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

12 In the Matter of the Accusation Against:

Case No. 5291

13 **DANIEL RODRIGUEZ**
14 **52233 Oasis Palms Avenue**
Coachella, CA 92236

A C C U S A T I O N

15 **Pharmacy Technician Registration No. TCH**
16 **53054**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

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

23 2. On April 8, 2004, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 53054 to Daniel Rodriguez (Respondent). Respondent has also been
25 known as Daniel Urias Rodriguez, Jr. The Pharmacy Technician Registration was in full force
26 and effect at all times relevant to the charges brought herein and will expire on February 29,
27 2016, unless renewed.

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1 **JURISDICTION**

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 (Code) unless otherwise indicated.

5 4. Code section 118, subdivision (b) provides that the suspension, expiration,
6 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
7 disciplinary action during the period within which the license may be renewed, restored, reissued,
8 or reinstated.

9 5. Code section 4300, subdivision (a) provides that every license issued by the Board
10 may be suspended or revoked.

11 6. Code section 4300.1 states:

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

16 **STATUTORY PROVISIONS**

17 7. Section 480 of the Code states:

18 (a) A board may deny a license regulated by this code on the grounds
19 that the applicant has one of the following:

20 (1) Been convicted of a crime. A conviction within the meaning of
21 this section means a plea or verdict of guilty or a conviction following a plea of
22 nolo contendere. Any action that a board is permitted to take following the
23 establishment of a conviction may be taken when the time for appeal has elapsed,
24 or the judgment of conviction has been affirmed on appeal, or when an order
25 granting probation is made suspending the imposition of sentence, irrespective of
26 a subsequent order under the provisions of Section 1203.4 of the Penal Code.

24 (2) Done any act involving dishonesty, fraud, or deceit with the
25 intent to substantially benefit himself or herself or another, or substantially injure
26 another.

26 (3) (A) Done any act that if done by a licentiate of the business or
27 profession in question, would be grounds for suspension or revocation of license.

27 (B) The board may deny a license pursuant to this subdivision
28 only if the crime or act is substantially related to the qualifications, functions, or
duties of the business or profession for which application is made.

1 (b) Notwithstanding any other provision of this code, no person shall
2 be denied a license solely on the basis that he or she has been convicted of a
3 felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5
4 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that
5 he or she has been convicted of a misdemeanor if he or she has met all applicable
6 requirements of the criteria of rehabilitation developed by the board to evaluate
7 the rehabilitation of a person when considering the denial of a license under
8 subdivision (a) of Section 482.

6 (c) A board may deny a license regulated by this code on the ground
7 that the applicant knowingly made a false statement of fact required to be
8 revealed in the application for the license.

8 8. Section 490 of the Code provides, in pertinent part, that a board may suspend or
9 revoke a license on the ground that the licensee has been convicted of a crime substantially
10 related to the qualifications, functions, or duties of the business or profession for which the
11 license was issued.

12 9. Section 493 of the Code states:

13 Notwithstanding any other provision of law, in a proceeding conducted by
14 a board within the department pursuant to law to deny an application for a license
15 or to suspend or revoke a license or otherwise take disciplinary action against a
16 person who holds a license, upon the ground that the applicant or the licensee has
17 been convicted of a crime substantially related to the qualifications, functions, and
18 duties of the licensee in question, the record of conviction of the crime shall be
19 conclusive evidence of the fact that the conviction occurred, but only of that fact,
20 and the board may inquire into the circumstances surrounding the commission of
21 the crime in order to fix the degree of discipline or to determine if the conviction
22 is substantially related to the qualifications, functions, and duties of the licensee in
23 question.

20 As used in this section, 'license' includes 'certificate,' 'permit,'
21 'authority,' and 'registration.'

22 10. Section 4022 of the Code states

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

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

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

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

3 11. Section 4060 of the Code states:

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

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

20 12. Section 4301 of the Code states:

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

25

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

. . . .

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

. . . .

(p) Actions or conduct that would have warranted denial of a license.

. . . .

1 13. Health & Safety Code (HSC) section 11173, subdivision (a) states:

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

6 14. HSC section 11377, subdivision (a) states:

7 Except as authorized by law and otherwise provided in subdivision (b) or
8 section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of
9 Division 2 of the Business and Professions Code, every person who possesses any
10 controlled substance which is (1) classified in Schedule III, IV, or V, and which is
11 not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except
12 paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph
13 (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of
14 subdivision (f) of Section 11054, or (5) specified in subdivision (d), (3), or (f) of
15 Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or
16 veterinarian, licensed to practice in this state, shall be punished by imprisonment
17 in a county jail for a period of not more than one year or pursuant to subdivision
18 (h) of Section 1170 of the Penal Code.

19 REGULATORY PROVISIONS

20 15. California Code of Regulations, title 16, section 1769, states:

21

22 (b) When considering the suspension or revocation of a facility or a
23 personal license on the ground that the licensee or the registrant has been
24 convicted of a crime, the board, in evaluating the rehabilitation of such person and
25 his present eligibility for a license will consider the following criteria:

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

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

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

1 **COST RECOVERY**

2 17. Code section 125.3 provides, in pertinent part, that the Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations
4 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case, with failure of the licentiate to comply subjecting the license to not
6 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs
7 may be included in a stipulated settlement.

8 **DRUG AT ISSUE**

9 18. Hydrocodone is a Schedule II controlled substance as designated by Health and
10 Safety Code section 11055, subdivision (b)(1)(I) and is a dangerous drug pursuant to Code
11 section 4022.

12 **FIRST CAUSE FOR DISCIPLINE**

13 **(Fraudulently Attempted to Obtain Controlled Substance Without a Prescription)**

14 19. Respondent subjected his pharmacy technician registration to discipline under
15 Code section 4301, subdivisions (f) and (o), in that on February 15, 2012, Respondent attempted
16 to obtain hydrocodone without a prescription, by misrepresentation, and concealment of material
17 fact, an act involving moral turpitude, dishonesty, fraud, deceit, and corruption. The
18 circumstances are as follows:

19 a. On February 15, 2012, Respondent drove up to the drive thru of a Rite Aid
20 Pharmacy in Indio, California, and handed a note to a pharmacy technician allegedly to pick-up a
21 prescription for hydrocodone and antibiotics for a neighbor. When the pharmacy technician
22 looked up the prescription in the computer, the prescription for hydrocodone and antibiotics had
23 been deleted. The pharmacy technician then recalled that on February 14, 2012, their store took a
24 similar prescription for hydrocodone and antibiotics for the same name. At that time, the
25 pharmacy technician called the alleged prescribing physician who confirmed that the prescription
26 was not authorized. Concerned that this was another fraudulent prescription, the pharmacy
27 technician reported the situation to the Indio Police Department. Before the police arrived,
28 Respondent drove away. Nonetheless, Respondent called to pick up the fraudulent prescription

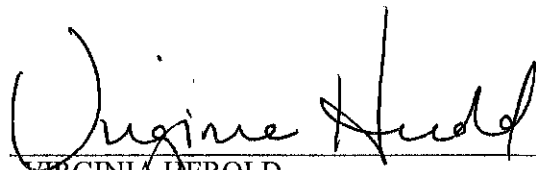
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PRAYER

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 53054, issued to Daniel Rodriguez;
2. Ordering Daniel Rodriguez 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: 11/10/14



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

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