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

11
12 In the Matter of the Accusation Against:

Case No. 5862

13 **VICTOR MANUEL RIOS-MALDONADO**
503 North Bradford Avenue
14 **Placentia, CA 92870**

A C C U S A T I O N

15 **Pharmacy Technician Registration**
16 **No. TCH 133945**

17 Respondent.

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 August 16, 2013, the Board issued Pharmacy Technician Registration
24 Number TCH 133945 to Victor Manuel Rios-Maldonado (Respondent). The Pharmacy
25 Technician Registration was in full force and effect at all times relevant to the charges brought
26 herein and will expire on July 31, 2017, unless 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
investigation of, or action or disciplinary proceeding against, the licensee or to render
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
furnished by the applicant or licensee.

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

23 8. Section 493 of the Code states:

24 Notwithstanding any other provision of law, in a proceeding conducted by a
25 board within the department pursuant to law to deny an application for a license or to
26 suspend or revoke a license or otherwise take disciplinary action against a person who
27 holds a license, upon the ground that the applicant or the licensee has been convicted
28 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."

9. Section 4022 of the Code states

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

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

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

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

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

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

21 12. Section 4301 of the Code states:

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

25 ...

26 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
27 deceit, or corruption, whether the act is committed in the course of relations as a
28 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, of 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 11350 provides, in pertinent part, that anyone who
27 possesses a Schedule III, IV, or V controlled substance which is a narcotic drug, unless upon the
28 written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this
state, shall be punished by imprisonment in a county jail for not more than one year.

REGULATORY PROVISIONS

14. 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.

1 15. California Code of Regulations, title 16, section 1770, states:

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

6 COSTS

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

13 DRUG

14 17. Hydrocodone bitartate with acetaminophen (hydrocodone APAP), sold under the
15 brand names Norco and Vicodin, is a Schedule II controlled substance as designated by Title 21,
16 Code of Federal Regulations section 1308.12, subdivision (b)(1)(vi), and it is designated as a
17 Schedule III controlled substance under Health and Safety Code section 11056, subdivision
18 (e)(4). It is a dangerous drug pursuant to Business and Professions Code section 4022.

19 FIRST CAUSE FOR DISCIPLINE

20 (June 14, 2016 Criminal Convictions for Second Degree Burglary

21 & Grand Theft by Employee on April 22, 2016)

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

25 a. On or about June 14, 2016, in a criminal proceeding entitled *People of the State*
26 *of California v. Victor Manuel Riosmaldonado, aka Victor M. Maldonado*, in Orange County
27 Superior Court, case number 16NF1361, Respondent was convicted on his plea of guilty to
28 violating Penal Code section 459-460(b), second degree burglary, a felony reduced to a

1 misdemeanor by the court pursuant to Penal Code section 17, subdivision (b); and Penal Code
2 section 487, subdivision (b)(3), grand theft by an employee, a misdemeanor. In Respondent's
3 plea agreement, he stated: On 4-22-16, in O.C. Ca, I willfully & unlawfully entered CVS w/the
4 intent to commit larceny & took the personal property of less than \$950 in a consecutive 12 mo
5 period."

6 b. As a result of the convictions, Respondent was sentenced to serve 30 days in
7 jail, or complete 30 days of CalTrans work service in lieu of jail. Respondent was granted
8 informal probation for three years, and ordered to submit to a fourth Amendment waiver, pay fees
9 and fines, and restitution, and comply with probation terms.

10 c. The facts that led to the convictions are that on or about April 14, 2016, the
11 pharmacist-in-charge (PIC) of a CVS store in Placentia, California, received complaints from two
12 customers that their prescriptions for hydrocodone APAP did not have the full quantity of tablets.
13 The PIC conducted an inventory of the hydrocodone APAP prescriptions in the pharmacy's
14 waiting bin and she discovered a total of five prescriptions with missing tablets. The PIC
15 reported her findings to the CVS regional loss prevention manager, and an investigation was
16 conducted. On April 22, 2016, Respondent was questioned by the loss prevention manager. In a
17 written statement, Respondent admitted that he would take prescription bags from the waiting bin,
18 "open the bag, pour out a few [tablets], and restaple the bag." Respondent admitted taking
19 "around 64 tablets," from five different prescriptions consisting of 52 tablets of hydrocodone
20 APAP 7.5/325 mg, and 16 tablets of hydrocodone APAP 10/325 mg. Respondent claimed that he
21 was forced to steal the hydrocodone APAP by someone with a gun pointed at him, and that he
22 had no choice. Respondent had no explanation why he had not reported the threats to the police.
23 The Placentia Police Department responded to the CVS store. Respondent was unable to provide
24 any details regarding the person who had been threatening him. Respondent allowed the officer
25 to search his vehicle. The officer found two empty prescription bottles for hydrocodone in
26 Respondent's name. Respondent denied abusing his medication, then stated he had taken two
27 tablets prior to starting his shift which was in excess of the prescribed quantity. During a pat
28 down search, the officer found documents in the pocket of Respondent's pharmacy jacket that

1 contained customers' personal information. Respondent was arrested. During booking,
2 Respondent repeated his story that he had stolen the hydrocodone APAP in fear of his own life
3 and his family's life. During the booking process, the officer observed signs and symptoms that
4 Respondent was experiencing major opiate withdrawal.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Commission of Acts Involving Moral Turpitude, Dishonesty & Deceit)**

7 19. Respondent has subjected his registration to discipline under section 4301,
8 subdivision (f) of the Code for unprofessional conduct in that he stole controlled substances and
9 dangerous drugs from his employer/pharmacy in a manner involving moral turpitude, dishonesty
10 and deceit, as described in paragraph 18, above.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Violation of California Statutes Regulating Controlled Substances)**

13 20. Respondent has subjected his registration to discipline under section 4301,
14 subdivision (j) of the Code for unprofessional conduct in that he knowingly violated Business and
15 Professions Code sections 4022, 4059, and 4060; and Health and Safety Code section 11350, as
16 described in paragraph 18, above.

17 **FOURTH CAUSE FOR DISCIPLINE**

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

19 21. Respondent has subjected his registration to discipline under section 4301,
20 subdivision (o) of the Code for unprofessional conduct in that he directly violated Title 21 U.S.C.
21 section 843, subdivision (a)(3), Board of Pharmacy Regulations (California Code of Regulations,
22 Title 16, Section 1700, et seq.), and the California Uniform Controlled Substances Act (Health
23 and Safety Code 11000, et seq.), when he stole controlled substances as described in paragraph
24 18, above.

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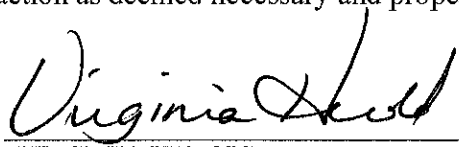
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PRAYER

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 133945, issued to Victor Manuel Rios-Maldonado;
2. Ordering Victor Manuel Rios-Maldonado 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: 7/28/17



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

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