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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. 5786

12 **OWEN EDWARD RICHARDS**
13 **1942 Garretson Avenue**
14 **Corona, CA 92879**

A C C U S A T I O N

15 **Pharmacy Technician Registration**
16 **No. TCH 132370**

Respondent.

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18
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about May 21, 2013, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 132370 to Owen Edward Richards (Respondent). On November 30,
25 2016, the Pharmacy Technician Registration expired under a Penal Code section 23 suspension
26 dated March 30, 2016, and has not been renewed.

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1 **JURISDICTION**

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

5 4. Section 4300, subdivision (a) of the Code states: "Every license issued may be
6 suspended or revoked."

7 5. Section 4300.1 of the Code states:

8 The expiration, cancellation, forfeiture, or suspension of a board-issued license
9 by operation of law or by order or decision of the board or a court of law, the
10 placement of a license on a retired status, or the voluntary surrender of a license by a
11 licensee shall not deprive the board of jurisdiction to commence or proceed with any
12 investigation of, or action or disciplinary proceeding against, the licensee or to render
13 a decision suspending or revoking the license.

12 **STATUTORY PROVISIONS**

13 6. Section 482 of the Code states:

14 Each board under the provisions of this code shall develop criteria to evaluate
15 the rehabilitation of a person when:

16 (a) Considering the denial of a license by the board under Section 480; or

17 (b) Considering suspension or revocation of a license under Section 490.

18 Each board shall take into account all competent evidence of rehabilitation
19 furnished by the applicant or licensee.

20 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or
21 revoke a license on the ground that the licensee has been convicted of a crime substantially
22 related to the qualifications, functions, or duties of the business or profession for which the
23 license was issued.

24 8. Section 493 of the Code states:

25 Notwithstanding any other provision of law, in a proceeding conducted by a
26 board within the department pursuant to law to deny an application for a license or to
27 suspend or revoke a license or otherwise take disciplinary action against a person who
28 holds a license, upon the ground that the applicant or the licensee has been convicted
of a crime substantially related to the qualifications, functions, and duties of the
licensee in question, the record of conviction of the crime shall be conclusive
evidence of the fact that the conviction occurred, but only of that fact, and the board
may inquire into the circumstances surrounding the commission of the crime in order

1 to fix the degree of discipline or to determine if the conviction is substantially related
2 to the qualifications, functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority,"
4 and "registration."

5 9. Section 4022 of the Code states

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

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

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

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

16 10. Section 4059 of the Code states, in pertinent part, that a person may not furnish any
17 dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,
18 veterinarian, or naturopathic doctor.

19 11. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
20 controlled substance, except that furnished to a person upon the prescription of a physician,
21 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor.

22 12. Section 4301 of the Code states:

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

27 ...

28 (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.

...

(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.

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1 (l) The conviction of a crime substantially related to the qualifications,
2 functions, and duties of a licensee under this chapter. The record of conviction of a
3 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
4 States Code regulating controlled substances or of a violation of the statutes of this
5 state regulating controlled substances or dangerous drugs shall be conclusive
6 evidence of unprofessional conduct. In all other cases, the record of conviction shall
7 be conclusive evidence only of the fact that the conviction occurred. The board may
8 inquire into the circumstances surrounding the commission of the crime, in order to
9 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
11 substantially related to the qualifications, functions, and duties of a licensee under this
12 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
13 contendere is deemed to be a conviction within the meaning of this provision. The
14 board may take action when the time for appeal has elapsed, or the judgment of
15 conviction has been affirmed on appeal or when an order granting probation is made
16 suspending the imposition of sentence, irrespective of a subsequent order under
17 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
18 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
19 dismissing the accusation, information, or indictment.

20 ...

21 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
22 abetting the violation of or conspiring to violate any provision or term of this chapter
23 or of the applicable federal and state laws and regulations governing pharmacy,
24 including regulations established by the board or by any other state or federal
25 regulatory agency. . .

26 13. Health and Safety Code section 11379, subdivision (a) states:

27 Except as otherwise provided in subdivision (b) and in Article 7 (commencing
28 with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code,
every person who transports, imports into this state, sells, furnishes, administers, or
gives away, or offers to transport, import into this state, sell, furnish, administer, or
give away, or attempts to import into this state or transport any controlled substance
which is (1) classified in Schedule III, IV, or V and which is not a narcotic drug,
except subdivision (g) of Section 11056, (2) specified in subdivision (d) of Section
11054, except paragraphs (13), (14), (15), (20), (21), (22), and (23) of subdivision (d),
(3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in
paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in
subdivision (d) or (e), except paragraph (3) of subdivision (e), or specified in
subparagraph (A) of paragraph (1) of subdivision (f), of Section 11055, unless upon
the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice
in this state, shall be punished by imprisonment pursuant to subdivision (h) of Section
1170 of the Penal Code for a period of two, three, or four years.

14. United States Code, title 21, section 843 states, in pertinent part:

(a) It shall be unlawful for any person knowingly or intentionally –

...

(3) to acquire or obtain possession of a controlled substance by
misrepresentation, fraud, forgery, deception, or subterfuge.

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REGULATORY PROVISIONS

15. California Code of Regulations, title 16, section 1769, subdivision (b) states:

(b) When considering the suspension or revocation of a facility or a personal License on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) Evidence, if any, of rehabilitation submitted by the licensee.

16. 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.

COSTS

17. 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.

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1 DRUGS

2 18. Alprazolam is a Schedule IV controlled substance pursuant to Health and Safety
3 Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions
4 Code section 4022.

5 19. Butalbital is a Schedule III controlled substance pursuant to Health and Safety
6 Code section 11056, subdivision (c), and a dangerous drug pursuant to Business and Professions
7 Code section 4022.

8 20. Cyclobenzaprine (Flexeril) is a dangerous drug pursuant to Business and
9 Professions Code section 4022.

10 21. Myrbetriq is a dangerous drug pursuant to Business and Professions Code section
11 4022.

12 22. Oxazepam is a Schedule IV controlled substance pursuant to Health and Safety
13 Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions
14 Code section 4022.

15 23. Tizanidine (Zanaflex) is a dangerous drug pursuant to Business and Professions
16 Code section 4022.

17 24. Tramadol is a Schedule IV controlled substance pursuant to Health and Safety
18 Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions
19 Code section 4022.

20 25. Tylenol with Codeine No. 4 is a Schedule III controlled substance pursuant to Health
21 and Safety Code section 11056, subdivision (e), and a dangerous drug pursuant to Business and
22 Professions Code section 4022.

23 26. Zolpidem is a Schedule IV controlled substance pursuant to Health and Safety
24 Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions
25 Code section 4022.

26 27. Zopiclone (Eszopiclone) is a Schedule IV controlled substance pursuant to Health
27 and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and
28 Professions Code section 4022.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(April 27, 2016 Criminal Convictions for Taking Vehicle Without Owner's Consent and for**
3 **Embezzlement on March 8, 2016)**

4 28. Respondent has subjected his registration to discipline under sections 490 and 4301,
5 subdivision (l) of the Code in that he was convicted of crimes that are substantially related to the
6 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

7 a. On or about April 27, 2016, in a criminal proceeding entitled *People of the*
8 *State of California v. Owen Edward Richards*, in the Riverside County Superior Court, case
9 number RIF1601147, Respondent was convicted on his plea of guilty to violating Vehicle Code
10 section 10851(a) (taking vehicle without owner's consent), and Penal Code section 503
11 (embezzlement)¹, both felonies. As a result of a plea bargain, counts for violating Penal Code
12 section 488 (petty theft) and Business and Professions Code section 4060 (possession of a
13 controlled substance without a prescription), both misdemeanors, were dismissed, and a count for
14 violating Penal Code section 12022.1 (commission of a crime while on bail or own
15 recognizance), was stricken.

16 b. As a result of the convictions, on May 17, 2016, Respondent was granted
17 formal probation for 36 months, and was committed to the custody of the sheriff for 60 days.
18 Respondent was ordered to pay fees and fines, and restitution to the victim, submit to a Fourth
19 Amendment waiver, abstain from the use or possession of illegal controlled substances, submit to
20 random drug tests, and additional conditions of felony probation.

21 c. The facts that led to the convictions are that on or about January 26, 2016,
22 Corona Police Department officers responded to a report of embezzlement at CVS Pharmacy.
23 Upon arrival, the officers made contact with a loss prevention (LP) staff who informed
24 the officers that on January 7, 2016, LP staff began an investigation potential loss of

25 _____
26 ¹ Violation of Penal Code section 503 (embezzlement) was originally charged under
27 Riverside Superior Court Case Number RIF1601670. On April 27, 2016, by oral motion, this
28 count was dismissed from Case No. RIF1601670 and added as count 4 to Riverside Superior
Court Case No. RIF1601147.

1 Alprazolam 2 mg and Alprazolam 0.5 mg at the pharmacy. The investigation began when LP
2 staff learned that one of their pharmacy technicians (not Respondent) had been arrested for DUI
3 and possession of narcotics for sale, which included Alprazolam. An inventory reconciliation that
4 covered the period May 1, 2015 to December 31, 2015 was completed and showed a loss of 265
5 tablets of Alprazolam 0.5 mg and 473 tablets of Alprazolam 1 mg. On January 22, 2016, an
6 additional inventory reconciliation was completed for Alprazolam 0.5 mg and Alprazolam 1 mg
7 which covered the period May 1, 2015 through January 20, 2016, which showed a loss of 267
8 Alprazolam 1 mg. At this point, LP staff decided to review video of pharmacy areas to determine
9 the source of the loss, and Respondent was identified on the video selecting a bottle of
10 Alprazolam 2 mg on January 18, 2016. The dispensing history confirmed that no Alprazolam 2
11 mg was dispensed on this date. On January 26, 2016, Respondent was questioned by LP staff
12 regarding the January 18, 2016 video and Respondent admitted to stealing medication from the
13 pharmacy beginning in November of 2015, and also admitted to stealing approximately \$64.92 in
14 merchandise from the store and approximately \$900 in cash from the lockers of other pharmacy
15 employees. Respondent admitted to stealing approximately 920 tablets of controlled substances
16 ranging from Tylenol with Codeine, Alprazolam 1 mg and 2 mg, Butab-Acetaminophen-Caff-
17 Codeine, and ASA-Butab-Caff codeine #3, and approximately 45 non-controlled substances that
18 required a prescription, Tizanidine and Cyclobenzaprine. The value of the stolen medication was
19 placed at approximately \$2,023.70. Respondent was arrested and charged with embezzlement
20 under Riverside Superior Court Case No. RIF1601670 and released on bail.

21 d. On March 8, 2016, at approximately 12:00 p.m., Corona Police Department
22 officers responded to Albertson's store regarding a man who possibly had a gun and who was
23 being held down by several people. Upon arrival, the officers made contact with the male being
24 held down (Respondent). The officers made contact with the victim and learned that while the
25 victim was working inside the store stocking and taking inventory, she had her personal work bag
26 inside a shopping cart which contained her wallet, cell phone and car keys, that she walked away
27 from the cart and when she returned to the aisle, the cart was gone. The victim then ran to the
28 parking lot and observed Respondent driving her vehicle and the victim began to scream that her

1 car was being stolen and began to chase the vehicle. Respondent was trying to speed through the
2 parking lot in an attempt to get away. A male that was driving in the parking lot realized what
3 was happening and blocked Respondent's path and another male pulled behind the vehicle to trap
4 it between two vehicles. One of the males pulled Respondent out of the victim's car and held him
5 down on the ground until police arrived. A black wallet belonging to the victim fell out of
6 Respondent's pocket as he was being held down. When the officers made contact with
7 Respondent, he made a spontaneous statement telling the officers that Respondent was sorry for
8 stealing the car, that he had been stressed out and had addiction issues and a problem with
9 prescription drugs. Respondent told the officers that his own personal car was in the parking lot
10 and asked the officers to retrieve his cell phone. Inside Respondent's car, the officers located a
11 bag of prescription pills for which Respondent had no prescriptions. Respondent complained that
12 he got hurt when he was held down by the witness and was transported to Corona Regional
13 Hospital where he was cleared for booking. Respondent was transported to the Corona Police
14 Department for booking.

SECOND CAUSE FOR DISCIPLINE

(Commission of Acts Involving Dishonesty, Fraud, Deceit & Corruption)

15
16 29. Respondent has subjected his registration to discipline under section 4301,
17 subdivision (f) of the Code for unprofessional conduct in that he stole controlled substances and
18 dangerous drugs, store merchandise, and cash, from his employer/pharmacy and co-workers by
19 using fraud, deceit, and dishonesty, as described in paragraph 28, above.
20

THIRD CAUSE FOR DISCIPLINE

(Violation of California Statutes Regulating Controlled Substances)

21
22 30. Respondent has subjected his registration to discipline under section 4301,
23 subdivision (j) of the Code for unprofessional conduct in that he knowingly violated Business and
24 Professions Code sections 4022, 4059, and 4060; and Health and Safety Code section 11379, as
25 described in paragraph 28, above.
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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Violating Federal & State Laws & Regulations Governing Pharmacy)**

3 31. Respondent has subjected his registration to discipline under section 4301,
4 subdivision (o) of the Code for unprofessional conduct, in that he violated Title 21 U.S.C. section
5 843, subdivision (a)(3), Board of Pharmacy Regulations (California Code of Regulations, Title
6 16, Section 1700, et seq.), and the California Uniform Controlled Substances Act (Health and
7 Safety Code 11000, et seq.), when he obtained controlled substances using fraud and deceit, as
8 described in paragraph 28, above.

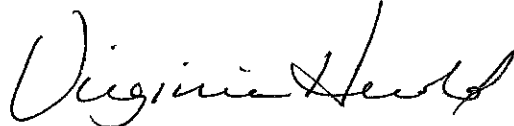
9 **PRAYER**

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

- 12 1. Revoking or suspending Pharmacy Technician Registration Number TCH 132370
13 issued to Owen Edward Richards
- 14 2. Ordering Owen Edward Richards to pay the Board of Pharmacy the reasonable costs
15 of the investigation and enforcement of this case, pursuant to Business and Professions Code
16 section 125.3; and,
- 17 3. Taking such other and further action as deemed necessary and proper.

18
19 DATED: _____

1/11/17



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

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