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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:

13 **TONYA MARIE PADILLA**
14 **6130 Camino Real, #119**
Riverside, CA 92509

15 **Pharmacy Technician Registration No. TCH**
16 **114094**

17 Respondent.

Case No. 5141

A C C U S A T I O N

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 October 10, 2011, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 114094 to Tonya Marie Padilla (Respondent). The Pharmacy
24 Technician Registration expired on September 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 unless otherwise indicated.

1 As used in this section, "license" includes "certificate," "permit," "authority,"
2 and "registration."

3 9. Section 4301 of the Code states:

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

8

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

12

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

15

16 (l) The conviction of a crime substantially related to the qualifications,
17 functions, and duties of a licensee under this chapter. The record of conviction of a
18 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
19 States Code regulating controlled substances or of a violation of the statutes of this
20 state regulating controlled substances or dangerous drugs shall be conclusive
21 evidence of unprofessional conduct. In all other cases, the record of conviction
22 shall be conclusive evidence only of the fact that the conviction occurred. The
23 board may inquire into the circumstances surrounding the commission of the crime,
24 in order to fix the degree of discipline or, in the case of a conviction not involving
25 controlled substances or dangerous drugs, to determine if the conviction is of an
26 offense substantially related to the qualifications, functions, and duties of a licensee
27 under this chapter. A plea or verdict of guilty or a conviction following a plea of
28 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.

. . . .

(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

1 pharmacy, including regulations established by the board or by any other state or
2 federal regulatory agency.

3

4 10. Section 4059 of the Code states:

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

10

11 11. Section 4060 of the Code states:

12 No person shall possess any controlled substance, except that furnished to a
13 person upon the prescription of a physician, dentist, podiatrist, optometrist,
14 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
15 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
16 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant
17 pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or
18 a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv)
19 of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This
20 section shall not apply to the possession of any controlled substance by a
21 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
22 optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
23 practitioner, or physician assistant, when in stock in containers correctly labeled
24 with the name and address of the supplier or producer.

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

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

REGULATORY PROVISIONS

13. 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 (1) Nature and severity of the act(s) or offense(s).
- 2 (2) Total criminal record.
- 3 (3) The time that has elapsed since commission of the act(s) or offense(s).
- 4 (4) Whether the licensee has complied with all terms of parole, probation,
5 restitution or any other sanctions lawfully imposed against the licensee.
- 6 (5) Evidence, if any, of rehabilitation submitted by the licensee.

7 14. California Code of Regulations, title 16, section 1770, states:

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

13 **COST RECOVERY**

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

18 **DRUGS**

19 16. Hydrocodone/APAP is a Schedule III controlled substance pursuant to Health and
20 Safety Code section 11056, subdivision (e), and a dangerous drug pursuant to Business and
21 Professions Code section 4022.

22 **FIRST CAUSE FOR DISCIPLINE**

23 **(September 4, 2013 Criminal Conviction for Embezzlement and Possession of a Controlled
24 Substance on May 1, 2013)**

25 17. Respondent has subjected her license to discipline under sections 490 and 4301,
26 subdivision (l) of the Code in that she was convicted of crimes that are substantially related to the
27 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:
28

1 a. On or about September 4, 2013, in a criminal proceeding entitled *People of the State*
2 *of California v. Tonya Marie Padilla*, Riverside Superior Court, case number RIF1307068,
3 Respondent was convicted on her plea of guilty to violating Penal Code section 503,
4 embezzlement, and Health and Safety Code section 11350(a), possession of a controlled
5 substance, both felonies.

6 b. The circumstances surrounding the conviction are that Respondent was employed as a
7 pharmacy technician at CVS Pharmacy, located in Riverside, California. In or around April 2013,
8 supervisors at CVS Pharmacy were notified that hydrocodone/APAP was missing in the pharmacy.
9 Thereafter, the Pharmacist-in-Charge (PIC) installed covert cameras to record the activities in the
10 pharmacy and she created a system to store all controlled substances in a separate waiting bin
11 which required an employee signature.

12 c. A review of the video surveillance showed that on June 16, 2013, Respondent
13 removed a prescription for controlled substances from the waiting bin, placed the bag in her
14 waistband, and covered her waistband with her shirt. After concealing the drugs in her waistband,
15 Respondent continued performing her duties until the closing of the pharmacy. The prescription
16 that Respondent took was 120 tablets of hydrocodone/APAP 5-500.

17 d. The video also showed that on May 19, 2013, Respondent took a prescription for a
18 controlled substance out of the waiting bin and concealed it in her waistband. On or about June
19 18, 2013, Respondent was interviewed by Loss Prevention staff, but would not answer any
20 questions. CVS Pharmacy then contacted the Riverside Police Department and Respondent was
21 arrested. Following her arrest, CVS conducted an audit and identified a loss of 5,675 tablets of
22 Hydrocodone/APAP 5-500; 3,087 tablets of Hydrocodone/APAP 7.5-500; 2,276 tablets of
23 Hydrocodone/APAP 7.5-750; 1,364 tablets of Hydrocodone/APAP 5-325; and 259 tablets of
24 Hydrocodone/APAP 10-325.

25 e. As a result of her conviction, on September 4, 2013, Respondent was ordered to serve
26 36 months of formal probation, sentenced to the custody of the Riverside Sheriff for 120 days,
27 with 112 days to be served in the work release program, ordered to not use or possess controlled
28 substances unless prescribed, ordered to pay restitution, required to participate and complete a

1 counseling, rehabilitation or treatment program, and ordered to not have any direct or indirect
2 contact with CVS.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Dishonest Act)**

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

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Unlawful Furnishing of a Controlled Substance)**

11 19. Respondent has subjected her license to disciplinary action under section 4301,
12 subdivision (j) of the Code for violation of Health and Safety Code section 11170 in that
13 Respondent illegally furnished to herself controlled substances without a prescription, when she
14 stole hydrocodone/APAP from CVS, as detailed in paragraph 17, above, which is incorporated
15 herein by reference.

16 **FOURTH CAUSE FOR DISCIPLINE**

17 **(Unlawful Possession of a Controlled Substance)**

18 20. Respondent has subjected her license to disciplinary action under section 4301,
19 subdivision (o) of the Code for violation of Code section 4060 in that Respondent illegally
20 possessed controlled substances without a prescription, as detailed in paragraph 17, above, which
21 is incorporated herein by reference.

22 **PRAYER**

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

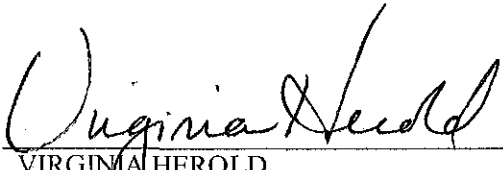
25 1. Revoking or suspending Pharmacy Technician Registration Number TCH 114094,
26 issued to Tonya Maric Padilla;

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2. Ordering Tonya Marie Padilla 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: 6/9/14



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

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