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

11 In the Matter of the Accusation Against:

Case No. 5932

12 **ELISA D. MARQUEZ, A.K.A. ELISA
13 VALENTINE**
1600 Yulupa Ave. #19
14 Santa Rosa, CA 95405

ACCUSATION

15 Pharmacy Technician Registration No. TCH
16 68753

Respondent.

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 May 3, 2006, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 68753 to Elisa D. Marquez, also known as Elisa Valentine
24 (Respondent). The Pharmacy Technician Registration expired on July 31, 2015,¹ and has not
25 been renewed.

26 JURISDICTION

27 ¹ The Registration was cancelled on November 1, 2015, pursuant to Business and
28 Professions Code section 4402, subdivision (e).

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

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

7 5. Section 4300 of the Code states, in relevant part:

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

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

12 "(1) Suspending judgment.

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

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

15 "(4) Revoking his or her license.

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

18 ...

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

24 6. Section 4300.1 of the Code states:

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

4 7. Section 4301 of the Code states:

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

8 . . .

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

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

14 "(q) Engaging in any conduct that subverts or attempts to subvert an investigation of the
15 board."

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

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

23 9. Section 4059, subdivision (a), of the Code states:

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

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1 10. Section 4060 of the Code states:

2 "No person shall possess any controlled substance, except that furnished to a person upon
3 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
4 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
5 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
6 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
7 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
8 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
9 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
10 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
11 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
12 labeled with the name and address of the supplier or producer.

13 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a
14 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and
15 devices."

16 11. Section 11171 of the Health and Safety Code states:

17 "No person shall prescribe, administer, or furnish a controlled substance except under the
18 conditions and in the manner provided by this division."

19 12. Section 4022 of the Code states:

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

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

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

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

1 DRUGS

2 13. 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 14. Norco is a brand name for hydrocodone/acetaminophen. Hydrocodone is a Schedule
6 II controlled substance as designated by Health and Safety Code section 11055, subdivision
7 (b)(1)(I), and a dangerous drug as designated by Business and Professions Code section 4022.

8 15. Ambien is a brand name for zolpidem. Zolpidem is a Schedule IV controlled
9 substance as designated by Health and Safety Code section 11057, subdivision (d)(32), and a
10 dangerous drug as designated by Business and Professions Code section 4022.

11 16. Suboxone is a brand name for buprenorphine. Buprenorphine is a Schedule III
12 controlled substance as designated by Health and Safety Code section 11056, subdivision (e), and
13 a dangerous drug as designated by Business and Professions Code section 4022.

14 17. Xanax is a brand name for alprazolam. Alprazolam is a Schedule IV controlled
15 substance as designated by Health and Safety Code section 11057, subdivision (d)(I), and a
16 dangerous drug as designated by Business and Professions Code section 4022.

17 COST RECOVERY

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

24 BACKGROUND

25 19. On or about October 10, 2014, the Board received a DEA 106 report from CVS
26 Pharmacy No. 1173 located in Healdsburg, California, which indicated a loss of several controlled
27 substances including zolpidem, alprazolam, buprenorphine, and hydrocodone/acetaminophen.

1 20. On or about February 6, 2015, CVS personnel interviewed Respondent regarding the
2 loss of drugs from the pharmacy. During the interview, Respondent admitted that she first started
3 stealing Norco in July 2014, and continued to steal it until October 2014. During the interview
4 She admitted to stealing 1,000 tablets of Hydrocodone/APAP 10/325 mg and 50 tablets of
5 Hydrocodone/APAP 5/325 mg between July 2014 and October 1, 2014. Respondent explained
6 that she stopped stealing Norco when it was designated as a controlled substance II. Respondent
7 further admitted that after October 2014, she began stealing zolpidem 10 mg, suboxone 8 mg, and
8 alprazolam 2 mg.

9 21. During the February 6, 2015 interview, Respondent admitted that she stole 800 tablets
10 of zolpidem 10 mg between October 1, 2014 and February 6, 2015. Further, she admitted to
11 stealing 60 suboxone 8 mg tablets and 90 alprazolam 2 mg tablets during this same time period.

12 22. During the interview, Respondent claimed that her ex-husband made her steal the
13 drugs by threatening her safety and the safety of her son. According to Respondent, her ex-
14 husband "has serious drug issues."

15 23. On April 3, 2015 and May 11, 2015, a Board Inspector (Inspector) sent letters to
16 Respondent to request a meeting with her regarding the theft of medications from CVS Pharmacy
17 No. 1173. Respondent did not respond to the letters. On May 21, 2015, May 26, 2015, and June
18 3, 2015, the inspector called Respondent and left voice messages for Respondent. On June 3,
19 2015, Respondent called the Inspector and left a message saying should would be out of town for
20 a while but wanted to speak with the inspector. The inspector called Respondent again on June
21 11, 2015, and left a message. Respondent failed to return the Inspector's telephone call.

22 **FIRST CAUSE FOR DISCIPLINE**
23 **(Unprofessional Conduct-Dishonest Act)**
24 **(Bus. & Prof. Code, § 4301, subd. (f))**

25 24. Respondent has subjected her Pharmacy Technician Registration to disciplinary
26 action under Code section 4301, subdivision (f), in that, from October 2014 to February 2015, she
27 stole zolpidem, alprazolam, buprenorphine, and hydrocodone/acetaminophen from her employer,
28 CVS Pharmacy No. 1173. The circumstances are explained in paragraphs 19 through 22, above.

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SECOND CAUSE FOR DISCIPLINE
(Possession of Controlled Substance without a Prescription)
(Bus. & Prof. Code, § 4060)

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25. Respondent has subjected her Pharmacy Technician Registration to disciplinary action under Code section 4060, in that she illegally possessed zolpidem, alprazolam, buprenorphine, and hydrocodone/apap, controlled substances, without a prescription. The circumstances are more fully explained in paragraphs 19 through 22, above.

THIRD CAUSE FOR DISCIPLINE
(Furnishing Dangerous Drugs without a Prescription)
(Bus. & Prof. Code, § 4059, subdivision (a))

26. Respondent has subjected her Pharmacy Technician Registration to disciplinary action under Code section 4059, subdivision (a), in that she furnished controlled substances and dangerous drugs without a prescription. Specifically, from July 2014 to February 2015, she furnished zolpidem, alprazolam, buprenorphine, and hydrocodone/acetaminophen to her ex-husband. The circumstances are more fully explained in paragraphs 19 through 22, above.

FOURTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Engaging in Conduct that Subverts Investigation)
(Bus. & Prof. Code 4301, subd. (q))

27. Respondent has subjected her Pharmacy Technician Registration to disciplinary action under Code section 4301, subdivision (q), in that she failed to properly respond to numerous requests from the Board's Inspector to meet and discuss the investigation regarding her theft of medications from CVS Pharmacy No. 1173. The circumstances are more fully explained in paragraph 23, above.

FIFTH CAUSE FOR DISCIPLINE
(Violation of Laws Relating to Controlled Substance)
(Bus. & Prof. Code, § 4301, subd. (j))

28. Respondent has subjected her Pharmacy Technician Registration to disciplinary action under Code section 4031, subdivision (j), in that she violated state laws relating to controlled substances, including Health and Safety Code, sections 11171, when she stole controlled substances from her employer and furnished them to her ex-husband. The circumstances are more fully explained in paragraphs 19 through 22, above.

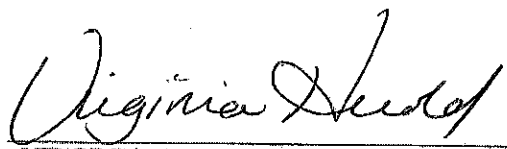
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PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 68753, issued to Elisa D. Marquez;
2. Ordering Elisa D. Marquez 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: 5/1/17



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

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