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7  
8 **BEFORE THE**  
**BOARD OF PHARMACY**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 5515

11 **MARLENE MARTINEZ**

12 8123 Evergreen Ave.  
13 South Gate, CA 90280

14 Pharmacy Technician Registration No. TCH  
15 60030

16 Respondent.

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

17  
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about December 20, 2004, the Board issued Pharmacy Technician Registration  
23 Number TCH 60030 to Marlene Martinez (Respondent). The Pharmacy Technician Registration  
24 was in full force and effect at all times relevant to the charges brought herein and will expire on  
25 November 30, 2016, unless renewed.

26 **JURISDICTION AND STATUTORY PROVISIONS**

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

1 indicated.

2 4. Section 4300 of the Code provides, in pertinent part:

3 “(a) Every license issued may be suspended or revoked.

4 (b) The board shall discipline the holder of any license issued by the board,  
5 whose default has been entered or whose case has been heard by the board and found  
6 guilty, by any of the following methods:

7 (1) Suspending judgment.

8 (2) Placing him or her upon probation.

9 (3) Suspending his or her right to practice for a period not exceeding one  
10 year.

11 (4) Revoking his or her license.

12 (5) Taking any other action in relation to disciplining him or her as the  
13 board in its discretion may deem proper.

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

20 (1) Medical or psychiatric evaluation.

21 (2) Continuing medical or psychiatric treatment.

22 (3) Restriction of type or circumstances of practice.

23 (4) Continuing participation in a board-approved rehabilitation program.

24 (5) Abstention from the use of alcohol or drugs.

25 (6) Random fluid testing for alcohol or drugs.

26 (7) Compliance with laws and regulations governing the practice of  
27 pharmacy.

28 (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.

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

1           5.     Section 490 of the Code provides:

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

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

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

19                  (d) The Legislature hereby finds and declares that the application of this  
20                  section has been made unclear by the holding in *Petropoulos v. Department of Real*  
21                  *Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a  
22                  significant number of statutes and regulations in question, resulting in potential harm  
23                  to the consumers of California from licensees who have been convicted of crimes.  
24                  Therefore, the Legislature finds and declares that this section establishes an  
25                  independent basis for a board to impose discipline upon a licensee, and that the  
26                  amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session  
27                  do not constitute a change to, but rather are declaratory of, existing law.”

28           6.     Section 4301 of the Code provides, 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.

                  ...

1 (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.

2 (k) The conviction of more than one misdemeanor or any felony involving  
3 the use, consumption, or self-administration of any dangerous drug or alcoholic  
beverage, or any combination of those substances.

4 (l) The conviction of a crime substantially related to the qualifications,  
5 functions, and duties of a licensee under this chapter. The record of conviction of a  
6 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United  
States Code regulating controlled substances or of a violation of the statutes of this  
7 state regulating controlled substances or dangerous drugs shall be conclusive evidence  
of unprofessional conduct. In all other cases, the record of conviction shall be  
8 conclusive evidence only of the fact that the conviction occurred. The board may  
9 inquire into the circumstances surrounding the commission of the crime, in order to fix  
the degree of discipline or, in the case of a conviction not involving controlled  
10 substances or dangerous drugs, to determine if the conviction is of an offense  
substantially related to the qualifications, functions, and duties of a licensee under this  
11 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. The  
12 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  
13 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  
14 dismissing the accusation, information, or indictment.”

14 7. Section 4060 of the Code provides, in pertinent part:

15 “A person shall not possess any controlled substance, except that  
16 furnished to a person upon the prescription of a physician, dentist, podiatrist,  
optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or  
17 furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to  
Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant  
18 pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a  
pharmacist pursuant to Section 4052.1, 4052.2, or 4052.6. This section does not apply  
19 to the possession of any controlled substance by a manufacturer, wholesaler, third-  
party logistics provider, pharmacy, pharmacist, physician, podiatrist, dentist,  
20 optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse  
practitioner, or physician assistant, if in stock in containers correctly labeled with the  
21 name and address of the supplier or producer.

22 This section does not authorize a certified nurse-midwife, a nurse  
practitioner, a physician assistant, or a naturopathic doctor, to order his or her own  
23 stock of dangerous drugs and devices.”

#### 24 REGULATORY PROVISIONS

25 8. California Code of Regulations, title 16, section 1770, provides, in pertinent part:

26 “For the purpose of denial, suspension, or revocation of a personal or  
27 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  
28 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

1 the functions authorized by his license or registration in a manner consistent with the  
2 public health, safety, or welfare.”

3 **COST RECOVERY**

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

10 **FIRST CAUSE FOR DISCIPLINE**

11 **(Substantially Related Criminal Convictions)**

12 10. Respondent is subject to disciplinary action under section 490 and section 4301,  
13 subdivision (l) of the Code, in conjunction with California Code of Regulations, title 16, section  
14 1770, in that Respondent was convicted of crimes substantially related to the qualifications,  
15 functions and duties of a pharmacy technician, as follows:

16 11. On January 4, 2011, Respondent was convicted of one misdemeanor count of violating  
17 Vehicle Code section 23152(b) [Driving While Having a 0.08% or Higher Blood Alcohol] in the  
18 criminal proceeding entitled *The People of the State of California v. Marlene Martinez* (Super. Ct.  
19 of California, County of L.A., 2010, Case No. 0DY07430). As part of the plea, Respondent  
20 admitted to a blood alcohol level of 0.15%, or higher. The court ordered Respondent to serve 4  
21 days in Los Angeles County Jail and placed Respondent on probation for a period of 48 months,  
22 with terms and conditions. Among other things, Respondent was ordered to enroll and participate  
23 in, and successfully complete a 18-month licensed second-offender alcohol and other drug  
24 education and counseling program.

25 12. On October 16, 2013, Respondent was convicted of one felony count of violating  
26 Penal Code section 487(a) [Grand Theft by Embezzlement] in the criminal proceeding entitled *The*  
27 *People of the State of California v. Marlene Martinez* (Super. Ct. of California, County of L.A.,  
28 2013, Case No. BA416248). The court ordered Respondent to perform 250 hours of CalTrans  
and placed Respondent on formal probation for 3 years, with terms and conditions. The

1 circumstances underlying the criminal conviction are that on or between July 12, 2013, and  
2 September 12, 2013, while employed as a Pharmacy Technician at RiteAid Pharmacy, Respondent  
3 took approximately 160 tablets of Cialis<sup>1</sup> and 10 tablets of Cetirizine<sup>2</sup>.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Unlawful Possession of a Dangerous Drug)**

6 13. Respondent is subject to disciplinary action under section 4060 of the Code on the  
7 grounds of unprofessional conduct in that Respondent furnished a dangerous drug without the  
8 prescription of an authorized prescriber. Specifically, Respondent took approximately 160 tablets  
9 of Cialis from RiteAid Pharmacy, without a prescription. The conduct is described in more  
10 particularity in paragraph 12 above, inclusive and hereby incorporated by reference.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Act Involving Moral Turpitude, Dishonesty, Fraud, or Deceit)**

13 14. Respondent is subject to disciplinary action under section 4301, subdivision (f) of the  
14 Code on the grounds of unprofessional conduct in that Respondent committed acts involving  
15 moral turpitude, dishonesty, fraud, or deceit when she took medications from RiteAid Pharmacy.  
16 The conduct is described in more particularity in paragraph 12 above, inclusive and hereby  
17 incorporated by reference.

18 **FOURTH CAUSE FOR DISCIPLINE**

19 **(Dangerous Use of Alcoholic Beverages)**

20 15. Respondent is subject to disciplinary action under section 4301, subdivision (h) of the  
21 Code on the grounds of unprofessional conduct in that Respondent used alcohol beverages in a  
22 manner dangerous to herself, others, and the public. The conduct is described in more particularity  
23 in paragraph 11 above, inclusive and hereby incorporated by reference.

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26 \_\_\_\_\_  
27 <sup>1</sup> Cialis (Tadalafil) is used for erectile dysfunction and is categorized as a dangerous drug pursuant to section  
4022 of the Code.

28 <sup>2</sup> Zyrtec (Cetirizine) is used for allergy relief.



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**PRAYER**

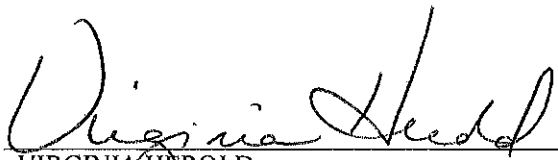
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Pharmacy Technician Registration Number TCH 60030, issued to Marlene Martinez;

2. Ordering Marlene Martinez 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: 2/20/16



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

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