BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MELISSA YVONE CARMONA
206 S. Sullivan #63
Santa Ana, CA 92704
Pharmacy Technician Registration No. TCH 111525

Respondent.

Complainant alleges:

PARTIES

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

2. On or about March 10, 2011, the Board of Pharmacy issued Pharmacy Technician Registration Number TCH 111525 to Melissa Yvone Carmona (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2014, unless renewed.
JURISDICTION

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

4. Section 4300, subdivision (a) of the Code states "Every license issued may be suspended or revoked."

5. Section 4300.1 of the Code states:

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

STATUTORY PROVISIONS

6. 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.

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

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

7. Section 4059 of the Code states:

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

8. Section 4060 of the Code states:

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

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

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

DRUGS

11. Phenergan/Codeine, the brand name for Promethazine with Codeine Syrup is a Schedule V controlled substance under Health and Safety Code section 11058 and is a dangerous drug.

12. Norco, is a brand name for acetaminophen and hydrocodone bitartrate, a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (e), and a dangerous drug pursuant to Business and Professions Code section 4022.

13. Xanax, is a brand name for alprazolam (a benzodiazepine), a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022.

FACTUAL ALLEGATIONS

14. Respondent was employed as a pharmacy technician at CVS/Caremark store #5841 (hereinafter “CVS”) from June 24, 2011 through January 28, 2013. In or around November 2012, the loss prevention manager at CVS received a report regarding CVS’s inventory of promethazine with codeine. The loss prevention manager contacted the pharmacy supervisor to obtain counts so that an audit could be performed. The audit demonstrated a loss of 12,320 mls of promethazine with codeine.

15. On January 18, 2013, the pharmacy supervisor and loss prevention manager conducted interviews of pharmacy staff at CVS. During the interview, a pharmacy technician A.V. stated that he had smelled promethazine with codeine syrup on Respondent and that he witnessed her running over to the area where the promethazine with codeine was kept when the pharmacist left for break or bathroom. The pharmacy supervisor and loss prevention manager then interviewed Respondent. Respondent admitted that for the past few months, she had been drinking promethazine with codeine directly from the stock bottle. Respondent stated that she
drank from the bottle twice per day for 2-3 times per 1-2 weeks. Respondent admitted that she consumed about 3-4 bottles of promethazine with codeine and that she did not have a prescription for it. Respondent also admitted that she stole two Norco tablets and ten Xanax tablets from CVS. Respondent signed a promissory note promising to pay CVS $273.67 for the drugs that she stole.

16. On or about January 29, 2013, officers from the Santa Ana Police Department interviewed Respondent about the theft of drugs from CVS. Respondent again admitted to taking and ingesting promethazine with codeine, 2 Norco pills and 10 Xanax pills. Respondent also admitted that she assisted another pharmacy technician in taking drugs from CVS by placing Xanax tablets on the rear counter so that the pharmacy technician could grab the pills.

17. On or about May 21, 2013, the People of the State of California issued a misdemeanor complaint against Respondent in Orange County Superior Court Case Number 13CM04253, alleging a violation of Penal Code section 484(a)-488-508, theft by employee. On or about June 14, 2013, Respondent pled guilty to violation of Penal Code section 484(a)-488-508. However, the Court granted Respondent deferred entry of judgment and the case was dismissed on September 16, 2013.

FIRST CAUSE FOR DISCIPLINE

(Dishonest Act)

18. Respondent has subjected her license to disciplinary action under section 4301, subdivision (f) of the Code in that Respondent committed an act involving dishonesty, fraud, deceit, or corruption, when she stole controlled substances from her employer while working as a pharmacy technician, as detailed in paragraphs 14 through 17, above, and which are incorporated herein by reference.

SECOND CAUSE FOR DISCIPLINE

(Use of Controlled Substances in Dangerous Manner)

19. Respondent has subjected her license to disciplinary action under section 4301, subdivision (h) of the Code in that Respondent administered to herself controlled substances to the extent or in a manner as to be dangerous or injurious to herself or the public, or to the extent
that it impaired her ability to practice safely, as evidenced by Respondent’s admissions that while working as a pharmacy technician, she consumed promethazine with codeine without a physician prescription, directly from the CVS stock bottle twice per day for 2-3 times per 1-2 weeks, as detailed in paragraphs 14 through 17, above, and which are incorporated herein by reference.

**THIRD CAUSE FOR DISCIPLINE**

(Unlawful Administration of a Controlled Substance)

20. Respondent has subjected her license to disciplinary action under section 4301, subdivision (j) of the Code for violation of Health and Safety Code section 11170 in that Respondent illegally administered to herself controlled substances without a prescription, as evidenced by Respondent’s admissions that she consumed promethazine with codeine from the CVS stock bottle twice per day for 2-3 times per 1-2 weeks, as detailed in paragraphs 14 through 17, above, and which are incorporated herein by reference.

**FOURTH CAUSE FOR DISCIPLINE**

(Unlawful Possession of a Controlled Substance)

21. Respondent has subjected her license to disciplinary action under section 4301, subdivision (o) of the Code for violation of Code section 4060 in that Respondent illegally possessed controlled substances without a prescription, as evidenced by Respondent’s admissions that she stole promethazine with codeine, Norco, and Xanax from CVS, as detailed in paragraphs 14 through 17, above, and which are incorporated herein by reference.

**PRAYER**

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 111525, issued to Melissa Yvone Carmona;

2. Ordering Melissa Yvone Carmona 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: 3/15/14

Virginia Abrold
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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