 19, 2011, Respondent was apprehended by a manager for a thrift  
6 or grocery store in San Rafael on suspicion of attempting to steal razor blades. The manager told  
7 the responding officer(s) from the San Rafael Police Department that on or about January 9, 2011  
8 he had seen Respondent take razor blades without paying for them, and had followed him on that  
9 occasion but not apprehended him. So when Respondent came into the store on or about January  
10 19, 2011, the store manager followed him, and observed him placing razor blades in his jacket; on  
11 this occasion, Respondent removed the razor blades from his jacket before exiting the store.

12           22. On or about April 29, 2011, Respondent was again apprehended by store security at a  
13 Safeway store in San Rafael after having left the store without paying for two (2) packages of  
14 razors in his possession, valued at \$64.00. Respondent admitted to the responding officer(s) from  
15 the San Rafael Police Department that he had taken the razors, and said he forgot to pay for them.

16           23. On or about May 16, 2011, based on the incident in paragraph 22 above, Respondent  
17 was charged, in *People v. Gustavo Mejia-Contreras*, Case No. CR175606A in Marin County  
18 Superior Court, with violating Penal Code section 490.5 (Petty Theft from a Merchant), a  
19 misdemeanor. On or about November 23, 2011, the charge was dismissed pursuant to a Harvey  
20 waiver (considered for sentencing), pursuant to action in Case No. CR178155A (see below).

21           24. On or about November 12, 2011, Respondent was apprehended by store security at a  
22 Rite Aid store in San Rafael after having left the store without paying for six (6) packages of  
23 razors in his possession, valued at \$140.00. Respondent admitted to the responding officer(s)  
24 from the San Rafael Police Department that he had come into the store intending to steal the  
25 razors, and further admitted that he sells stolen merchandise on the streets to pay for medication.  
26 A search of Respondent's property discovered six (6) men's watches with store price tags, total  
27 value \$200.00. Respondent stated that he stole the watches from a Kohl's store the previous day.  
28 Subsequent police contact with Kohl's determined that the watches did not come from Kohl's.



1 SECOND CAUSE FOR DISCIPLINE

2 (Possession of Controlled Substance)

3 29. Respondent is subject to discipline under section section(s) 4301(j), (o) and/or 4060  
4 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described in  
5 paragraph(s) 20 and/or 26 above, possessed, conspired to possess, and/or assisted in or abetted  
6 possession of, a controlled substance, without a prescription.

7  
8 THIRD CAUSE FOR DISCIPLINE

9 (Conviction of Substantially Related Crime(s))

10 30. Respondent is subject to discipline under section 4301(l) and/or section 490 of the  
11 Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of  
12 substantially related crime(s), in that, as described in paragraphs 17, 18, 22, 24, and 25 above, on  
13 or about November 23, 2011, in a criminal case titled *People v. Gustavo Mejia Contreras*, Case  
14 No. CR178155A in Marin County Superior Court, Respondent was convicted of violating Penal  
15 Code section 459 (Commercial Burglary), a misdemeanor. By virtue of Harvey waivers entered  
16 by Respondent with regard to two other pending criminal cases based on similar conduct (theft of  
17 razors from area merchants), the other pending cases were dismissed in favor of inclusion of the  
18 targeted stores in a stay-away order entered against Respondent under this conviction.

19  
20 FOURTH CAUSE FOR DISCIPLINE

21 (Unprofessional Conduct)

22 31. Respondent is subject to discipline under section 4301 of the Code in that  
23 Respondent, as described in paragraphs 16 to 30 above, engaged in unprofessional conduct.

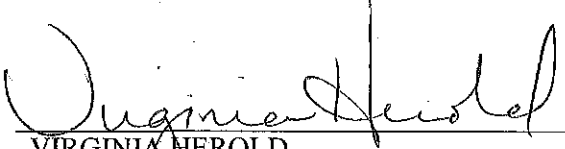
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25 PRAYER

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

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1. Revoking or suspending Pharmacy Technician License No. TCH 41474, issued to Gus A. Mejia aka Gustavo Mejia Contreras (Respondent);
2. Ordering Respondent to pay the Board 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 is deemed necessary and proper.

DATED: 2/12/13



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

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