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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 No. 4519

12 **ROSELA CARNARIO**
15405 S. Gibson Ave
13 Compton, CA 90221

A C C U S A T I O N

14 Pharmacy Technician Registration No. TCH 111201
15 Respondent.
16

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about February 28, 2011, the Board issued Pharmacy Technician Registration
23 No. TCH 111201 to Rosela Carnario (Respondent). The Pharmacy Technician Registration was
24 in full force and effect at all times relevant to the charges brought herein and will expire on
25 August 31, 2014, 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 whether the act is a felony or misdemeanor or not.

2

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

5 **REGULATORY PROVISION**

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

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

13 **DRUG STATUTES**

14 9. Penal Code section 381b states:

15 "Any person who possesses nitrous oxide or any substance containing nitrous oxide, with
16 the intent to breathe, inhale, or ingest for the purpose of causing a condition of intoxication,
17 elation, euphoria, dizziness, stupefaction, or dulling of the senses or for the purpose of, in any
18 manner, changing, distorting, or disturbing the audio, visual, or mental processes, or who
19 knowingly and with the intent to do so is under the influence of nitrous oxide or any material
20 containing nitrous oxide is guilty of a misdemeanor. This section shall not apply to any person
21 who is under the influence of nitrous oxide or any material containing nitrous oxide pursuant to
22 an administration for the purpose of medical, surgical, or dental care by a person duly licensed to
23 administer such an agent."

24 10. Penal Code section 381c states, in pertinent part:

25 "(a) As used in this section, "nitrous oxide" refers to any of the following substances:
26 N[2]O, dinitrogen monoxide, dinitrogen oxide, nitrogen oxide, or laughing gas.

27 "(b) Every person who sells, furnishes, administers, distributes, gives away, or offers to
28 sell, furnish, administer, distribute, or give away a device, canister, tank, or receptacle either

1 exclusively containing nitrous oxide or exclusively containing a chemical compound mixed with
2 nitrous oxide, to a person under 18 years of age is guilty of a misdemeanor. The court shall
3 consider ordering the person to perform community service as a condition of probation.”

4 11. United States Code Service, title 21, section 331 states, in pertinent part:

5 “The following acts and the causing thereof are hereby prohibited:

6 “(k) The alteration, mutilation, destruction, obliteration, or removal of the whole or any
7 part of the labeling of, or the doing of any other act with respect to, a food, drug, device, tobacco
8 product, or cosmetic, if such act is done while such article is held for sale (whether or not the first
9 sale) after shipment in interstate commerce and results in such article being adulterated or
10 misbranded. . . .”

11 12. United States Code Service, title 21, section 352 states, in pertinent part:

12 “A drug or device shall be deemed to be misbranded--

13 “(a) False or misleading label. If its labeling is false or misleading in any particular.

14 Health care economic information provided to a formulary committee, or other similar entity, in
15 the course of the committee or the entity carrying out its responsibilities for the selection of drugs
16 for managed care or other similar organizations, shall not be considered to be false or misleading
17 under this paragraph if the health care economic information directly relates to an indication
18 approved under section 505 [21 USCS § 355] or under section 351(a) of the Public Health
19 Service Act [42 USCS § 262(a)] for such drug and is based on competent and reliable scientific
20 evidence. The requirements set forth in section 505(a) [21 USCS § 355(a)] or in section 351(a) of
21 the Public Health Service Act [42 USCS § 262(a)] shall not apply to health care economic
22 information provided to such a committee or entity in accordance with this paragraph.
23 Information that is relevant to the substantiation of the health care economic information
24 presented pursuant to this paragraph shall be made available to the Secretary upon request. In this
25 paragraph, the term "health care economic information" means any analysis that identifies,
26 measures, or compares the economic consequences, including the costs of the represented health
27 outcomes, of the use of a drug to the use of another drug, to another health care intervention, or to
28 no intervention.

1 Code Service, title 21, sections 331, subdivision (k), 352, subdivision (a), and 353,
2 subdivision (a), and / or Penal Code sections 381b, and 381c(b), when she possessed and sold
3 nitrous oxide misbranded from its commercial use into unlabeled balloon packages for sale as a
4 recreational use food or drug, as follows:

5 a. On or about September 23, 2011, Respondent informed Los Angeles police officers
6 that she went to a neighbor's "house" party with a nitrous oxide compressed air tank and balloons
7 to make money selling recreational use balloons of nitrous oxide to the party attendees, ranging in
8 ages from 14 through 25 years old. Respondent was selling the balloons of nitrous oxide for four
9 balloons for \$5.00. Respondent was arrested.

10 b. Subsequently, on or about September 27, 2011, after pleading guilty to violating
11 Penal Code sections 381b [possession of nitrous oxide] and 381c(b) [possession of nitrous oxide
12 for sale], Respondent was placed on the Deferred Entry of Judgment program for 18 months in
13 the criminal proceeding entitled *The People of the State of California v. Rosela Carnario* (Super.
14 Ct. Los Angeles County, 2011, No. 1CP07019).

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

17 16. Respondent is subject to disciplinary action under sections 4300 and 4301,
18 subdivision (f), on the grounds of unprofessional conduct, in that on or about September 23, 2011,
19 Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit and / or
20 corruption. Complainant refers to and by this reference incorporates the allegations set forth
21 above in paragraph 15, subparagraphs (a) and (b), inclusive, as though set forth fully.

22 **THIRD CAUSE FOR DISCIPLINE**

23 **(Completing Document That Misrepresents Factual Truth)**

24 17. Respondent is subject to disciplinary action under section 4301, subdivision (g), in
25 that on or about August 16, 2012, Respondent knowingly completed a pharmacy technician
26 renewal application and marked "No" in response to a question on whether she has been
27 convicted of a crime. Respondent failed to disclose on her license renewal that on or about
28 September 27, 2011, she was convicted of criminal offenses. Complainant refers to, and by this

1 reference incorporates, the allegations set forth above in paragraph 15, subparagraphs (a) and (b),
2 as though set forth fully.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct)**

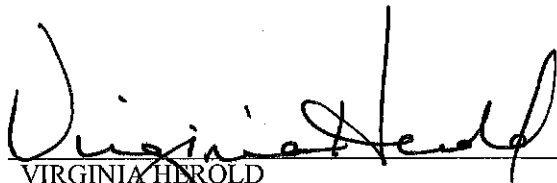
5 18. Respondent is subject to disciplinary action under sections 4300 and 4301, in
6 conjunction with California Code of Regulations, title 16, section 1770, in that Respondent
7 committed substantially related acts of unprofessional conduct. Complainant refers to and by this
8 reference incorporates the allegations set forth above in paragraphs 15 through 17, inclusive, as
9 though set forth fully.

10 **PRAYER**

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

- 13 1. Revoking or suspending Pharmacy Technician Registration No. TCH 111201, issued
14 to Respondent Rosela Carnario;
- 15 2. Ordering Respondent Rosela Carnario to pay the Board the reasonable costs of the
16 investigation and enforcement of this case, pursuant to section 125.3; and
- 17 3. Taking such other and further action as deemed necessary and proper.
- 18
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21 DATED: 10/21/13

22 

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

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