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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:

Case No. 4613

13 **EDWARD GERMAN HERRERA**
9055 Hubbard Street
Culver City, CA 90232

A C C U S A T I O N

14 **Pharmacy Technician Registration No. TCH**
15 **101524**

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 ("Board").

21 2. On or about June 3, 2010, the Board issued Pharmacy Technician Registration
22 Number TCH 101524 to Edward German Herrera (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 March 31, 2014, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board, under the authority of the following
27 laws. All section references are to the Business and Professions Code ("Code") unless otherwise
28 indicated.

1 8. Section 492 of the Code states:

2 "Notwithstanding any other provision of law, successful completion of any diversion
3 program under the Penal Code, or successful completion of an alcohol and drug problem
4 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of
5 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2
6 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that
7 division, from taking disciplinary action against a licensee or from denying a license for
8 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a
9 record pertaining to an arrest.

10 This section shall not be construed to apply to any drug diversion program operated by any
11 agency established under Division 2 (commencing with Section 500) of this code, or any
12 initiative act referred to in that division."

13 9. Section 493 of the Code states:

14 "Notwithstanding any other provision of law, in a proceeding conducted by a
15 board within the department pursuant to law to deny an application for a license or to
16 suspend or revoke a license or otherwise take disciplinary action against a person who
17 holds a license, upon the ground that the applicant or the licensee has been convicted
18 of a crime substantially related to the qualifications, functions, and duties of the
19 licensee in question, the record of conviction of the crime shall be conclusive
20 evidence of the fact that the conviction occurred, but only of that fact, and the board
21 may inquire into the circumstances surrounding the commission of the crime in order
22 to fix the degree of discipline or to determine if the conviction is substantially related
23 to the qualifications, functions, and duties of the licensee in question."

24 As used in this section, "license" includes "certificate," "permit," "authority," and
25 "registration."

26 10. Section 4021 of the Code provides:

27 "Controlled substance" means any substance listed in Chapter 2 (commencing with Section
28 11053) of Division 10 of the Health and Safety Code.

1 11. Section 4022 of the Code states:

2 "Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in
3 humans or animals, and includes the following:

4 "(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without
5 prescription," "Rx only," or words of similar import.

6 "(b) Any device that bears the statement: "Caution: federal law restricts this device to sale
7 by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled
8 in with the designation of the practitioner licensed to use or order use of the device.

9 "(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
10 prescription or furnished pursuant to Section 4006."

11 12. Section 4060 of the Code states:

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

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

26 13. Section 4301 of the Code states, in pertinent part:

27 "The board shall take action against any holder of a license who is guilty of unprofessional
28 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

1 Unprofessional conduct shall include, but is not limited to, any of the following:

2

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

6 ...

7 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous
8 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
9 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
10 to the extent that the use impairs the ability of the person to conduct with safety to the public the
11 practice authorized by the license.

12 ...

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

15 ...

16 "(l) The conviction of a crime substantially related to the qualifications, functions, and
17 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
18 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
19 substances or of a violation of the statutes of this state regulating controlled substances or
20 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
21 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
22 The board may inquire into the circumstances surrounding the commission of the crime, in order
23 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
24 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
25 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
26 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
27 of this provision. The board may take action when the time for appeal has elapsed, or the
28 judgment of conviction has been affirmed on appeal or when an order granting probation is made

1 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
2 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
3 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
4 indictment. . . .”

5 ...

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

10 CONTROLLED SUBSTANCES

11 14. Alprazolam is the generic name for Xanax. It is a Schedule IV controlled substance
12 as defined by Health and Safety Code section 11057, subdivision (d), and a dangerous drug
13 within the meaning of section 4022 of the Code. It is used to treat anxiety.

14 15. Hydrocodone with acetaminophen is the generic name for Vicodin. It is a Schedule
15 III controlled substance as defined by Health and Safety Code section 11056, subdivision (e)(5),
16 and a dangerous drug within the meaning of section 4022 of the Code. It is an analgesic.

17 16. Health and Safety Code section 11170 states that no person shall prescribe,
18 administer, or furnish a controlled substance for himself.

19 17. Health and Safety Code section 11350, subdivision (a), states, in pertinent part:

20 "Except as otherwise provided in this division, every person who possess (1) any controlled
21 substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section 11054,
22 specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in
23 subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2)
24 any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon
25 the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in
26 this state, shall be punished by imprisonment in the state prison."

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1 **REGULATORY PROVISION**

2 18. California Code of Regulations, title 16, section 1770, states:

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

9 **COST RECOVERY**

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

14 **FACTUAL ALLEGATIONS**

15 20. From April 2011 to July 2012, Respondent was employed as a Pharmacy Technician
16 at a CVS Pharmacy located in Marina Del Rey, California. On or about February 17, 2012, an
17 internal loss reporting tool flagged the potential theft/loss of the drug hydrocodone/APAP in its
18 January report. On February 27, 2012, an investigative team conducted a drug audit and
19 confirmed that there was a loss of 2787 pills of hydrocodone/APAP from April 30, 2011 to
20 February 20, 2012. Findings at that time were determined to be inconclusive. However, as part of
21 its preventative measure, CVS Pharmacy moved all hydrocodone/APAP into its control drug safe.
22 On or about May 2012, the same drug was flagged in its internal report with a second loss of
23 2038 pills of hydrocodone/APAP. CVS initiated an investigation and interviews were conducted
24 with their employees. On June 18, 2012, alprazolam was also flagged. On June 26, 2012, the CVS
25 investigation team interviewed Respondent. Respondent admitted taking quantities of controlled
26 substances, hydrocodone and alprazolam. Respondent admitted to stealing these medications by
27 placing them in his socks or smock and leaving the store. On June 28, 2013, after a second set of
28 counts for the second loss of hydrocodone/APAP, results came back with a loss of 23 pills instead

1 of the original 2038 pills. On July 5, 2012, Respondent was terminated. On August 3, 2013, the
2 counts were completed, confirming a loss of 363 alprazolam pills. From April 2011 to June 2012,
3 while working at the CVS Pharmacy, Respondent admitted to stealing 2,500 hydrocodone/APAP
4 10-325 tablets and 300 alprazolam tablets for self-administration. The Los Angeles Police
5 Department was called. Criminal charges were brought pursuant to the investigation. On June 27,
6 2012, Respondent signed a promissory note promising to repay CVS \$1,803.98.

7 **FIRST CAUSE FOR DISCIPLINE**

8 **(Conviction of a Substantially-Related Crime)**

9 21. Respondent is subject to disciplinary action under sections 490, 4300 and 4301,
10 subdivision (l) of the Code, in conjunction with California Code of Regulations, title 16, section
11 1770, on the grounds of unprofessional conduct as Respondent was convicted of a crime
12 substantially related to the qualifications, functions, or duties of a registered pharmacy technician.

13 a. On July 25, 2012, Respondent was charged with one felony count of violating Health
14 and Safety Code section 11350(a) [possession of a controlled substance] and one felony count of
15 violating Penal Code section 487(a) [grand theft by an employee in excess of \$950] in the
16 criminal proceeding entitled *The People of the State of California v. Edward German Herrera*,
17 Super Ct. Los Angeles County, 2012, No. SA081380). On August 27, 2012, the Court placed
18 Respondent on 36 months deferred entry of judgment for violating Health and Safety Code
19 section 11350(a). As to violating Penal Code section 487(a), Respondent was convicted, and the
20 Court sentenced Respondent to serve 4 days in Los Angeles County jail. The Court ordered
21 Respondent to pay restitution and placed Respondent on 3 years probation.

22 b. Complainant refers to and by this reference incorporates, the allegations set forth
23 above in paragraph 20, as though set forth fully.

24 **SECOND CAUSE FOR DISCIPLINE**

25 **(Violation of a Statute Involving Controlled Substances and Dangerous Drugs)**

26 22. Respondent is subject to disciplinary action under sections 4301, subdivision (j), 492
27 of the Code, in conjunction with section 4060 of the Code, on the grounds of unprofessional
28 conduct because Respondent committed an act in violation of a statute of this state, of any other

1 state, or of the United States regulating controlled substances and dangerous drugs. Complainant
2 refers to and by this reference incorporates, the allegations set forth above in paragraph 20 as
3 though set forth fully.

4 **THIRD CAUSE FOR DISCIPLINE**

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

6 23. Respondent is subject to disciplinary action under sections 4300 and 4301,
7 subdivision (f) of the Code, on the grounds of unprofessional conduct as Respondent committed
8 an act involving moral turpitude, dishonesty, fraud, deceit and corruption, whether the act was
9 committed in the course of relations as a licensee or otherwise, and whether the act is a felony or
10 misdemeanor or not. Complainant refers to, and by this reference incorporates, the allegations set
11 forth above in paragraph 20, as though set forth fully.

12 **FOURTH CAUSE FOR DISCIPLINE**

13 **(Violation of the Pharmacy Act)**

14 24. Respondent is subject to disciplinary action under section 4301, subdivision (o) of the
15 Code, on the grounds of unprofessional conduct, in that Respondent was committed an act
16 violating the Pharmacy Act. Complainant refers to, and by this reference incorporates, the
17 allegations set forth above in paragraphs 20 through 23, inclusive, as though set forth fully.

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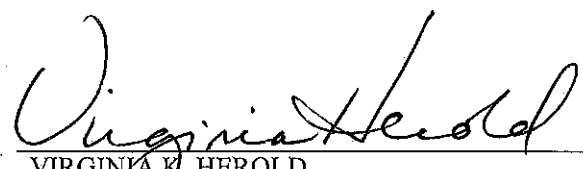
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PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration No. TCH 101524, issued to Edward German Herrera;
2. Ordering Edward German Herrera to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3 of the Code; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 1/31/14



VIRGINIA K. HEROLD
Executive Officer
California State Board of Pharmacy
State of California
Complainant

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