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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. 5354

11 **JOSELITO DURAN RICO**
12 **646 N. Madison Ave. #4**
13 **Los Angeles, CA 90004**

A C C U S A T I O N

14 **Inmate #AX9583**
15 **Wasco State Prison-Reception Center**
16 **701 Scofield Avenue**
17 **P O BOX 8800**
18 **Wasco, CA 93280**

19 **Pharmacy Technician Registration No. TCH**
20 **39066**

Respondent.

21 Complainant alleges:

22 **PARTIES**

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

25 2. On or about October 17, 2001, the Board of Pharmacy issued Pharmacy Technician
26 Registration Number TCH 39066 to Joselito Duran Rico (Respondent). The Pharmacy
27 Technician Registration was in full force and effect at all times relevant to the charges brought
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1 herein and expired on March 31, 2015. The Pharmacy Technician Registration was cancelled on
2 July 1, 2015 pursuant to Bus. & Prof. Code § 4402(e).

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4 **JURISDICTION**

5 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
6 Consumer Affairs, under the authority of the following laws. All section references are to the
7 Business and Professions Code unless otherwise indicated.

8 4. Section 4300 of the Code state, in pertinent 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 (c) The Board may refuse a license to any applicant guilty of unprofessional conduct.

20 ...

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

26 5. Section 4300.1 of the Code states, in pertinent part:

27 “The expiration, cancellation, forfeiture, or suspension of a board-issued license by
28 operation of law or by order or decision of the board or a court of law, the placement of a license

1 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
2 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
3 proceeding against, the licensee or to render a decision suspending or revoking the license.”

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5 **STATUTORY PROVISIONS**

6 6. Section 490 states, in pertinent part:

7 “(a) In addition to any other action that a board is permitted to take against a licensee, a
8 board may suspend or revoke a license on the ground that the licensee has been convicted of a
9 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
10 or profession for which the license was issued.

11 (b) Notwithstanding any other provision of law, a board may exercise any authority to
12 discipline a licensee for conviction of a crime that is independent of the authority granted under
13 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
14 of the business or profession for which the licensee's license was issued.

15 (c) A conviction within the meaning of this section means a plea or verdict of guilty or a
16 conviction following a plea of nolo contendere. Any action that a board is permitted to take
17 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
18 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
19 made suspending the imposition of sentence, irrespective of a subsequent order under the
20 provisions of Section 1203.4 of the Penal Code.”

21 7. Section 4301 of the Code states, in pertinent part:

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

25 ...

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

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(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. [T]he record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The Board may inquire into the circumstances surround the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision.

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

REGULATORY PROVISIONS

8. 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.”

COST RECOVERY

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

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1 **FIRST CAUSE FOR DISCIPLINE**

2 (Conviction of a Substantially Related Crime)

3 10. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and
4 490, in conjunction with California Code of Regulations, Title 16, section 1770, in that,
5 Respondent was convicted of a crime substantially related to the qualifications, functions or
6 duties of a pharmacy technician, as follows:

7 a. On or around August 7, 2015, Respondent was convicted of eight (8) felony counts of
8 Pen. Code § 211 [robbery], five (5) felony counts of Pen. Code § 664-211 [attempted robbery]
9 and four (4) felony counts of Pen. Code § 459 [burglary] in *The Matter the People of the State of*
10 *California v. Joselito Durana Rico*, Los Angeles Co. Super. Ct., Case No. BA428605 (2014).
11 The crimes occurred over a six-month period of time between December 2012 and April 2013
12 and involved more than a dozen victims. The Court ordered the Respondent to serve twenty five
13 (25) years in prison. The underlying circumstances, in part, are as follows:

14 b. On or around May 6, 2013, at 11:48 a.m., Respondent entered an unlocked door at
15 RCBC, a business in Los Angeles, disguised wearing a wig and sunglasses. Respondent then
16 attempted to enter a second door, which was locked/secured. Respondent asked M.J.¹, an
17 employee, to open the second door. When M.J. partially opened the door to inform Respondent
18 that he could not come in, Respondent used his foot to prevent the door from closing.
19 Respondent then drew a handgun and threatened, "I will shoot you in the head if you don't give
20 me the money!" Respondent then forced himself into the building and ordered employees M.J.
21 and E.M. to lie "face down" and not move. Respondent demanded the key to the safe but fled
22 when he heard police sirens. Respondent's disguise was later found near the scene of the
23 incident.

24 c. On or around December 19, 2012, Respondent unlawfully, and by means of force and
25 fear took personal property from the person, possession, and immediate presence of F.S.

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27 _____
28 ¹ Initials are used here and throughout, when necessary, to protect consumer and or victim confidentiality.

- 1 d. On or around January 7, 2013, Respondent unlawfully, and by means of force and
2 fear took personal property from the person, possession, and immediate presence of T.D.
- 3 e. On or around February 5, 2013, Respondent unlawfully, and by means of force and
4 fear took personal property from the person, possession, and immediate presence of M.C.
- 5 f. On or around February 21, 2013, Respondent unlawfully, and by means of force and
6 fear took personal property from the person, possession, and immediate presence of R.A.
- 7 g. On or around February 21, 2013, Respondent unlawfully, and by means of force and
8 fear took personal property from the person, possession, and immediate presence of D.F.
- 9 h. On or around April 2, 2013, Respondent unlawfully, and by means of force and fear
10 took personal property from the person, possession, and immediate presence of A.B.
- 11 i. On or around April 2, 2013, Respondent unlawfully, and by means of force and fear
12 took personal property from the person, possession, and immediate presence of C.C.
- 13 j. On or around April 4, 2013, Respondent unlawfully, and by means of force and fear
14 attempted to take personal property from the person, possession, and immediate presence of A.D.
- 15 k. On or around April 4, 2013, Respondent unlawfully, and by means of force and fear
16 attempted to take personal property from the person, possession, and immediate presence of P.P.
- 17 l. On or around May 6, 2013, Respondent unlawfully, and by means of force and fear
18 took personal property from the person, possession, and immediate presence of S.P.
- 19 m. On or around May 6, 2013, Respondent unlawfully, and by means of force and fear
20 attempted to take personal property from the person, possession, and immediate presence of W.A.

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22 **SECOND CAUSE FOR DISCIPLINE**

23 (Acts Constituting Moral Turpitude)

24 11. Respondent is subject to disciplinary action under section 4301(f) of the code in that
25 Respondent committed acts constituting moral turpitude. Complainant refers to, and by reference
26 incorporates, the allegations set forth above in paragraph 10, and all subparagraphs, as though set
27 forth fully herein.

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THIRD CAUSE FOR DISCIPLINE

(Acts Warranting Denial of Licensure)

12. Respondent is subject to disciplinary action under section 4301(p) of the code in that Respondent committed acts warranting denial of licensure. Complainant refers to, and by reference incorporates, the allegations set forth above in paragraph 10, and all subparagraphs, as though set forth fully herein.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

13. Respondent is subject to disciplinary action under section 4301 of the code in that Respondent committed acts constituting unprofessional conduct. Complainant refers to, and by reference incorporates, the allegations set forth above in paragraph 10, and all subparagraphs, as though set forth fully herein.

14. In addition, on or around March 28, 2013, Respondent entered BDO, a business located in Los Angeles disguised in a wig and sunglasses. Upon seeing Respondent, employees C.G. and M.R. fled to a bathroom, where they barricaded themselves and called 911. Respondent gained access to the restricted employee area and unsuccessfully attempted to open the bathroom door. Respondent then returned to the front desk, where he unlawfully stole \$7,000 from desk drawers.

PRAAYER

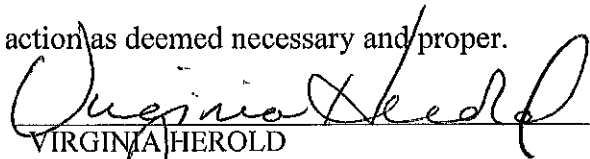
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Pharmacy Technician Registration Number TCH 39066, issued to Joselito Duran Rico
2. Ordering Joselito Durana Rico 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;

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3. Taking such other and further action as deemed necessary and proper.

DATED: 12/7/15



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

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