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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. 5798

13 **PHILIP ANTHONY ACOSTA**
14 **2661 Holt Ave.**
Sanger, CA 93657

A C C U S A T I O N

15 **Pharmacy Technician Registration No.**
TCH 99539

16 Respondent.

17
18 Virginia Herold ("Complainant") alleges:

19 **PARTIES**

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

22 2. On or about March 22, 2010, the Board issued Pharmacy Technician Registration
23 Number TCH99539 to Philip Anthony Acosta ("Respondent"). The registration expired on
24 November 30, 2015, and was cancelled on March 6, 2016.

25 **JURISDICTION**

26 3. Business and Professions Code ("Code") section 4300(a) states that every license
27 issued may be suspended or revoked.

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1 7. Code section 4060 states, in part:

2 A person shall not possess any controlled substance, except that furnished
3 to a person upon the prescription of a physician, dentist, podiatrist, optometrist,
4 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant
5 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a
6 nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to
7 Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist
8 pursuant to Section 4052.1, 4052.2, or 4052.6. This section does not apply to the
9 possession of any controlled substance by a manufacturer, wholesaler, third-party
10 logistics provider, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist,
11 veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or
12 physician assistant, if in stock in containers correctly labeled with the name and
13 address of the supplier or producer.

14 8. Health and Safety Code section 11170 states that no person shall prescribe,
15 administer, or furnish a controlled substance for himself.

16 9. Health and Safety Code section 11173(a) states:

17 No person shall obtain or attempt to obtain controlled substances, or
18 procure or attempt to procure the administration of or prescription for controlled
19 substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the
20 concealment of a material fact.

21 COST RECOVERY

22 10. Code section 125.3 provides, in pertinent part, that the Board may request the
23 administrative law judge to direct a licensee 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.

26 **DRUGS**

27 11. "Norco" is a brand name for certain strengths of the combination product of
28 hydrocodone, originally a Schedule III controlled substance per Health and Safety Code
11056(e)(4) and a dangerous drug per Business and Professions Code 4022, and acetaminophen.
All hydrocodone combination products were federally rescheduled to Schedule II on October 5,
2014, by the US Drug Enforcement Agency (DEA).

12. "Diazepam", is the generic name for brand name Valium, a benzodiazepine, a
Schedule IV controlled substance per Health and Safety Code 11057(d)(9) and a dangerous drug
per Business and Professions Code 4022.

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1 13. "Percocet," is a brand name for the combination product of oxycodone, a Schedule II
2 controlled substance per Health and Safety Code 11055(b)(1) (M) and a dangerous drug per
3 Business and Professions Code 4022, and acetaminophen.

4 14. "Xanax," is a brand name for alprazolam, a benzodiazepine, a Schedule IV controlled
5 substance per Health and Safety Code 11057(d)(1) and a dangerous drug per Business and
6 Professions Code 4022.

7 15. "Vicodin" is a brand name for certain strengths of the combination product of
8 hydrocodone, originally a Schedule III controlled substance per Health and Safety Code
9 11056(e)(4) and a dangerous drug per Business and Professions Code 4022, and acetaminophen.
10 All hydrocodone combination products were federally rescheduled to Schedule II on October 5,
11 2014, by the US Drug Enforcement Agency (DEA).

12 **BACKGROUND INFORMATION**

13 16. On and between February 24, 2015, and March 10, 2015, while employed as a
14 pharmacy technician at Wal-Mart Neighborhood Market located in Clovis, California,
15 Respondent embezzled controlled substances¹ for his own personal use by taking medication
16 from orders that had been completed/filled for customers. Furthermore, during Respondent's
17 arrest on or about March 13, 2015, an officer located a Vicodin tablet on his person for which he
18 did not have a prescription.

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(Conviction of a Crime)**

21 17. Respondent is subject to discipline pursuant to Code section 4301(l), in that on or
22 about June 15, 2015, in the case of *People v. Philip Acosta*, (Super. Ct. Fresno County, 2015,
23 Case No. M15919325), Respondent was convicted by the Court on his plea of no contest of
24 violating Penal Code section 508 (embezzlement by clerk, agent, or servant), a misdemeanor.
25 The circumstances of the crime were that on and between February 24, 2015, and March 10,
26 2015, while working as a pharmacy technician at Wal-Mart Neighborhood Market, located in

27 ¹ Xanax .5mg. (1 tablet); Xanax 1mg. (18 tablets); Norco 10/325mg. (15 tablets); Valium
28 10mg. (42 tablets); Valium 2mg. (2 tablets); and Percocet 5/325mg. (4 tablets).

1 Clovis, California, Respondent took controlled substances from orders that had been
2 completed/filled for customers, as more particularly set forth above in paragraph 16.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct - Violation of State Laws Regulating Controlled Substances)**

5 18. Respondent is subject to discipline under Code section 4301(j), on the grounds of
6 unprofessional conduct, in that while employed as a pharmacy technician at Wal-Mart
7 Neighborhood Market, located in Clovis, California, Respondent did the following:

8 **On and between February 24, 2015, and March 10, 2015**

9 a. Respondent obtained Xanax, Norco, Valium, and Percocet, controlled substances, by
10 fraud, deceit, misrepresentation or subterfuge or by the concealment of a material fact in violation
11 of Health and Safety Code section 11173(a) when, while on duty, Respondent took the
12 medication from orders that had been completed/filled for customers for his own personal use.

13 b. Respondent possessed Xanax, Norco, Valium, and Percocet, controlled substances, in
14 violation of Code section 4060, in that he did not have a prescription for those controlled
15 substances.

16 c. Respondent self-administered Xanax, Norco, Valium, and Percocet, controlled
17 substances, in violation of Health and Safety Code section 11170.

18 **March 13, 2015**

19 d. Respondent possessed Vicodin, a controlled substance, in violation of Code section
20 4060, in that he did not have a prescription for that controlled substance.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

23 19. Respondent is subject to discipline pursuant to Code section 4301(f), on the grounds
24 of unprofessional conduct, in that he committed acts involving dishonesty, fraud, deceit, or
25 corruption, as more particularly set forth above in paragraphs 16-18.

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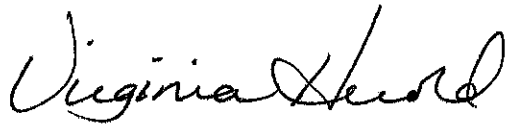
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PRAYER

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 99539, issued to Philip Anthony Acosta;
2. Ordering Philip Anthony Acosta 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; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: 1/9/17



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

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