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

11 In the Matter of the Accusation Against:

Case No. 5235

12 **CARLOS JESUS RUIZ**  
13 **3873 E. Clinton Avenue**  
14 **Fresno, CA 93703**

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

15 **Pharmacy Technician Registration**  
16 **No. TCH 128933**

Respondent.

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 ("Board"), Department of Consumer Affairs.

21 2. On or about December 14, 2012, the Board issued Pharmacy Technician Registration  
22 Number TCH 128933 to Carlos Jesus Ruiz ("Respondent"). The pharmacy technician  
23 registration was in full force and effect at all times relevant to the charges brought herein and will  
24 expire on December 31, 2014, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board under the authority of the following  
27 laws. All section references are to the Business and Professions Code unless otherwise indicated.

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4. Code section 4300 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. Code section 4300.1 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. Code section 4301 states, in pertinent part:

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, or 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

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

3 7. Code section 4022 states:

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

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

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

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

14 8. Code section 4060 states, in pertinent part:

15 No person shall possess any controlled substance, except that furnished to  
16 a person upon the prescription of a physician, dentist, podiatrist, optometrist,  
17 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant  
18 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a  
19 nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to  
20 Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist  
21 pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of  
22 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.

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

25 **DRUGS**

26 10. **Ativan**, a brand of **Lorazepam**, is a Schedule IV controlled substance as designated  
27 by Health and Safety Code section 11057, subdivision (d)(16). Ativan is used in the treatment of  
28 anxiety.

11 11. **Norco**, a brand of Hydrocodone Bitartrate and Acetaminophen, is a Schedule III  
12 controlled substance as designated by Health and Safety Code section 11056, subdivision (e)(4).  
13 Norco is used for pain relief.

14 12. **Norvasc**, a brand of **Amlodipine**, is a dangerous drug within the meaning of Code  
15 section 4022 in that it requires a prescription under federal law. Amlodipine is used in the  
16 treatment of hypertension.

1 13. **Synthroid** and **Levothroid**, brand names for **Levothyroxine**, are dangerous drugs  
2 within the meaning of Code section 4022 in that they require a prescription under federal law.  
3 Synthroid and Levothroid are thyroid hormone replacement drugs.

4 14. **Tylenol with Codeine** is a combination drug containing codeine and acetaminophen  
5 and is a Schedule III controlled substance as designated by Health and Safety Code section  
6 11056, subdivision (e)(2). Tylenol with Codeine is used for pain relief.

7 15. **Vicodin** is a compound consisting of 5 mg Hydrocodone Bitartrate, also known as  
8 Dihydrocodeinone, and 500 mg Acetaminophen per tablet, and is a Schedule III controlled  
9 substance as designated by Health and Safety Code section 11056, subdivision (e)(4). Vicodin is  
10 used for pain relief.

11 16. **Zoloft**, a brand of **Sertraline**, is a dangerous drug within the meaning of Code section  
12 4022 in that it requires a prescription under federal law. Zoloft is used to treat depression.

#### 13 **COST RECOVERY**

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

#### 18 **BACKGROUND**

19 18. At all times relevant to the charges brought herein, Respondent was employed as a  
20 pharmacy technician at CVS/Pharmacy #09971 (“CVS”) located at 4077 W. Clinton Avenue,  
21 Fresno, California.

22 19. In and between January 2013 through July 24, 2013, Respondent admittedly stole  
23 approximately 30 Levothyroxine, 50 Lorazepam, 200 Hydrocodone 10/325 (Norco), 12 Tylenol  
24 with Codeine, 30 Hydrocodone 5/500 mg (Vicodin), and 30 Amlodipine from CVS. Respondent  
25 admitted his theft to CVS, that the controlled substances and dangerous drugs were for his self-  
26 use, and he did not have a valid prescription for any of the drugs. Respondent also admitted to  
27 self-administering Zoloft, which he had received from his sister. Respondent admitted that he  
28 entered his personal phone number while scanning customers’ CVS Extra Care Cards so he could

1 accrue their reward points on his personal CVS Extra Care Card and receive in-store credit to  
2 purchase CVS merchandise. Respondent was terminated by CVS on or about July 26, 2013.  
3 CVS reported Respondent's thefts to the Fresno Police Department for investigation.

4 20. On or about July 26, 2013, a Fresno Police Department law enforcement officer  
5 interviewed Respondent at CVS. Respondent admitted to the officer that he had stolen  
6 prescription medications from CVS for the past six months and to the CVS Extra Care rewards  
7 points scam, described in paragraph 18, above. Respondent confirmed to the officer that he had  
8 not been coerced in writing and signing his confession statement provided to CVS. Respondent  
9 was cited for violating Penal Code section 484, subdivision (a) (theft).

10 21. On or about August 8, 2013, the Board received notice from CVS Senior Regulatory  
11 Compliance Consultant L.P. that Respondent had been terminated from his employment on July  
12 26, 2013, following his admission to stealing controlled substances from the pharmacy and  
13 customers' CVS Extra Care reward points.

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

16 22. Respondent is subject to disciplinary action pursuant to Code section 4301,  
17 subdivision (f), for unprofessional conduct, in that while employed as a pharmacy technician at  
18 CVS/Pharmacy #09971, Respondent committed acts involving moral turpitude, dishonesty, fraud,  
19 deceit, or corruption, as follows:

20 a. In and between January 2013 and July 24, 2013, Respondent stole or diverted  
21 the controlled substances Lorazepam, Norco, Tylenol with Codeine, and Vicodin and the  
22 dangerous drugs Levothyroxine and Amlodipine for self-administration, as set forth in paragraphs  
23 18 and 19, above, incorporated herein by reference.

24 b. In and between January 2013 and July 24, 2013, Respondent stole CVS Extra  
25 Care rewards points from customers, as set forth in paragraphs 18 and 19, above, incorporated  
26 herein by reference.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Self-Administration of Controlled Substances)**

3 23. Respondent is subject to disciplinary action pursuant to Code section 4301,  
4 subdivision (h), for unprofessional conduct, in that in and between January 2013 and July 24,  
5 2013, while employed as a pharmacy technician at CVS/Pharmacy #09971, Respondent self-  
6 administered the controlled substances Lorazepam, Norco, Tylenol with Codeine, and Vicodin,  
7 and the dangerous drugs Levothyroxine, Amlodipine, and Zoloft to an extent or in a manner  
8 dangerous or injurious to himself, others, and/or the public, as set forth in paragraphs 19 and 20,  
9 above, incorporated herein by reference.

10 **THIRD CAUSE FOR DENIAL**

11 **(Violations of State Laws Regulating Controlled Substances)**

12 24. Respondent is subject to disciplinary action pursuant to Code section 4301,  
13 subdivision (j), for unprofessional conduct, in that in and between January 2013 and July 24,  
14 2013, while employed as a pharmacy technician at CVS/Pharmacy #09971:

15 a. Respondent possessed the controlled substances Lorazepam, Norco, Tylenol  
16 with Codeine, and Vicodin without valid prescriptions from a physician, dentist, podiatrist,  
17 optometrist, veterinarian, or naturopathic doctor, in violation of Code section 4060, as set forth in  
18 paragraphs 19 and 20, above, incorporated herein by reference.

19 b. Respondent self-administered the controlled substances Lorazepam, Norco,  
20 Tylenol with Codeine, and Vicodin, in violation of Health and Safety Code section 11170, as set  
21 forth in paragraphs 19 and 20, above, incorporated herein by reference.

22 c. Respondent furnished the controlled substances Lorazepam, Norco, Tylenol  
23 with Codeine, and Vicodin to himself, in violation of Health and Safety Code section 11170, as  
24 set forth in paragraphs 19 and 20, above, incorporated herein by reference.

25 **FOURTH CAUSE FOR DENIAL**

26 **(Violations of the Pharmacy Law)**

27 25. Respondent is subject to disciplinary action pursuant to Code section 4301,  
28 subdivision (o), for unprofessional conduct, in that in and between January 2013 and July 24,

1 2013, while employed as a pharmacy technician at CVS/Pharmacy #09971, Respondent violated  
2 or attempted to violate, directly or indirectly, a provision or term of the Pharmacy Law (Bus. &  
3 Prof. Code § 4300, et seq.), specifically, Code section 4060, as set forth in paragraphs 22, 23, and  
4 24, above, incorporated herein by reference.

5 **PRAYER**

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

- 8 1. Revoking or suspending Pharmacy Technician Registration Number TCH 128933,  
9 issued to Carlos Jesus Ruiz;
- 10 2. Ordering Carlos Jesus Ruiz to pay the Board of Pharmacy the reasonable costs of the  
11 investigation and enforcement of this case, pursuant to Business and Professions Code section  
12 125.3;
- 13 3. Taking such other and further action as deemed necessary and proper.

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15 DATED: 12/3/14



16 VIRGINIA HEROLD  
17 Executive Officer  
18 Board of Pharmacy  
19 Department of Consumer Affairs  
20 State of California  
21 *Complainant*

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