

1 KAMALA D. HARRIS
Attorney General of California
2 ARMANDO ZAMBRANO
Supervising Deputy Attorney General
3 CHRISTINE J. LEE
Deputy Attorney General
4 State Bar No. 282502
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2539
6 Facsimile: (213) 897-2804
Attorneys for Complainant

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

10
11 In the Matter of the Accusation Against:
12 **SHAUNA MARIE LINARES**
15780 Rushford St.
13 Whittier, CA 90603
14 **Pharmacy Technician Registration No. TCH**
23782
15
16 Respondent.

Case No. 4772

A C C U S A T I O N

17
18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia K. Herold (Complainant) brings this Accusation solely in her official
21 capacity as the Executive Officer of the California State Board of Pharmacy.
22 2. On or about September 18, 1997, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 23782 to Shauna Marie Linares (Respondent). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought
25 herein and will expire on October 31, 2013, unless renewed.

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1 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
2 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
3 made suspending the imposition of sentence, irrespective of a subsequent order under the
4 provisions of Section 1203.4 of the Penal Code."

5 8. Section 492 of the Code states:

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

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

17 9. Section 493 of the Code states:

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

27 As used in this section, "license" includes "certificate," "permit," "authority," and
28 "registration."

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

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

5 ...

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

9 ...

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

12 ...

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

3 ...

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

8 11. Section 4022 of the Code states:

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

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

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

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

18 12. Section 4059 of the Code states:

19 "(a) A person may not furnish any dangerous drug, except upon the prescription of a
20 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
21 3640.7."

22 REGULATORY PROVISIONS

23 13. California Code of Regulations, title 16, section 1770, states:

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

3 **DANGEROUS DRUG**

4 14. Cyclobenzaprine, or Flexeril as it is known by its brand name is a muscle relaxer.
5 Cyclobenzaprine is prescribed for short-term relief of muscle spasms associated with acute
6 painful muscle and skeletal conditions. It is a dangerous drug pursuant to section 4022 of the
7 Code.

8 **COST RECOVERY**

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

13 **FACTUAL ALLEGATIONS**

14 16. On or about May 10, 2012, Respondent, a pharmacy technician employed at the
15 Twin Towers Correctional Facility in Los Angeles, California, was observed on video
16 surveillance removing a bottle of dangerous drugs from the pharmacy shelf and placing the bottle
17 in her purse. The Los Angeles County Sheriff's Department was called to investigate. The Deputy
18 searched Respondent's purse and found an unopened bottle of Cyclobenzaprine, 100 count, 10mg
19 each. When the Deputy asked Respondent if someone gave her permission to get the bottle or
20 instructed her to get the bottle, Respondent said no. The Deputy also searched Respondent's desk
21 and found a wireless phone, which due to security concerns is a violation at the correctional
22 facility.

23 **FIRST CAUSE FOR DISCIPLINE**

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

25 17. Respondent is subject to disciplinary action under sections 490, 4300 and 4301,
26 subdivision (l) of the Code, in conjunction with California Code of Regulations, title 16, section
27 1770, on the grounds of unprofessional conduct as Respondent was convicted of a crime
28 substantially related to the qualifications, functions, or duties of a registered pharmacy technician.

1 a. On August 10, 2012, Respondent was charged with two misdemeanor counts of
2 Penal Code section 508 [embezzlement: clerk who fraudulently appropriates to his own use any
3 property of another which has come into his control by virtue of his employment]; Penal Code
4 section 470(b)[forgery]; Business and Professions Code 4324(a) [forgery: attempts to pass along
5 any prescription for any drug]; and Penal Code 4575(a) [possession of a wireless communication
6 device in a local correctional facility] in the criminal proceeding entitled *The People of the State*
7 *of California v. Shauna Linares*, (Super Ct. Los Angeles County, 2012, No. 2CA16032). On
8 February 25, 2013, the Court placed Respondent on 36 months deferred entry of judgment for
9 violating Penal Code Section 4575(a).

10 b. Complainant refers to and by this reference incorporates, the allegations set
11 forth above in paragraph 16, as though set forth fully.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Unprofessional Conduct- Unlawful Possession of a Dangerous Drug)**

14 18. Respondent is subject to disciplinary action under sections 4301, subdivision (j),
15 4022, and 4059 of the Code on the grounds of unprofessional conduct in that Respondent
16 possessed a dangerous drug without an authorized prescriber's prescription. Complainant refers
17 to, and by this reference incorporates, the allegations set forth above in paragraph 16 as though
18 set forth fully.

19 **THIRD CAUSE FOR DISCIPLINE**

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

21 19. Respondent is subject to disciplinary action under sections 4301, subdivision (j) and
22 492 of the Code on the grounds of unprofessional conduct because Respondent committed an act
23 in violation of a statute of this state, of any other state, or of the United States regulating
24 controlled substances and dangerous drugs. Complainant refers to and by this reference
25 incorporates, the allegations set forth above in paragraphs 16 through 17, inclusive, as though set
26 forth fully.

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1 **FOURTH CAUSE FOR DISCIPLINE**

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

3 20. Respondent is subject to disciplinary action under sections 4300 and 4301,
4 subdivision (f) of the Code on the grounds of unprofessional conduct as Respondent committed
5 an act involving moral turpitude, dishonesty, fraud, deceit and corruption, whether the act was
6 committed in the course of relations as a licensee or otherwise, and whether the act is a felony or
7 misdemeanor or not. Complainant refers to, and by this reference incorporates, the allegations set
8 forth above in paragraph 16 as though set forth fully.

9 **FIFTH CAUSE FOR DISCIPLINE**

10 **(Violation of Pharmacy Act)**

11 21. Respondent is subject to disciplinary action under section 4301, subdivision (o) of the
12 Code, on the grounds of unprofessional conduct violating or attempting to violate, directly, or
13 indirectly, any provision of the applicable federal and state law and regulations governing
14 pharmacy, including regulations established by the Board in that Respondent was convicted of a
15 crime and committed an act that was in violation of the Pharmacy Act. Complainant refers to,
16 and by this reference incorporates, the allegations set forth above in paragraphs 16 through 20,
17 inclusive, as though set forth fully.

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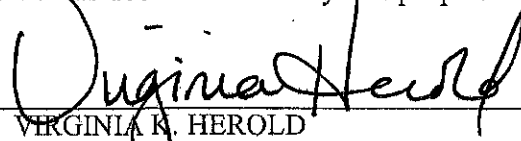
PRAYER

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 issued Pharmacy Technician Registration Number TCH 23782 to Shauna Marie Linares;
2. Ordering Shauna Marie Linares 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:

12/2/13



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

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10/24/13