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

12 In the Matter of the Accusation Against:

13 **CINDY ELIZABETH CABRERA**
8519 Everest Street
Downey, CA 90242

14 Pharmacy Technician Registration
No. TCH 103550

15 Respondent.

Case No. 4573

A C C U S A T I O N

16 Complainant alleges:

17 **PARTIES**

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

20 2. On or about June 22, 2010, the Board of Pharmacy (Board) issued Pharmacy
21 Technician Registration No. TCH 103550 to Cindy Elizabeth Cabrera (Respondent). The
22 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges
23 brought herein and will expire on November 30, 2013, unless renewed.

24 **JURISDICTION**

25 3. This Accusation is brought before the Board under the authority of the following
26 laws. All section references are to the Business and Professions Code unless otherwise indicated.

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STATUTORY PROVISIONS

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2 4. Section 4300 of the Code provides in pertinent part, that every license issued by the
3 Board is subject to discipline, including suspension or revocation.

4 5. Section 4300.1 of the Code states:

5 “The expiration, cancellation, forfeiture, or suspension of a board-issued license by
6 operation of law or by order or decision of the board or a court of law, the placement of a license
7 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
8 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
9 proceeding against, the licensee or to render a decision suspending or revoking the license.”

10 6. Section 4301 of the Code states, in pertinent part:

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

14

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

18 ...

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

24

25 “(l) The conviction of a crime substantially related to the qualifications, functions, and
26 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
27 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
28 substances or of a violation of the statutes of this state regulating controlled substances or

1 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
2 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
3 The board may inquire into the circumstances surrounding the commission of the crime, in order
4 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
5 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
6 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
7 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
8 of this provision. The board may take action when the time for appeal has elapsed, or the
9 judgment of conviction has been affirmed on appeal or when an order granting probation is made
10 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
11 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
12 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
13 indictment.

14 REGULATORY PROVISION

15 7. California Code of Regulations, title 16, section 1770 states, in pertinent part:

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

22 COST RECOVERY

23 8. Section 125.3 of the Code states, in pertinent part, that the Board may request the
24 administrative law judge to direct a licentiate found to have committed a violation or violations of
25 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
26 enforcement of the case.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Conviction of a Substantially Related Crime)**

3 9. Respondent is subject to disciplinary action under Code sections 4301, subdivision (l)
4 in conjunction with California Code of Regulations, title 16, section 1770, in that
5 Respondent has been convicted of a crime substantially related to the qualifications, functions or
6 duties of a pharmacy technician, as follows:

7 a. On or about December 22, 2011, pursuant to her *nolo contendere* plea, Respondent
8 was convicted of one misdemeanor count of violating Penal Code section 484, subdivision (a)
9 [theft] in the criminal case entitled *The People of the State of California v. Cindy E. Cabrera*
10 (Super. Ct. Los Angeles County, 2011, No. 1WW05271). The Court sentenced Respondent to
11 serve 1 day in Los Angeles County Jail and placed her on 1 year probation, with terms and
12 conditions.

13 b. The circumstances of the conviction are that on or about October 20, 2011,
14 Respondent entered a WalMart store in Pico Rivera, California, selected several items of
15 merchandise, concealed them in her purse, and exited the store without paying for the items.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Acts Involving Dishonesty, Fraud or Deceit)**

18 10. Respondent is subject to disciplinary action under Code section 4301, subdivision (f),
19 in that on or about October 20, 2011, Respondent committed acts involving dishonesty, fraud, or
20 deceit. Complainant refers to, and by this reference incorporates, the allegations set forth above
21 in paragraph 9, as though set forth fully.

22 **THIRD CAUSE FOR DISCIPLINE**

23 **(Dangerous Use of a Controlled Substance)**

24 11. Respondent is subject to disciplinary action under Code section 4301, subdivision (h),
25 in that on or about September 8, 2011, Respondent administered or used a controlled substance to
26 the extent or in a manner as to be dangerous or injurious to herself, as follows:

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1 a. On or about September 8, 2011, Respondent was found unconscious on the bathroom
2 floor and transported to the hospital for drug overdose. Respondent admitted to the police
3 officers that she had been using Heroin, a controlled substance, for the last 3-4 months, by
4 injecting Heroin into the veins in her arms and hands.

5 **PRAYER**

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

- 8 1. Revoking or suspending Pharmacy Technician Registration No. TCH 103550, issued
9 to Cindy Elizabeth Cabrera;
- 10 2. Ordering Cindy Elizabeth Cabrera to pay the Board the reasonable costs of the
11 investigation and enforcement of this case, pursuant to section 125.3; and
- 12 3. Taking such other and further action as deemed necessary and proper.

13
14 DATED: _____

11/4/13



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