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

11 In the Matter of the Accusation Against:

Case No. 5557

12 **TEIZA ESPINOZA LOMELI**
13 **508 Sheldon Avenue**
14 **Vallejo, CA 94591**

ACCUSATION

15 **Pharmacy Technician Registration No. TCH**
119769

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about February 14, 2012, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 119769 to Teiza Espinoza Lomeli (Respondent). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought in
25 this Accusation. The Pharmacy Technician Registration will expire on October 31, 2015, unless
26 renewed.

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JURISDICTION

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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 unless otherwise indicated.

5 4. Section 4011 of the Code provides that the Board shall administer and enforce both
6 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
7 Act [Health & Safety Code, § 11000 et seq.].

8 5. Section 4300 of the Code states, in relevant 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 ...

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

25 6. Section 4300.1 of the Code states:

26 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by
27 operation of law or by order or decision of the board or a court of law, the placement of a license
28 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board

1 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
2 proceeding against, the licensee or to render a decision suspending or revoking the license."

3 STATUTES

4 7. Section 4301 of the Code states, in relevant:

5 "The board shall take action against any holder of a license who is guilty of unprofessional
6 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

7 Unprofessional conduct shall include, but is not limited to, any of the following:

8 "(a) Gross immorality.

9 ...

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

13 ...

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

16 ...

17 "(l) The conviction of a crime substantially related to the qualifications, functions, and
18 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
19 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
20 substances or of a violation of the statutes of this state regulating controlled substances or
21 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
22 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
23 The board may inquire into the circumstances surrounding the commission of the crime, in order
24 to fix the degree of discipline or, in the case of a conviction not involving controlled substances or
25 dangerous drugs, to determine if the conviction is of an offense substantially related to the
26 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
27 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
28 of this provision. The board may take action when the time for appeal has elapsed, or the

1 judgment of conviction has been affirmed on appeal or when an order granting probation is made
2 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
3 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
4 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
5 indictment.

6 ...

7 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
8 violation of or conspiring to violate any provision or term of this chapter or of the applicable
9 federal and state laws and regulations governing pharmacy, including regulations established by
10 the board or by any other state or federal regulatory agency."

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

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

18 9. Section 4022 of the Code states

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

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

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

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

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1 DRUGS

2 10. Code section 4021 states:

3 “Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
4 11053) of Division 10 of the Health and Safety Code.”

5 11. Valium is a brand name for diazepam. Diazepam is a Schedule IV controlled
6 substance as designated by Health and Safety Code section 11057, subdivision (d)(9), and a
7 dangerous drug as designated by Business and Professions Code section 4022.

8 12. Soma is a brand name for Carisoprodol. Carisoprodol is a Schedule IV controlled
9 substance as designated by Health and Safety Code section 11057, subdivision (g), and a
10 dangerous drug as designated by Business and Professions Code section 4022.

11 13. Xanax is a brand name for Alprazolam. Alprazolam is a Schedule IV controlled
12 substance as designated by Health and Safety Code section 11057, subdivision (d)(1), and a
13 dangerous drug as designated by Business and Professions Code section 4022.

14 14. Vicodin is a brand name for Hydrocodone with Acetaminophen. Hydrocodone is a
15 Schedule II controlled substance as designated by Health and Safety Code section 11055,
16 subdivision (b)(1)(I), and a dangerous drug as designated by Business and Professions Code
17 section 4022.

18 15. Promethazine with codeine is a Schedule V controlled substance as designated by
19 Health and Safety Code section 11058, and a dangerous drug as designated by Business and
20 Professions Code section 4022.

21 COST RECOVERY

22 16. Section 125.3 of the Code provides, in relevant part, that the Board may request the
23 administrative law judge to direct a licentiate found to have committed a violation or violations of
24 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
25 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
26 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
27 included in a stipulated settlement.

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1 BACKGROUND

2 17. On or about July 24, 2014, Vallejo police officers conducted a traffic stop of a vehicle
3 registered to Respondent. Respondent was a passenger in the vehicle. Officers smelled a strong
4 odor of marijuana emanating from the car. The driver admitted that there was marijuana in the
5 car and presented a medical marijuana physician's note to the officers. Officer determined that
6 the operator of the car had a suspended driver's license and an outstanding misdemeanor warrant
7 for his arrest. Officers searched the vehicle and located marijuana in two separate containers in
8 the center console, one 9 mm handgun and a magazine containing fifteen rounds of ammunition
9 (9 mm) in a purse on the floor of the car, and one ammunition (9 mm) round in the driver's side
10 of the car. Officers arrested Respondent and the driver of the car.¹

11 18. On or about March 27, 2015, in a criminal proceeding entitled *The People of the State*
12 *of California v. Teiza Espinoza Lomeli*, in the Solano County Superior Court, Case No.
13 VCR221566, Respondent, who was the registered owner of the car, was convicted, upon her plea
14 of no lo contendere, to one count of being an occupant with a concealed firearm in a vehicle (Pen.
15 Code, § 25400, subd. (a)(3)), a misdemeanor. The court sentenced Respondent to serve 16 days
16 in county jail, and placed her on probation for 3 years with various conditions including, but not
17 limited to, successfully completing a 8-hour counseling program relating to weapons.

18 19. On or about August 15, 2014, officers for the Pinole Police Department responded to
19 a CVS pharmacy because Respondent had been detained for theft of controlled substances. CVS
20 Loss Prevention Manager told responding officers that video surveillance showed that
21 Respondent, a pharmacy technician, had removed prescription pill bottles from the cabinet and
22 concealed them on her person. The Loss Prevention Manager further explained that he confronted
23 Respondent about the theft of prescription pills and that defendant admitted that she had been
24 diverting drugs from the pharmacy since sometime in May of 2014. Specifically, she admitted to
25 stealing Norco (Vicodin), Carisoprodol (Soma), Diazepam (Valium), Alprazolam (Xanax), and
26

27 ¹ During the booking process, officers found one ammunition round (9 mm) in
28 Respondent's wallet.

1 Promethazine with Codeine.² Respondent admitted that she stole 200 pills of Soma
2 (Carisoprodol 350 mg), and 150 pills of Vicodin (Norco 10/325 mg), on August 15, 2014.
3 Further, Respondent admitted that she stole from CVS the following: 9,500 Vicodin pills since
4 May 2014; 100 Soma pills—three or four times a week—during a four month period; 250 Xanax
5 pills on one occasion; 300 Valium pills on one occasion; and Promethazine with Codeine on three
6 different occasions. Further defendant admitted to the Loss Prevention Manager that she sold the
7 pills she stole to a unidentified female, whom she referred to as “Pill Girl.” After reviewing a
8 transcript of the interview of defendant by the Loss Prevention Manager, the officers arrested
9 defendant.

10 **FIRST CAUSE FOR DISCIPLINE**
11 **(Conviction of a Crime)**
12 **(Bus. & Prof. Code § 4301, subd. (I))**

13 20. Respondent has subjected her Pharmacy Technician Registration to disciplinary
14 action under Code section 4301, subdivision (I), in that she was convicted of a crime substantially
15 related to the qualifications, functions, and duties of a pharmacy technician. The circumstances
16 are explained in paragraphs 17 and 18, above.

17 **SECOND CAUSE FOR DISCIPLINE**
18 **(Violation of Laws Relating to Controlled Substance)**
19 **(Bus. & Prof. Code, § 4301, subd. (j))**

20 21. Respondent has subjected her Pharmacy Technician Registration to disciplinary
21 action under Code section 4031, subdivision (j), in that she violated state laws relating to
22 controlled substances, including Health and Safety Code, section 11350, subdivision
23 (a)(possessing controlled substances). The circumstances are more fully explained in paragraph
24 19, above.

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28 ² Defendant admitted to these thefts during a voluntary loss prevention interview
conducted by the Loss Prevention Manager. Another CVS employee was present during the
interview of defendant.

1 **THIRD CAUSE FOR DISCIPLINE**
2 **(Dishonest or Fraudulent Act)**
3 **(Bus. & Prof Code, § 4301, subd. (f))**

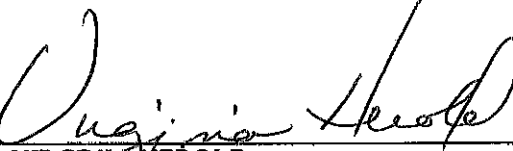
4 22. Respondent has subjected her Pharmacy Technician Registration to disciplinary
5 action under Code section 4301, subdivision (f), in that she stole medications and controlled
6 substances from her employer, CVS Pharmacy. The circumstances are explained in paragraph 19,
7 above.

8 PRAYER

9 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
10 Accusation, and that following the hearing, the Board of Pharmacy issue a decision:

- 11 1. Revoking or suspending Pharmacy Technician Registration Number TCH 119769,
12 issued to Teiza Espinoza Lomeli;
- 13 2. Ordering Teiza Espinoza Lomeli to pay the Board of Pharmacy the reasonable costs
14 of the investigation and enforcement of this case, pursuant to Business and Professions Code
15 section 125.3;
- 16 3. Taking such other and further action as deemed necessary and proper.

17
18 DATED: 11/4/15



19 VIRGINIA HEROLD
20 Executive Officer
21 Board of Pharmacy
22 Department of Consumer Affairs
23 State of California
24 Complainant

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