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

12 In the Matter of the Accusation Against:

Case No. 5485

13 **DAVID MADRIGAL**
948 S. California Street
Stockton, California 95206

A C C U S A T I O N

14 **Pharmacy Technician Registration No. TCH**
15 **112091**

16 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, Department of Consumer Affairs.

21 2. On or about April 5, 2011, the Board of Pharmacy issued Pharmacy Technician
22 Registration Number TCH 112091 to David Madrigal (Respondent). The Pharmacy Technician
23 Registration expired on March 31, 2015, and has not been renewed.

24 **JURISDICTION**

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

4. Section 4300 of the Code states:

"(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.

(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy, including, but not limited to, the following:

- (1) Medical or psychiatric evaluation.
- (2) Continuing medical or psychiatric treatment.
- (3) Restriction of type or circumstances of practice.
- (4) Continuing participation in a board-approved rehabilitation program.
- (5) Abstention from the use of alcohol or drugs.
- (6) Random fluid testing for alcohol or drugs.
- (7) Compliance with laws and regulations governing the practice of pharmacy.

(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary certificate of licensure for any violation of the terms and conditions of probation. Upon satisfactory completion of probation, the board shall convert the probationary certificate to a regular certificate, free of conditions.

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

6 5. Section 4301 of the Code provides, in pertinent part, that:

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

10 ...

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

14 ...

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

20 ...

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

23 ..."

24 6. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
25 controlled substance, except that furnished to a person upon lawful prescription.

26 7. Section 11170 of Health and Safety Code provides, in pertinent part, that no person
27 shall furnish a controlled substance to himself.

8. Section 11173, sub-part (a), of the Health and Safety Code states that “no person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.”

9. Health and Safety Code section 11350(a) provides, in pertinent part, that "...every person who possesses (1) any controlled substance... specified in subdivision (b) or (c) of Section 11055..., unless upon prescription..., shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code".

10. Section 125.3 of the Code 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, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

11 Section 118, subdivision (b), of the Code provides that the suspension/expiration/surrender/cancellation of a license shall not deprive the Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

DRUGS

12. Percocet, also known as Oxycodone/Acetaminophen, is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subpart (b)(1)(M).

BACKGROUND

13. On or about March 24, 2014, and for at least one year prior thereto, Respondent was employed as a pharmacy technician at California Department of Corrections and Rehabilitation, California Correctional Health Care services (CDCR/CCHCS) in Sacramento, California.

14. On or about March 24, 2014, Respondent unlawfully entered the job locker of D.G. an employee of (CDCR/CCHCS) and stole one or more tablets of Oxycodone from D.G.'s lunch box. On other occasions on unknown dates during the approximately one year period before

1 March 24, 2014, Respondent stole approximately five tablets of Percocet also known as
2 Oxycodone/Acetaminophen from co-employee D.G. in the same fashion as alleged in Paragraphs
3 13 and 14 above.

4 15. Respondent self-administered some or all the Oxycodone/Acetaminophen that he
5 stole from D.G. as alleged above.

6 FIRST CAUSE FOR DISCIPLINE

7 (Unprofessional Conduct-Unlawful Possession of Controlled Substances)

8 16. Respondent is subject to disciplinary action under Code section 4301, subdivision (j),
9 because he violated Code sections 11350, subdivision (a) and 4060 by possessing the controlled
10 substance Oxycodone/Acetaminophen without a valid prescription, as alleged in Paragraphs 13,
11 14 and 15 above.

12 SECOND CAUSE FOR DISCIPLINE

13 (Unprofessional Conduct-Unlawful Self-Administration of Controlled Substances)

14 17. Respondent is subject to disciplinary action under Code section 4301, subdivision (h)
15 because he violated Health and Safety Code section 11170 by self-administering
16 Oxycodone/Acetaminophen without a valid prescription, as set forth in Paragraphs 13, 14 and 15
17 above.

18 THIRD CAUSE FOR DISCIPLINE

19 (Obtaining Controlled Substances by Fraud, Deceit and Subterfuge)

20 18. Respondent is subject to disciplinary action under Code section 4301, subdivision (j),
21 because he violated Health and Safety Code section 11173, subdivision (a), by obtaining
22 Oxycodone/Acetaminophen by fraud, deceit and subterfuge as alleged in Paragraphs 13, 14 and
23 15 above.

24 PRAYER

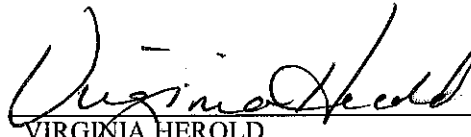
25 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
26 and that following the hearing, the Board of Pharmacy issue a decision:

27 1. Revoking or suspending Pharmacy Technician Registration No. TCH 112091 issued
28 to Respondent David Madrigal;

1
2 2. Ordering Respondent David Madrigal to pay the Board of Pharmacy the reasonable
3 costs of the investigation and enforcement of this case, pursuant to Business and Professions Code
4 section 125.3;

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

6
7 DATED: 10/20/15


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