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

11
12 In the Matter of the Accusation Against:

Case No. 4888

13 **CINDY DO**
14 **5800 Hannes Avenue, #604**
Mira Loma, CA 91752

A C C U S A T I O N

15 **Pharmacy Technician Registration No. TCH 113347**

16 Respondent.

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.

22 2. On July 13, 2011, the Board of Pharmacy issued Pharmacy Technician Registration
23 Number TCH 113347 to Cindy Do (Respondent). The Pharmacy Technician Registration expired
24 on June 30, 2013, and has not been renewed.

25 **JURISDICTION**

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

1 4. Section 4300, subdivision (a), of the Code provides that every license issued by the
2 Board may be suspended or revoked.

3 5. Section 4300.1 of the Code states:

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

8 **STATUTORY PROVISIONS**

9 6. Section 482 of the Code states:

10 Each board under the provisions of this code shall develop criteria to
11 ~~evaluate the rehabilitation of a person when:~~

11 (a) Considering the denial of a license by the board under Section 480; or

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

13 Each board shall take into account all competent evidence of rehabilitation
14 furnished by the applicant or licensee.

15 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or
16 revoke a license on the ground that the licensee has been convicted of a crime substantially
17 related to the qualifications, functions, or duties of the business or profession for which the
18 license was issued.

19 8. Section 493 of the Code states:

20 Notwithstanding any other provision of law, successful completion of any
21 diversion program under the Penal Code, or successful completion of an alcohol
22 and drug problem assessment program under Article 5 (commencing with Section
23 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit
24 any agency established under Division 2 (commencing with Section 500) of this
25 code, or any initiative act referred to in that division, from taking disciplinary
26 action against a licensee or from denying a license for professional misconduct,
27 notwithstanding that evidence of that misconduct may be recorded in a record
28 pertaining to an arrest. This section shall not be construed to apply to any drug
29 diversion program operated by any agency established under Division 2
30 (commencing with Section 500) of this code, or any initiative act referred to in
31 that division.

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9. 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.

....

(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.

....

REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1769, states:

....

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

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.

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

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

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

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

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

11 **COST RECOVERY**

12 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request
13 the administrative law judge to direct a licentiate found to have committed a violation or
14 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
15 and enforcement of the case, with failure of the licentiate to comply subjecting the license to not
16 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs
17 may be included in a stipulated settlement.

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(October 3, 2012 Criminal Conviction for Forgery on September 24, 2012)**

20 13. Respondent subjected her pharmacy technician registration to discipline under
21 Code sections 490 and 4301, subdivision (l) in that she was convicted of a crime that is
22 substantially related to the qualifications, functions, and duties of a registered pharmacy
23 technician. The circumstances are as follows:

24 a. On October 3, 2012, in a criminal proceeding entitled *The People of the*
25 *State of California vs. Cindy Do*, in Los Angeles County Superior Court, South District, Long
26 Beach Courthouse, Case Number 2LG02740, Respondent was convicted on her plea of *nolo*
27 *contendere* to violating Penal Code (PC) section 470, subdivision (d), forgery, a misdemeanor.

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1 Charges for violation of PC sections 459, burglary, and 475, subdivision (c), forgery,
2 misdemeanors, were dismissed pursuant to a plea bargain.

3 b. As a result of the conviction, on October 3, 2012, Respondent was
4 sentenced to three days in the Los Angeles County Jail, with credit for three days actually served,
5 and granted summary probation for three years. Respondent was also ordered to pay penalty
6 assessments, fines, fees, and restitution and render 30 days of community service.

7 c. The facts that led to the conviction are that on September 24, 2012,
8 Respondent attempted to cash a fraudulent check at a bank in Long Beach, California. As the
9 teller ran the check through the bank computer system, he was alerted to verify the account. The
10 verification confirmed that the check was forged. The teller informed his manager, who called
11 the Long Beach Police Department (LBPD). Respondent was arrested and transported to the
12 women's facility of the LBPD Jail Division.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(May 8, 2013 Criminal Conviction for Grand Theft on September 15, 2012)**

15 14. Respondent subjected her pharmacy technician registration to discipline under
16 Code sections 490 and 4301, subdivision (l) in that she was convicted of a crime that is
17 substantially related to the qualifications, functions, and duties of a registered pharmacy
18 technician. The circumstances are as follows:

19 a. On May 8, 2013, in a criminal proceeding entitled *The People of the State*
20 *of California vs. Cindy Do*, in Los Angeles County Superior Court, South District, Long Beach
21 Courthouse, Case Number NA095433, Respondent was convicted on her plea of *nolo contendere*
22 to violating PC section 487, subdivision (a), grand theft, a felony. A charge for violation of PC
23 section 530.5, subdivision (a), identity theft, a felony, was dismissed pursuant to a plea bargain.

24 b. As a result of the conviction, on May 8, 2013, Respondent was sentenced
25 to 16 days in the Los Angeles County Jail, with credit for 16 days actually served, and granted
26 formal probation for three years. Respondent was also ordered to pay penalty assessments, fines,
27 fees, and restitution and render 60 days of service with the California Department of
28 Transportation.

1 c. The facts that led to the conviction are that on September 15, 2012,
2 Respondent used the credit card of another person to purchase a \$500.00 gift card at a Home
3 Depot store in Signal Hill, California. On September 16, 2012, Respondent used another credit
4 card to purchase \$887.32 worth of goods at a Home Depot store in Garden Grove, California.
5 The owner of the two credit cards filed a complaint with the issuing bank, which reimbursed her
6 for the fraudulent transactions. The owner also filed a complaint with the Irvine Police
7 Department. On September 29, 2012, Respondent used a third credit card belonging to a
8 different person to purchase \$2,071.55 worth of goods at the Home Depot store in Westminster,
9 California. The owner stated that he did not know Respondent, did not authorize Respondent to
10 use his card, had been reimbursed by his issuing bank, and desired prosecution. The Home Depot
11 stores' video footage of the September 15, 2013, and the September 29, 2013, transactions
12 showed Respondent completing and signing for the transactions.

13 **THIRD CAUSE FOR DISCIPLINE**

14 **(Unprofessional Conduct - Commission of Any Act Involving Moral Turpitude, Dishonesty,
15 Fraud, Deceit, or Corruption)**

16 15. Respondent has subjected her pharmacy technician registration to discipline under
17 Code section 4301, subdivision (f), in that she committed acts involving moral turpitude,
18 dishonesty, fraud, deceit, and corruption when she attempted to pass, as true and genuine, a
19 check, knowing the same to be counterfeited, and obtained identifying information of two
20 persons to complete fraudulent credit card transactions, as described in paragraphs 13 and 14,
21 above.

22 **PRAYER**

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

25 1. Revoking or suspending Pharmacy Technician Registration Number TCH
26 113347, issued to Cindy Do;

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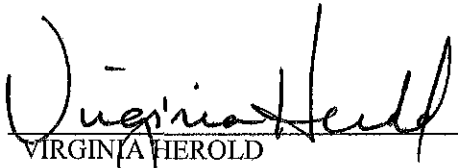
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2. Ordering Cindy Do to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 2/19/14



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

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