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7	Attorneys for Complainant	
8		RE THE
9	DEPARTMENT OF (PHARMACY CONSUMER AFFAIRS
10	STATE OF C	CALIFORNIA
11	In the Matter of the Accusation Against:	Case No. 4483
12	ANGEL M. AYALA	ACCUSATION
13	2555 Wabash Ave. Los Angeles, CA 90033	(Gov. Code, § 11503.)
14	Pharmacy Technician Registration No.	
15	ТСН 62830	
16	Respondent.	
ι7		
18	Complainant alleges:	
19	PAF	<u>TIES</u>
20	1. Complainant Virginia Herold brings	this Accusation solely in her official capacity as
21	the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.	
22	2. On April 6, 2006, the Board issued	Pharmacy Technician Registration Number
23	TCH 68230 to Respondent Angel M. Ayala. The	e registration was in full force and effect at all
24	times relevant to the charges brought herein, and	will expire on August 31, 2015 unless it is
25	renewed.	
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		Accusation Against Angel M. Ayala (Case No. 4483)

1	JURISDICTION
2	3. This Accusation is brought before the Board under the authority of the following
3	laws. All section references are to the Business and Professions Code (Code) unless otherwise
4	indicated.
5	4. Code section 4300 provides that every license issued by the Board may be revoked
6	suspended and that proceedings to discipline a license are to be conducted according to the
7	Administrative Procedure Act (Gov. Code, §§ 11370, et seq.).
8	5. Code sections 118 and 4300.1 provide that the suspension, expiration, forfeiture,
9	cancellation or surrender of a license will not deprive the Board of jurisdiction to institute or
10	continue a disciplinary proceeding against a licensee.
11	STATUTES
12	6. Section 4301 of the Code states, in relevant part:
13	The board shall take action against any holder of a license who is guilty of
14	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:
15	
16	(f) The commission of any act involving moral turpitude, dishonesty, fraud,
17 18	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.
19	
20	(j) The violation of any of the statutes of this state, or any other state, or of the United States regulating controlled substances and dangerous drugs.
21	
22	(o) Violating or attempting to violate, directly or indirectly, or assisting in or 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, including regulations established by the board or by any other state or federal
24	regulatory agency.
25	(p) Actions or conduct that would have warranted denial of a license.
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 (a) No person shall obtain or attempt to obtain controlled substances, or procure 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 9. Health and Safety Code section 11350 states, in relevant part: (a) Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b), (c), (e), or paragraph (1) of subdivision (f) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (b) or (c) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (1) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (b) of subdivision (c) of Section 11054, or specified in subdivision (b) or c) of Section 11055, or specified in subdivision (b) of c) of Section 11055, or specified in subdivision (b) of subdivision (b) of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in a county jail for not more than one year, except that such person shall instead be punished pursuant to subdivision (b) of Section 1170 of the Penal Code if that person has one or more prior convictions for an offense specified in clause (iv) of subgaragraph (C) of paragraph (2) of subdivision (c) of Section 290 of the Penal Code. 		1	· · · · · · · · · · · · · · · · · · ·
 No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3640.7, or clause (iv) of subparagraph (A) of paragraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optimetrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse prestitioner, ophysician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer. Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, the sort her own stock of dangerous drugs and devices. Health and Safety Code section 11173 states, in relevant part: (a) No person shall obtain or attempt to obtain controlled substances, or procure 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 Health and Safety Code section 11350 states, in relevant part: (a) Except as otherwise provided in this division (b), (c), (c), or paragraph (1) of subdivision (b) of Section 11054, or specified in subdivision (b) of Section 11055, or specified in subdivision (b), (c), (c), or paragraph (1) of subdivision (b) of Section 11054, or specified in subdivision (b) of Section 11055, or specified in subdivision (b) of Section 11054, or specified in subdivision (b) of Section 11055, o	1		DRUG STATUTES
person upon the prescription of a physician, dentist, poliatrist, optimetrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furmished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 3246.51, a nurse practitioner pursuant to 2836.1, or a physician assistant pursuant to section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optimetrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer. Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices. 8. Health and Safety Code section 11173 states, in relevant part: 9. Health and Safety Code section 11350 states, in relevant part: 10. State as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b), c(c), (c), or paragraph (1) of subdivision (b) of Section 11054, or specified in subdivision (b) of Section 11055, or specified in subdivision (b) of Section 11055, or specified in subdivision (b) (c) of Section 11055, or specified in subdivision (b) of Section 1105, or yee or onvice in an often sequent person shall instead be punished pursuant paragraph (1) of subdivision (b) of Section 11054, or specified in subdivision (b) of Section 11054, or paragraph (1) of subdivision	2		7. Section 4060 of the Code states:
 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 302.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to other subparagraph (D) of paragraph (G) of, or clause (iv) of subparagraph (A) of paragraph (S) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer. Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices. 8. Health and Safety Code section 11173 states, in relevant part: (a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, decit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact 9. Health and Safety Code section 11350 states, in relevant part: (a) Except as otherwise provided in this division, (b) or (c) of Section 11055, or specified in subdivision (b) (c), (e), or paragraph (1) of subdivision (f) of Section 11054, specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (b) of Section 11055, or specified in subdivision (b) of Section 11056, or (2) or (2) of subdivision (c) of Section 11054, specified in subdivision (b) of (c) (c) or (d) of Section 11054, or specified in subdivision (b) of (c) (c) of Section 11054, specified in subdivision (b	3		
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7 to the 'possession' of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer. 10 Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices. 11 8. Health and Safety Code section 11173 states, in relevant part: 13 (a) No person shall obtain or attempt to obtain controlled substances, or procure 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 16 9. Health and Safety Code section 11350 states, in relevant part: 17 (a) Except as otherwise provided in this division, every person who possesses 18 (1) any controlled substance specified in subdivision (b), (c), (c), or paragraph (1) of subdivision (f) of Section 11054, specified in subdivision (b), (c), (c) or paragraph (1) of subdivision (f) of Section 11054, specified in subdivision (b), (c), (c) or poragraph (1) of subdivision (f) of Section 11054, specified in subdivision (b), (c), (c) or paragraph (1) of subdivision (f) of Section 11054, specified in subdivision (b) of (c) of Section 11055, or specified in subdivision (b), of (c) of paragraph (1) of subdivision (f) of Section 11054, specified in subdivision (b) of (c) of Section 11055, or specifited in subdivisin (b) of Section 11054, spe	6		pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph
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 of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code. /// 26 /// 27- /// 28 /// 3 	22		Section 1170 of the Penal Code if that person has one or more prior convictions for an
24 25 26 7// 27 7// 28 7// 1// 3	23		of Section 667 of the Penal Code or for an offense requiring registration pursuant to
26 - /// 27 - /// 28 /// 3	24		subdivision (c) of Section 290 of the Penal Code.
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4483)

1	REGULATIONS
2	10. California Code of Regulations, title 16, section 1770, states:
3	For the purpose of denial, suspension, or revocation of a personal or facility
4	license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the
5 6	qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare.
7	COST RECOVERY
8	11. Section 125.3 of the Code provides, in relevant part, that the Board may request the
9	administrative law judge to direct a licentiate found to have committed a violation of the licensing
10	act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
11	case.
12	DRUG CLASSIFICATIONS
13	12. Hydromorphone is an opioid pain medication. It is a Schedule II controlled substance
14	and a dangerous drug. (Health & Saf. Code, § 11055, subd. (b)(1)(J); Bus. & Prof. Code, § 4022.)
15	STATEMENT OF FACTS
16	13. Pasadena-based Huntington Memorial Hospital employed Respondent in its
17	pharmacy as a Pharmacy Technician from February 2008 to December 8, 2011.
18	14. At first, the pharmacy assigned Respondent to the night shift and tasked him with
19	restocking the hospital's Pyxis MedStation machines. A Pyxis MedStation machine is an
20	automated drug-dispensing system that stores dangerous drugs and controlled substances to be
21	administered to patients. It logs each access attempt, and hospital employees are required to use a
22	unique, employee-specific access code to gain entry.
23	15. Respondent transferred to the daytime shift in July of 2010 and the pharmacy re-
24	assigned him to its sterile intravenous drug compounding area. It also reduced his Pyxis-
25	restocking duties.
26	16. In June of 2011, the pharmacy assigned Respondent to perform tasks that did not
27	require him to access a Pyxis machine. Respondent's user identification code and password,
28	however, remained active, allowing him continued access.
	4
	Accusation Against Angel M. Ayala (Case No. 4483)

1 17. Between September 1 and November 27, 2011, Respondent entered Pyxis machine 2 cabinets that stocked hydromorphone syringes in concentrations of thirty milligram per milliliter 3 and sixty milligram per milliliter. He did this 369 times over three months. On 43 occasions, he 4 accessed or attempted to access a Pyxis machine on a day that he was not scheduled to work; he 5 did this on October 20, November 1, 3, 8, 10, 15, 17, 22, 23, and 28, 2011.

Between September 1 and November 27, 2011, Respondent removed hydromorphone
syringes by using the Pyxis machines' expire and refill functions. Forty-four hydromorphone
PCA syringes in Pyxis Machine cabinets that Respondent accessed were found with broken
tamper seals. The seals were aligned in an effort to make the seals appear intact. Six of the
tampered-with syringes were tested and all were found to contain less than the expected amount
of hydromorphone. Respondent replaced the depleted hydromorphone content with saline
solution.

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14

FIRST CAUSE FOR DISCIPLINE

(Moral Turpitude, Dishonesty, Deceit)

19. Respondent is subject to disciplinary action under Code section 4301, subdivision (f), 15 in conjunction with California Code of Regulations, title 16, section 1770, for unprofessional 16 conduct because he committed an act involving moral turpitude, dishonesty, fraud, deceit or 17 corruption. In particular, between September 1 and November 27, 2011, Respondent diverted six 18 syringes of hydromorphone, a controlled substance and dangerous drug, from Huntington 19 Memorial Hospital's Pyxis MedStation machines. Respondent attempted to conceal his theft by 20 replacing the depleted volume of hydromorphone with saline solution and then realigning the 21 tamper seals. Complainant realleges paragraphs 12-18. 22

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SECOND CAUSE FOR DISCIPLINE

24

(Violate Statutes Regulating Controlled Substances and Dangerous Drugs)

25 20. Respondent is subject to disciplinary action under Code section 4301, subdivision (j),
26 in conjunction with California Code of Regulations, title 16, section 1770, for unprofessional
27 conduct because Respondent violated the following statutes regulating controlled substances and
28 dangerous drugs:

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a. Bus. & Prof. Code, § 4060: Code section 4060, in relevant part, prohibits the
 possession of a controlled substance except with a valid prescription. Respondent violated Code
 section 4060 by possessing hydromorphone without a valid prescription or lawful purpose
 between September 1 and November 27, 2011. Complainant realleges paragraphs 12–18.

b. Health & Saf. Code, § 11173: Health and Safety Code section 11173 criminalizes
obtaining or attempting to obtain a controlled substance by fraud, deceit, misrepresentation, or
subterfuge. Respondent violated Health and Safety code section 11173 by obtaining
hydromorphone, a controlled substance and dangerous drug, between September 1 and November
27, 2011, by means of fraud, deceit, misrepresentation and subterfuge. Complainant realleges
paragraphs 12–18.

c. Health & Saf. Code, § 11350: Health and Safety Code section 11350 criminalizes
 possession of a controlled substance unless upon the written prescription of a physician, dentist,
 podiatrist, or veterinarian. Respondent violated Health and Safety Code section 11350 by
 possessing hydromorphone without a valid prescription or lawful purpose between September 1
 and November 27, 2011. Complainant realleges paragraphs 12–18.

THIRD CAUSE FOR DISCIPLINE

(Violate Pharmacy Law)

18 21. Respondent is subject to disciplinary action under Code section 4301, subdivision (o),
19 in conjunction with California Code of Regulations, title 16, section 1770, for unprofessional
20 conduct because he violated provisions of the Pharmacy Law (Bus. & Prof. Code, §§ 2700, *et seq.*). Complainant realleges paragraphs 12–20.

FOURTH CAUSE FOR DISCIPLINE

(Conduct that Would Have Warranted License Denial)

24 22. Respondent is subject to disciplinary action under Code section 4301, subdivision (p),
25 in conjunction with California Code of Regulations, title 16, section 1770, for unprofessional
26 conduct because he committed acts that would have warranted denial of a license. Complainant
27 realleges paragraphs 12–21.

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Accusation Against Angel M. Ayala (Case No. 4483)

1	PRAYER	
2	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,	
3	and that following the hearing, the Board of Pharmacy issue a decision:	
4	1. Revoking or suspending Pharmacy Technician Registration Number TCH 62830,	
5	issued to Respondent Angel M. Ayala;	
6	2. Ordering Respondent Angel M. Ayala to pay the Board of Pharmacy the reasonable	
7	costs of the investigation and enforcement of this case, pursuant to Business and Professions	
8	Code section 125.3; and	
9	3. Taking such other and further action as deemed necessary and proper.	
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14	DATED: 5/9/15 Marina Lud	
15	VIRGINIA HEROLD Executive Officer	
16	Board of Pharmacy Department of Consumer Affairs	
17	State of California Complainant	
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,	Accusation Against Angel M. Ayala (Case No. 4483)	

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