

1 XAVIER BECERRA
Attorney General of California
2 LINDA K. SCHNEIDER
Senior Assistant Attorney General
3 ARMANDO ZAMBRANO
Supervising Deputy Attorney General
4 State Bar No. 225325
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2542
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 5959

12 **MINDY NACOLE CEJA**
13 1833 E. Ruddock Ct.
Covina, CA 91724

A C C U S A T I O N

14 **Pharmacy Technician Registration No.**
15 **TCH 127720**

16 Respondent.

17
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 ("Board"), Department of Consumer Affairs.

22 2. On or about November 6, 2012, the Board issued Pharmacy Technician Registration
23 No. TCH 127720 to Mindy Nacole Ceja ("Respondent"). The Pharmacy Technician Registration
24 was in full force and effect at all times relevant to the charges brought herein and will expire on
25 August 31, 2018, 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, provision (a), of the Code states, in pertinent part, "[e]very license
6 issued may be suspended or revoked. . . ."

7 5. Section 4300.1 of the Code states "[t]he expiration, cancellation, forfeiture, or
8 suspension of a board-issued license by operation of law or by order or decision of the board or a
9 court of law, the placement of a license on a retired status, or the voluntary surrender of a license
10 by a licensee shall not deprive the board of jurisdiction to commence or proceed with any
11 investigation of, or action or disciplinary proceeding against, the licensee or to render a decision
12 suspending or revoking the license."

13 **STATUTORY PROVISIONS**

14 6. Section 490 of the Code provides, in pertinent part, that a board may suspend or
15 revoke a license on the ground that the licensee has been convicted of a crime substantially
16 related to the qualifications, functions, or duties of the business or profession for which the
17 license was issued.

18 7. Section 4022 of the Code states, in pertinent part:

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

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

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

25 8. Section 4060 of the Code states, in pertinent part:

26 No person shall possess any controlled substance, except that furnished to a
27 person upon the prescription of a physician, dentist, podiatrist, optometrist,
28 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant
to a drug order issued by a certified nurse midwife pursuant to Section 2746.51, a
nurse practitioner pursuant to Section 2836.1, or a physician assistant

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

9 Nothing in this section authorizes a certified nurse midwife, a nurse practitioner,
10 a physician assistant, or a naturopathic doctor, to order his or her own stock of
11 dangerous drugs and devices.

12 9. Section 4301 of the Code states, in pertinent part:

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

16

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

20

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

26

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

. . . .

(l) The conviction of a crime substantially related to the qualifications,
functions, and duties of a licensee under this chapter. The record of conviction of a
violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
States Code regulating controlled substances or of a violation of the statutes of this
state regulating controlled substances or dangerous drugs shall be conclusive evidence
of unprofessional conduct. In all other cases, the record of conviction shall be
conclusive evidence only of the fact that the conviction occurred. The board may
inquire into the circumstances surrounding the commission of the crime, in order to
fix the degree of discipline or, in the case of a conviction not involving controlled
substances or dangerous drugs, to determine if the conviction is of an offense
substantially related to the qualifications, functions, and duties of a licensee under this
chapter. A plea or verdict of guilty or a conviction following a plea of nolo
contendere is deemed to be a conviction within the meaning of this provision. The
board may take action when the time for appeal has elapsed, or the judgment of

1 conviction has been affirmed on appeal or when an order granting probation is made
2 suspending the imposition of sentence, irrespective of a subsequent order under
3 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
4 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
5 dismissing the accusation, information, or indictment.

6

7 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
8 abetting the violation of or conspiring to violate any provision or term of this chapter
9 or of the applicable federal and state laws and regulations governing pharmacy,
10 including regulations established by the board or by any other state or federal
11 regulatory agency. . . .”

12 10. California Health and Safety Code section 11170 states, “[n]o person shall prescribe,
13 administer, or furnish a controlled substance for himself.”

14 11. California Health and Safety Code section 11171 states, “[n]o person shall prescribe,
15 administer, or furnish a controlled substance except under the conditions and in the manner
16 provided by this division.”

17 12. California Health and Safety Code section 11350 states, in pertinent part:

18 (a) Except as otherwise provided in this division, every person who possesses
19 (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of
20 subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of
21 subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section
22 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled
23 substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the
24 written prescription of a physician, dentist, podiatrist, or veterinarian licensed to
25 practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of
26 Section 1170 of the Penal Code. . . .

27 **REGULATORY PROVISION**

28 13. Title 21 of the United States Code, section 829, subdivision (b), states, in pertinent
part, “Schedule III and IV substances. Except when dispensed directly by a practitioner, other
than a pharmacist, to an ultimate user, no controlled substance in schedule III or IV, which is a
prescription drug as determined under the Federal Food, Drug, and Cosmetic Act [21 USCS §§
301 et seq.], may be dispensed without a written or oral prescription in conformity with section
503(b) of that Act [21 USCS § 353(b)]. Such prescriptions may not be filled or refilled more than
six months after the date thereof or be refilled more than five times after the date of the
prescription unless renewed by the practitioner. . . .”

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1 **COST RECOVERY**

2 14. 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 investigation and enforcement
5 of the case.

6 **CONTROLLED SUBSTANCE / DANGEROUS DRUG**

7 15. Phentermine, a stimulant, with brand names of Adipex-P and Ionamin, is a Schedule
8 IV controlled substance pursuant to the Health and Safety Code section 11057, subdivision (f)(4),
9 and a dangerous drug Pursuant to Code section 4022.

10 **FIRST CAUSE FOR DISCIPLINE**

11 **(Unprofessional Conduct - Commission of Acts Involving Moral Turpitude, Dishonesty,
12 Fraud, Deceit, or Corruption)**

13 16. Respondent is subject to disciplinary action under Code section 4301, subdivision (f),
14 by and through Code section 4060, in that Respondent committed acts involving moral turpitude,
15 dishonesty, fraud, deceit, or corruption. The circumstances are as follows:

16 17. On or about December 3, 2015, a CVS located in Studio City notified the Board that
17 Respondent was terminated from employment due to pilferage of a controlled substance and
18 reported loses of 71 phentermine 37.5mg tablets and 20 phentermine 15mg tablets for the time
19 period of May 1, 2015 through November 5, 2015. On or about November 5, 2015, Respondent
20 admitted, in a signed statement, to diverting one phentermine 37.5mg tablet for personal use
21 while filling a prescription for a customer. Respondent stated that she stole a tablet because she
22 was struggling with weight since having a baby.

23 **SECOND CAUSE FOR DISCIPLINE**

24 **(Unprofessional Conduct - Administering to Oneself and/or Use Controlled Substance)**

25 18. Respondent is subject to disciplinary action under Code section 4301, subdivision (h),
26 in that Respondent administered to herself controlled substances or dangerous drugs to the extent
27 or in a manner as to be dangerous or injuries to herself, any person of the public, or to the extent
28 that the use impaired her ability to conduct with safety to the public the practice authorized by her

1 license. The facts and circumstances are described with more particularity in paragraph 17,
2 above.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct - Violation of Statutes of This State and the United States**
5 **Regulating Controlled Substances and Dangerous Drugs)**

6 19. Respondent is subject to disciplinary action under section 4301(j) of the Code, by and
7 through section 4060 of the Code, sections 11170, 11171, and 11350 of the Health and Safety
8 Code, and section 829, subdivision (b), of Title 21 of the United States Code, in that Respondent
9 violated the statutes of this state and the United States regulating controlled substances and
10 dangerous drugs. The facts and circumstances are described with more particularity in paragraph
11 17, above.

12 **FOURTH CAUSE FOR DISCIPLINE**

13 **(Unprofessional Conduct - Violating or Attempting to Violate Any Provision or Term of**
14 **This Chapter or of the Applicable Federal and State Laws and Regulations Governing**
15 **Pharmacy)**

16 20. Respondent is subject to disciplinary action under section 4301(o) of the Code, by
17 and through section 4060 of the Code, sections 11170, 11171, and 11350 of the Health and Safety
18 Code, and section 829, subdivision (b), of Title 21 of the United States Code, in that Respondent
19 violated or attempted to violate the provisions of the terms of this chapter and the applicable
20 federal and state laws and regulations governing pharmacy. The facts and circumstances are
21 described with more particularity in paragraph 17, above.

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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:

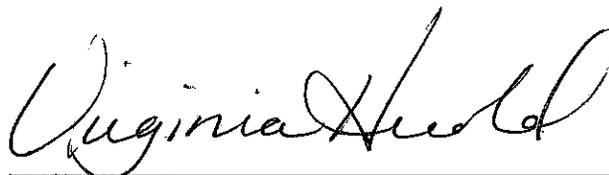
1. Revoking or suspending Pharmacy Technician Registration No. TCH 127720, issued to Mindy Nacole Ceja

2. Ordering Mindy Nacole Ceja 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: _____

3/7/17



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

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