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

11 In the Matter of the Accusation Against:

Case No. 4744

12 **FRANCISCO ARMENTA**
13 **3100 East 69th Street**
14 **Long Beach, CA 90805**

A C C U S A T I O N

15 **Pharmacy Technician Registration No.**
TCH 104703

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) 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 or about June 30, 2010, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 104703 to Francisco Armenta (Respondent). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought
25 herein and expired on January 31, 2014, while under disciplinary suspension.

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1 **JURISDICTION**

2 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
3 Consumer Affairs, under the authority of the following laws. All section references are to the
4 Business and Professions Code (Code) unless otherwise indicated.

5 4. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
6 surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
7 disciplinary action during the period within which the license may be renewed, restored, reissued
8 or reinstated.

9 5. Section 4300, subdivision (a) of the Code states:

10 "(a) Every license issued may be suspended or revoked."

11 6. Section 4300.1 of the Code states:

12 The expiration, cancellation, forfeiture, or suspension of a board-issued
13 license by operation of law or by order or decision of the board or a court of law, the
14 placement of a license on a retired status, or the voluntary surrender of a license by
15 a licensee shall not deprive the board of jurisdiction to commence or proceed with
16 any investigation of, or action or disciplinary proceeding against, the licensee or to
17 render a decision suspending or revoking the license.

16 **STATUTORY PROVISIONS**

17 7. Section 482 of the Code states, in pertinent part:

18 "Each board under the provisions of this code shall develop criteria to evaluate the
19 rehabilitation of a person when:

20 "....

21 "(b) Considering suspension or revocation of a license under Section 490.

22 "Each board shall take into account all competent evidence of rehabilitation furnished by
23 the applicant or licensee."

24 8. Section 490 of the Code provides, in pertinent part, that a board may suspend or
25 revoke a license on the ground that the licensee has been convicted of a crime substantially
26 related to the qualifications, functions, or duties of the business or profession for which the
27 license was issued.

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2 9. Section 493 of the Code states:

3 Notwithstanding any other provision of law, in a proceeding conducted by a
4 board within the department pursuant to law to deny an application for a license or
5 to suspend or revoke a license or otherwise take disciplinary action against a person
6 who holds a license, upon the ground that the applicant or the licensee has been
7 convicted of a crime substantially related to the qualifications, functions, and duties
8 of the licensee in question, the record of conviction of the crime shall be conclusive
9 evidence of the fact that the conviction occurred, but only of that fact, and the board
10 may inquire into the circumstances surrounding the commission of the crime in
11 order to fix the degree of discipline or to determine if the conviction is substantially
12 related to the qualifications, functions, and duties of the licensee in question.

13 As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
14 'registration.'

15 10. Section 4059 of the Code states, in pertinent part, that a person may not furnish any
16 dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,
17 veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any
18 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist,
19 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

20 11. Section 4060 of the Code states:

21 No person shall possess any controlled substance, except that furnished to a
22 person upon the prescription of a physician, dentist, podiatrist, optometrist,
23 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
24 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
25 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant
26 pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a
27 pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv)
28 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,
 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.

 12. Section 4301 of the Code states:

 The board shall take action against any holder of a license who is guilty of
 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:

....

(f) The commission of any act involving moral turpitude, dishonesty, fraud, 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.

....

(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.

(k) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances.

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

....

(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 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 regulatory agency.

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13. Health and Safety Code section 11350 provides that every person who possesses a controlled substance, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in the state prison.

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2 **REGULATORY PROVISIONS**

3 14. California Code of Regulations, title 16, (CCR) section 1770, states:

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

10 15. CCR section 1769, states, in pertinent part:

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12 (b) When considering the suspension or revocation of a facility or a
13 personal license on the ground that the licensee or the registrant has been
14 convicted of a crime, the board, in evaluating the rehabilitation of such person and
15 his present eligibility for a license will consider the following criteria:

16 (1) Nature and severity of the act(s) or offense(s).

17 (2) Total criminal record.

18 (3) The time that has elapsed since commission of the act(s) or offense(s).

19 (4) Whether the licensee has complied with all terms of parole, probation,
20 restitution or any other sanctions lawfully imposed against the licensee.

21 (5) Evidence, if any, of rehabilitation submitted by the licensee.

22 **COST RECOVERY**

23 16. Section 125.3 of the Code provides, 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, with failure of the licentiate to comply subjecting the license to not
27 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs
28 may be included in a stipulated settlement.

DRUGS

1 17. Hydrocodone/acetaminophen, also known by the brand names Vicodin, Vicodin ES,
2 Norco, Zydone, Maxidone, Lortab, Lorcet, Hydrocet, Co-Gesic, and Anexsia, is a narcotic
3 Schedule III controlled substance as designated by Health and Safety Code section 11056,
4 subdivision (e)(4), and is a dangerous drug pursuant to Business and Professions Code section
5 4022. Hydrocodone is used as a narcotic analgesic in the relief of pain.

6 18. Cocaine, a narcotic, is a Schedule II controlled substance pursuant to Health and
7 Safety Code section 11055, subdivision (b), and a dangerous drug pursuant to Business and
8 Professions Code section 4022.

9 **FIRST CAUSE FOR DISCIPLINE**

10 **(May 23, 2014 Criminal Convictions for Controlled Substance Violations)**

11 19. Respondent is subject to disciplinary action under sections 490 and 4301,
12 subdivisions (k) and (l), in that he was convicted of crimes that are substantially related to the
13 qualifications, functions, and duties of a pharmacy technician. The circumstances are as follows:
14

15 a. On May 23, 2014, in a criminal proceeding entitled *People of the State of*
16 *California v. Francisco Javier Armenta*, Orange County Superior Court case number 13 NF1887,
17 Respondent was convicted by his guilty plea of a felony violation of Health and Safety Code
18 section 11351, possession of a controlled substance for sale, cocaine; a felony violation of Health
19 and Safety Code section 11352, subdivision (a), sale or transportation of a controlled substance,
20 cocaine; a felony violation of Health and Safety Code section 11351, possession of a controlled
21 substance for sale, hydrocodone; a felony violation of Health and Safety Code section 11352,
22 subdivision (a), sale or transportation of a controlled substance, hydrocodone. Respondent also
23 received a special punishment allegation pursuant to Health and Safety Code section 11350,
24 subdivision (a).

25 b. The facts that led to the conviction are that Respondent was double parked on a
26 street in Fullerton, California when he was approached by two detectives from the Fullerton
27 Police Department. One of the detectives observed Respondent attempting to hide a ziplock
28 baggie containing a large number of pills. When asked, respondent admitted he did not have a

1 prescription for the pills. During a consensual search of Respondent's vehicle, the detectives also
2 discovered four bindles containing a white powder. Respondent indicated the powder was
3 cocaine. The pills were tested and found to be 90 tablets of hydrocodone. The powder was tested
4 and found to be 12 grams of cocaine.

5 c. As a result of his conviction, Respondent was sentenced to three years of
6 formal probation, serve 120 days in county jail, ordered to pay fees and fines, and register as a
7 narcotics offender.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Unprofessional Conduct - Violating Laws Regulating Controlled Substances)**

10 20. Respondent is subject to disciplinary action for unprofessional conduct under section
11 4301, subdivision (j) of the Code in that he violated California Health and Safety Code section
12 11350, subdivision (a), as set forth in paragraph 19, above, incorporated herein by reference.

13 **THIRD CAUSE FOR DISCIPLINE**

14 **(Unprofessional Conduct - Violation of Chapter)**

15 21. Respondent is subject to disciplinary action for unprofessional conduct under section
16 4301, subdivision (o) of the Code in that Respondent violated the Pharmacy Act by furnishing a
17 dangerous drug to others in violation of Code section 4059 and illegally possessing a controlled
18 substance in violation of Code section 4060, as set forth in paragraph 19, above, incorporated
19 herein by reference.

20 **PRAAYER**

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

23 1. Revoking or suspending Pharmacy Technician Registration Number TCH 104703,
24 issued to Francisco Armenta;

25 2. Ordering Francisco Javier Armenta to pay the Board of Pharmacy the reasonable
26 costs of the investigation and enforcement of this case, pursuant to Business and Professions
27 Code section 125.3;

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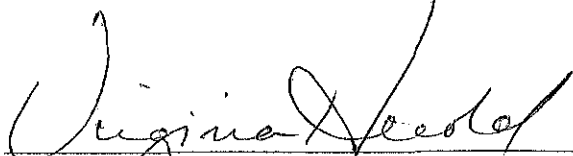
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3. Taking such other and further action as deemed necessary and proper.

DATED:

7/14/14



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

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