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

10 In the Matter of the Accusation Against:

Case No. 5028

11 **JOSHUA J. RUCIANO**  
12 **468 S. Eureka Avenue**  
13 **San Bernardino, CA 92410**

**A C C U S A T I O N**

14 **Pharmacy Technician Registration No. TCH**  
15 **96624**

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.

21 2. On or about February 11, 2010, the Board of Pharmacy issued Pharmacy Technician  
22 Registration Number TCH 96624 to Joshua J. Ruciano (Respondent). The Pharmacy Technician  
23 Registration expired on August 31, 2013 and was cancelled on December 1, 2013 pursuant to  
24 Business and Professions Code section 4402, subdivision (e).

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 unless otherwise indicated.

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4. Section 4300 of the Code states, in pertinent part:

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

"(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

"(1) Suspending judgment.

"(2) Placing him or her upon probation.

"(3) Suspending his or her right to practice for a period not exceeding one year.

"(4) Revoking his or her license.

"(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper."

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.

...

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

3 7. Section 4060 of the Code states:

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

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

19 8. Section 11170 of the California Health and Safety Code states:

20 "No person shall prescribe, administer, or furnish a controlled substance for himself."

21 9. Section 11173, subdivision (a) of the California Health and Safety Code states:

22 "(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt  
23 to procure the administration of or prescription for controlled substances, (1) by fraud, deceit,  
24 misrepresentation, or subterfuge; or (2) by the concealment of a material fact."

### 25 **COST RECOVERY**

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

### **DRUGS**

11. **Hydromorphone**, the generic name for Dilaudid, is a narcotic Schedule II controlled  
substance as designated by Health and Safety Code section 11055(d), and is a dangerous drug  
pursuant to Business and Professions Code section 4022. Hydromorphone is used as a narcotic  
analgesic in the relief of severe pain.

1 **STATEMENT OF FACTS**

2 12. On or about December 6, 2012, Respondent and another pharmacy technician, L.T.,  
3 were assigned to stock (physically deliver and place into the Pyxis machines) medications in the  
4 nursing units at Arrowhead Regional Medical Center. At approximately 10:30am, L.T. removed  
5 12 hydromorphone 4mg tablets from a Pyxis machine located on the 6<sup>th</sup> floor nursing unit and  
6 returned them to the pharmacy. L.T. placed the drugs on a shelf located in the controlled drug  
7 area. While in the pharmacy, Respondent picked up the 12 hydromorphone 4mg tablets before  
8 returning to the nursing units to continue stocking.

9 13. A few hours later, pharmacist K.C., who was assigned to the controlled drug area, ran  
10 a discrepancy report and identified the 12 hydromorphone 4mg tablets as missing. L.T. and K.C.  
11 both independently asked Respondent if he might have accidentally picked up the  
12 hydromorphone tablets and Respondent replied to each of them that he had not.

13 14. K.C. then informed her supervisor, pharmacist A.P., of the discrepancy and A.P.  
14 reviewed video surveillance which showed Respondent had picked up the 12 hydromorphone  
15 4mg tablets from the shelf where L.T. had placed them. A.P. then questioned Respondent if he  
16 had accidentally picked up the drugs and Respondent again replied "no." A.P., along with  
17 another pharmacist, then accompanied Respondent while he retraced his steps to every Pyxis  
18 machine he had restocked that day. Upon returning to the pharmacy, A.P. informed Respondent  
19 the he had viewed the video surveillance and saw Respondent pick up the drugs but Respondent  
20 again denied taking them. Upon further questioning, Respondent started crying, admitted to  
21 taking the hydromorphone, and pulled off his shoe and took out a plastic bag which had the 12  
22 hydromorphone 4mg tablets in it.

23 **FIRST CAUSE FOR DISCIPLINE**

24 **(Unprofessional Conduct in the Commission of an Act Involving Dishonesty, Fraud, Deceit)**

25 15. Respondent is subject to disciplinary action under Business and Professions Code  
26 section 4301, subdivision (f) for committing an act involving moral turpitude, dishonesty, fraud  
27 or deceit in that he took and placed twelve hydromorphone 4mg tablets in his shoe as more fully  
28

1 described above. Complainant hereby incorporates paragraphs 12 through 14, above, as though  
2 set forth fully.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct-Violation of Health and Safety Code section 11170)**

5 16. Respondent is subject to disciplinary action under Business and Professions Code  
6 section 4301, subdivision (j) for violating Health and Safety Code section 11170 in that  
7 Respondent furnished a controlled substance to himself when he took and placed twelve  
8 hydromorphone 4mg tablets in his shoe as more fully described above.. Complainant hereby  
9 incorporates paragraphs 12 through 14, above, as though set forth fully.

10 **THIRD CAUSE FOR DISCIPLINE**

11 **(Unprofessional Conduct-Violation of Health and Safety Code section 11173(a))**

12 17. Respondent is subject to disciplinary action under Business and Professions Code  
13 section 4301, subdivision (j) for violating Health and Safety Code section 11173(a) in that  
14 Respondent obtained controlled substances by fraud, deceit, misrepresentation, or subterfuge or  
15 by the concealment of a material fact when he took and placed twelve hydromorphone 4mg  
16 tablets in his shoe as more fully described above.. Complainant hereby incorporates paragraphs  
17 12 through 14, above, as though set forth fully.

18 **FOURTH CAUSE FOR DISCIPLINE**

19 **(Unprofessional Conduct-Unlawful Possession of a Controlled Substance)**

20 18. Respondent is subject to disciplinary action under Business and Professions Code  
21 section 4301, subdivision (j) for violating Business and Professions Code section 4060 in that  
22 Respondent possessed controlled substances without a prescription when he took and placed  
23 twelve hydromorphone 4mg tablets in his shoe as more fully described above. Complainant  
24 hereby incorporates paragraphs 12 through 14, above, as though set forth fully.

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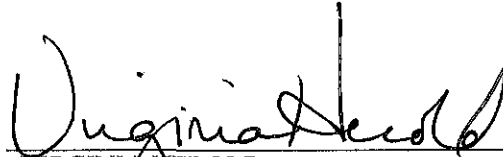
**PRAYER**

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 96624, issued to Joshua J. Ruciano;
2. Ordering Joshua J. Ruciano 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; and
3. Taking such other and further action as deemed necessary and proper.

DATED: \_\_\_\_\_

5/3/14



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

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