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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. 5601

11 **EZEQUIEL MENDOZA**  
12 **134 N. Third Street**  
13 **Salinas, CA 93906**

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

14 **Pharmacy Technician Registration No. TCH**  
15 **105387**

Respondent.

16  
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 (Board), Department of Consumer Affairs.

21 2. On or about August 16, 2010, the Board issued Pharmacy Technician Registration  
22 Number TCH 105387 to Ezequiel Mendoza (Respondent). The Pharmacy Technician  
23 Registration was in full force and effect at all times relevant to the charges brought herein and  
24 will expire on February 28, 2018, unless renewed.

25 **JURISDICTION**

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

1 4. Section 4300 of the Code states, in pertinent part:

2 "(a) Every license issued may be suspended or revoked.

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

6 "(1) Suspending judgment.

7 "(2) Placing him or her upon probation.

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

9 "(4) Revoking his or her license.

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

12 ". . . .

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

18 5. Section 4300.1 of the Code states:

19 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by  
20 operation of law or by order or decision of the board or a court of law, the placement of a license  
21 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board  
22 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary  
23 proceeding against, the licensee or to render a decision suspending or revoking the license."

24 **STATUTORY PROVISIONS**

25 6. Section 4021 of the Code states:

26 "'Controlled substance' means any substance listed in Chapter 2 (commencing with Section  
27 11053) of Division 10 of the Health and Safety Code."

28 7. Section 4022 of the Code states:

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

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

5 ". . . .

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

8 8. Section 4301 of the Code states:

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

12 ". . . .

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

16 ". . . .

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

22 ". . . .

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

25 ". . . .

26 "(l) The conviction of a crime substantially related to the qualifications, functions, and  
27 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
28 (commencing with Section 801) of Title 21 of the United States Code regulating controlled

1 substances or of a violation of the statutes of this state regulating controlled substances or  
2 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the  
3 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.  
4 The board may inquire into the circumstances surrounding the commission of the crime, in order  
5 to fix the degree of discipline or, in the case of a conviction not involving controlled substances or  
6 dangerous drugs, to determine if the conviction is of an offense substantially related to the  
7 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or  
8 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning  
9 of this provision. The board may take action when the time for appeal has elapsed, or the  
10 judgment of conviction has been affirmed on appeal or when an order granting probation is made  
11 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of  
12 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
13 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
14 indictment.

15 ". . . .

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

20 ". . . ."

21 9. Section 4059(a) of the Code states:

22 "A person may not furnish any dangerous drug, except upon the prescription of a physician,  
23 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A  
24 person may not furnish any dangerous device, except upon the prescription of a physician, dentist,  
25 podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7."

26 10. Section 4060 of the Code states:

27 "No person shall possess any controlled substance, except that furnished to a person upon  
28 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor

1 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified  
2 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a  
3 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,  
4 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of  
5 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not  
6 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,  
7 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified  
8 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly  
9 labeled with the name and address of the supplier or producer."

10 11. Health and Safety Code section 11350(a) provides, in pertinent part:

11 "Except as otherwise provided in this division, every person who possesses (1) any  
12 controlled substance specified in subdivision (b), (c), (e), or paragraph (1) of subdivision (f) of  
13 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or  
14 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section  
15 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic  
16 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian  
17 licensed to practice in this state, shall be punished by imprisonment in a county jail for not more  
18 than one year . . . ."

19 12. Health and Safety Code section 11352(a) provides that selling, furnishing, or giving  
20 away of any narcotic drug, unless upon the prescription of a physician, shall constitute a felony.

21 13. Health and Safety Code section 11352.1(b) provides that furnishing a dangerous drug  
22 or controlled substance without a license is a misdemeanor.

23 14. Code section 490(a) provides, in pertinent part, that a board may suspend or revoke a  
24 license on the ground that the licensee has been convicted of a crime substantially related to the  
25 qualifications, functions, or duties of the business or profession for which the license was issued.

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1 **COSTS**

2 15. Section 125.3 of the Code states, 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 of  
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
5 enforcement of the case.

6 **DRUGS**

7 16. Phenergan with Codeine Syrup is a brand name for promethazine with codeine, a  
8 Schedule V controlled substance as designated by Health and Safety Code section 11058(c)(1),  
9 and a dangerous drug as designated by Code section 4022. It is an antihistamine/antitussive,  
10 narcotic analgesic, and sleep aid.

11 17. Norco is a brand name for a compound of varying dosages of acetaminophen (aka  
12 APAP) and hydrocodone, a Schedule III controlled substance as designated by Health and Safety  
13 Code section 11056(e)(4), and dangerous drug as designated by Code section 4022. Effective  
14 October 6, 2014, hydrocodone combination drugs such as Norco were changed at the federal level  
15 from Schedule III (21 C.F.R. § 1308.13(e)(1)(iii) and (iv)) to Schedule II (21 C.F.R. §  
16 1308.12(b)(1)) controlled substances.

17 18. Tussionex Suspension is a brand name for a hydrocodone/ chlorpheniramine  
18 suspension, a Schedule III controlled substance as designated by Health and Safety Code section  
19 11056, and a dangerous drug under Code section 4022. It is used as a cough suppressant and  
20 antihistamine.

21 19. Viagra is a brand name for sildenafil and is a dangerous drug as designated by Code  
22 section 4022. It is used for erectile dysfunction.

23 20. Cialis is a brand name for tadalafil and is a dangerous drug as designated by Code  
24 section 4022. It is used for erectile dysfunction.

25 21. Tobradex Suspension is a brand name for tobramycin/ dexamethasone eye drops and  
26 is a dangerous drug as designated by Code section 4022. It is used for eye inflammation and  
27 infection.

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1 **DIVERSION BACKGROUND**

2 22. Between 2013 and June 2015, while working as a pharmacy technician for CVS,  
3 Respondent diverted over twenty thousand dollars worth of controlled substances and dangerous  
4 drugs. He stole promethazine with codeine, Cialis, Viagra, and Norco. Respondent generally  
5 removed the drugs by placing them in garbage bags or his pockets and leaving the pharmacy with  
6 them.

7 23. Respondent furnished these medications to other individual(s).

8 24. On at least one occasion, Respondent sold prescription medication (Tobradex  
9 Suspension) to a customer but did not enter the transaction in the cash register. Respondent kept  
10 the money from the sale.

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(Possess Controlled Substance)**

13 25. Respondent is subject to disciplinary action under Code section 4301(j) and/or  
14 4301(o), in conjunction with Code section 4060 and/or Health and Safety Code section 11350(a),  
15 in that Respondent possessed a controlled substance and/or narcotic drug without a valid  
16 prescription. The circumstances are described above in "Diversion Background."

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Furnish Dangerous Drug and/or Controlled Substance)**

19 26. Respondent is subject to disciplinary action under Code section 4301(j) and/or  
20 4301(o), in conjunction with Code section 4059 and/or Health and Safety Code sections 11352(a)  
21 and/or 11352.1(b), in that Respondent illegally furnished, sold, or gave away a dangerous drug  
22 and/or controlled substance to another person. The circumstances are described above in  
23 "Diversion Background."

24 **THIRD CAUSE FOR DISCIPLINE**

25 **(Act Involving Dishonesty)**

26 27. Respondent is subject to disciplinary action under Code section 4301(f) in that  
27 Respondent did an act involving moral turpitude, dishonesty, fraud, deceit, or corruption. The  
28 circumstances are described above in "Diversion Background."

1 **CONVICTION BACKGROUND**

2 28. On or about March 9, 2015, in the Superior Court of California for the County of  
3 Monterey, in the case entitled *The People of the State of California v. Ezequiel Mendoza*, Case  
4 No. MS327211A, Respondent pled guilty to and was convicted of violating Vehicle Code section  
5 23103.5 (alcohol related driving offense). The circumstances of the conviction were that on or  
6 about December 24, 2014, police observed Respondent driving his vehicle above the speed limit  
7 and following at an unsafe distance. When pulled over, Respondent was discovered to be under  
8 the influence of alcohol. Respondent registered blood alcohol concentrations of .08% and .10%.

9 **FOURTH CAUSE FOR DISCIPLINE**

10 **(Criminal Conviction)**

11 29. Respondent is subject to disciplinary action under Code sections 490(a) and/or  
12 4301(l) in that Respondent was convicted of an offense substantially related to the duties,  
13 functions, or qualifications of a licensee. The circumstances are described above in "Conviction  
14 Background."

15 **FIFTH CAUSE FOR DISCIPLINE**

16 **(Dangerous Use of Alcohol)**

17 30. Respondent is subject to disciplinary action under Code section 4301(h) in that  
18 Respondent used alcohol to an extent or in a manner dangerous or injurious to himself, to another  
19 person, or to the public. The circumstances are described above in "Conviction Background."

20 **PRAYER**

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

- 23 1. Revoking or suspending Pharmacy Technician Registration Number TCH 105387,  
24 issued to Ezequiel Mendoza;
- 25 2. Ordering Ezequiel Mendoza to pay the Board of Pharmacy the reasonable costs of the  
26 investigation and enforcement of this case, pursuant to Business and Professions Code section  
27 125.3; and,

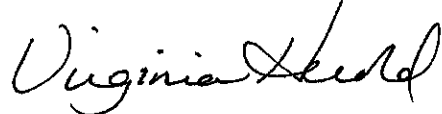
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3. Taking such other and further action as is deemed necessary and proper.

DATED: 12/5/16



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

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