

1 KAMALA D. HARRIS  
Attorney General of California  
2 DIANN SOKOLOFF  
Supervising Deputy Attorney General  
3 TIMOTHY J. McDONOUGH  
Deputy Attorney General  
4 State Bar No. 235850  
1515 Clay Street, 20th Floor  
5 P.O. Box 70550  
Oakland, CA 94612-0550  
6 Telephone: (510) 622-2134  
Facsimile: (510) 622-2270  
7 E-mail: Tim.McDonough@doj.ca.gov  
*Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 5111

12 **CHRISTINA MARIE LUCERO**  
13 1211 1/2 Broadway  
14 Santa Cruz, CA 95062

**ACCUSATION**

15 **Pharmacy Technician Registration No. TCH**  
16 **89797**

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 or about April 23, 2009, the Board of Pharmacy issued Pharmacy Technician  
23 Registration Number TCH 89797 to Christina Marie Lucero (Respondent). The Pharmacy  
24 Technician Registration was in full force and effect at all times relevant to the charges brought in  
25 this Accusation and expired on May 31, 2014.

26 ///

27 ///

28 ///

JURISDICTION

1  
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 unless otherwise indicated.

5       4.     Section 4011 of the Code provides that the Board shall administer and enforce both  
6 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances  
7 Act [Health & Safety Code, § 11000 et seq.].

8       5.     Section 4300 of the Code states, in relevant part:

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

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

13           "(1) Suspending judgment.

14           "(2) Placing him or her upon probation.

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

16           "(4) Revoking his or her license.

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

19           ....

20          "(e) The proceedings under this article shall be conducted in accordance with Chapter 5  
21 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board  
22 shall have all the powers granted therein. The action shall be final, except that the propriety of the  
23 action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil  
24 Procedure."

25       6.     Section 4300.1 of the Code states:

26           "The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of  
27 law or by order or decision of the board or a court of law, the placement of a license on a retired  
28 status, or the voluntary surrender of a license by a licensee shall not deprive the board of

1 jurisdiction to commence or proceed with any investigation of, or action or disciplinary  
2 proceeding against, the licensee or to render a decision suspending or revoking the license."

3 STATUTORY PROVISIONS

4 7. Section 4301 of the Code states, in relevant part:

5 "The board shall take action against any holder of a license who is guilty of unprofessional  
6 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

7 Unprofessional conduct shall include, but is not limited to, any of the following:

8 ...

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

12 ...

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

18 ...

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

21 ...

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

26 8. Section 4059 of the Code states, in relevant part, that a person may not furnish any  
27 dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,  
28 veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any

1 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist,  
2 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

3 9. Section 4060 of the Code states:

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

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

17 10. Section 4022 of the Code states:

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

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

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

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

27 ///

28 ///

1 DRUG STATUTES

2 11. Hydrocodone/Acetaminophen is a Schedule III controlled substance as designated by  
3 Health and Safety Code section 11056, subdivision (e)(4), and a dangerous drug as designated by  
4 Business and Professions Code section 4022.

5 12. Flexeril is a brand name for cyclobenzaprine. Cyclobenzaprine is a dangerous drug as  
6 designated by Business and Professions Code section 4022.

7 13. ProAir is a brand name for albuterol. Albuterol is a dangerous drug as designated by  
8 Business and Professions Code section 4022.

9 COST RECOVERY

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

16 FACTUAL BACKGROUND

17 15. Respondent worked as a pharmacy technician at a CVS pharmacy in Capitola,  
18 California (Capitola CVS) from September 2012, until July 29, 2013. On or about June 21, 2013,  
19 CVS loss prevention managers initiated an investigation at the Capitola CVS because they  
20 discovered what appeared to be a loss of a large amount of hydrocodone/acetaminophen 10/325  
21 mg from the pharmacy. As part of the investigation, CVS loss prevention managers conducted  
22 behavioral analysis interviews of the employees at Capitola CVS. On July 29, 2013, during an  
23 interview with CVS loss prevention managers, Respondent admitted to stealing  
24 hydrocodone/acetaminophen 10/325 mg, Flexeril 5 mg, and a Pro-Air inhaler from Capitola CVS.  
25 At that time, Respondent wrote and signed a statement where she admitted to stealing 7,200  
26 tablets of hydrocodone/acetaminophen 10/325 mg over a period of ten months for her own use  
27 and to give to her friends. In the statement, Respondent further admitted to stealing 40 tabs of  
28 Flexeril which she used to help her with shoulder pain, and a ProAir inhaler to assist her with her

1 asthma. Respondent explained that she took the pills from the pharmacy by placing them in her  
2 sweater pocket. Capitola CVS Pharmacy terminated Respondent's employment.

3 **FIRST CAUSE FOR DISCIPLINE**  
4 **(Unprofessional Conduct--Act of Dishonesty, Fraud, or Deceit)**  
5 **(Bus & Prof. Code § 4301, subd. (f))**

6 16. Respondent has subjected her Pharmacy Technician Registration to disciplinary  
7 action under Code section 4301, subdivision (f), in that she stole prescription drugs from Capitola  
8 CVS, her employer. The circumstances are explained in paragraph 15, above.

9 **SECOND CAUSE FOR DISCIPLINE**  
10 **(Possession of Controlled Substance without a Prescription)**  
11 **(Bus. & Prof. Code, § 4301, subd. (j))**

12 17. Respondent has subjected her Pharmacy Technician Registration to disciplinary  
13 action under Code section 4301, subdivision (j), in that she illegally possessed a controlled  
14 substance (hydrocodone/acetaminophen 10/325 mg), without a prescription. By doing so, she  
15 violated numerous state and federal statutes regarding controlled substances including Business  
16 and Professions Code section 4060. The circumstances are explained in paragraph 15, above.

17 **THIRD CAUSE FOR DISCIPLINE**  
18 **(Furnishing Dangerous Drugs without a Prescription)**  
19 **(Bus. & Prof Code, §§ 4301, subd. (o), & 4059, subd. (a))**

20 18. Respondent has subjected her Pharmacy Technician Registration to disciplinary  
21 action under Code section 4301, subdivision (o), in that she violated Code section 4059,  
22 subdivision (a), when she furnished controlled substances and dangerous drugs to her friends,  
23 without a prescription. The circumstances are explained in paragraphs 15, above.

24 **FOURTH CAUSE FOR DISCIPLINE**  
25 **(Self-Administration of Controlled Substance)**  
26 **(Bus. & Prof. Code, § 4301, subd. (h))**

27 19. Respondent has subjected her Pharmacy Technician Registration to disciplinary  
28 action under Code section 4301, subdivision (h), in that she administered a controlled substance  
(hydrocodone/acetaminophen 10/325 mg) to herself without a prescription on numerous occasions  
between October 2012, and July 2013. The circumstances are explained in paragraph 15, above.

///

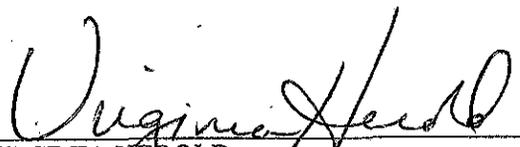
///

1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this  
3 Accusation, and that following the hearing, the Board of Pharmacy issue a decision:

- 4 1. Revoking or suspending Pharmacy Technician Registration Number TCH 89797,  
5 issued to Christina Marie Lucero;
- 6 2. Ordering Christine Marie Lucero to pay the Board of Pharmacy the reasonable costs  
7 of the investigation and enforcement of this case, pursuant to Business and Professions Code  
8 section 125.3;
- 9 3. Taking such other and further action as deemed necessary and proper.

10  
11  
12 DATED: 8/16/14

  
13 VIRGINIA HEROLD  
14 Executive Officer  
15 Board of Pharmacy  
16 Department of Consumer Affairs  
17 State of California  
18 Complainant

19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
SF2014902160  
90407294.doc