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

11 In the Matter of the Accusation Against:
12 **MINDY LOUISE LUNA**
13 **P.O. Box 224**
El Cajon, CA 92020
14 **Pharmacy Technician Registration No. TCH**
15 **98731**
16 Respondent.

Case No. 5982

ACCUSATION

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 February 3, 2010, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 98731 to Mindy Louise Luna (Respondent). The Pharmacy
24 Technician Registration expired on October 31, 2015, and has not been renewed.

25 **JURISDICTION**

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

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

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

....

(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, of any other state, or of the United States regulating controlled substances and dangerous drugs.

....

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

....

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

....

11. Health and Safety Code section 11173, subdivision (a) states:

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

12. Health and Safety Code section 11350, subdivision (a) states:

(a) Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written 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.

1 13. Health and Safety Code section 11351 states:

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3 Except as otherwise provided in this division, every person who possesses
4 for sale or purchases for purposes of sale (1) any controlled substance specified in
5 subdivision (b), (c), or (e) of Section 11054, specified in paragraph (14), (15), or
6 (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of
7 Section 11055, or specified in subdivision (h) of Section 11056, or (2) any
8 controlled substance classified in Schedule III, IV, or V which is a narcotic drug,
9 shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of
10 the Penal Code for two, three, or four years.

11 14. Health and Safety Code section 11377, subdivision (a) states:

12 (a) Except as authorized by law and as otherwise provided in subdivision (b)
13 or Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of
14 Division 2 of the Business and Professions Code, every person who possesses any
15 controlled substance which is (1) classified in Schedule III, IV, or V, and which is
16 not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except
17 paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph
18 (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of
19 subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of
20 Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or
21 veterinarian, licensed to practice in this state, shall be punished by imprisonment in
22 a county jail for a period of not more than one year or pursuant to subdivision (h)
23 of Section 1170 of the Penal Code.

24 15. United States Code, title 21, section 843, subdivision (a)(3) states:

25 (a) It shall be unlawful for any person knowingly or intentionally – (3) to acquire
26 or obtain possession of a controlled substance by misrepresentation, fraud, forgery,
27 deception, or subterfuge.

28 REGULATORY PROVISIONS

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

1 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
2 included in a stipulated settlement.

3 DRUGS

4 18. Hydrocodone /acetaminophen (common brand name Norco) is a Schedule II
5 controlled substance as designated by Title 21, Code of Federal Regulations section 1308.12,
6 subdivision (b)(1)(vi), and was designated as a Schedule III controlled substance under
7 (California) Health and Safety Code section 11056, subdivision (e)(4). On October 6, 2014,
8 Hydrocodone /acetaminophen was designated as a Schedule II controlled substance under Health
9 and Safety Code section 11055(b)(1)(I). It is a dangerous drug pursuant to Business and
10 Professions Code section 4022.

11 19. Alprazolam (common brand name Xanax) is a Schedule IV controlled substance as
12 designated by Title 21, Code of Federal Regulations section 1308.14, subdivision (c)(2), and it is
13 designated as Schedule IV controlled substance under (California) Health and Safety Code section
14 11057, subdivision (d)(1). It is a dangerous drug pursuant to Business and Professions Code
15 section 4022.

16 20. Promethazine with codeine (common brand name Phenergan with codeine) is a
17 Schedule V controlled substance as designated by Title 21, Code of Federal Regulations section
18 1308.15, subdivision (c)(1), and it is designated as Schedule V controlled substance under
19 (California) Health and Safety Code section 11058, subdivision (c)(1). It is a dangerous drug
20 pursuant to Business and Professions Code section 4022.

21 21. Clonazepam (common brand name Klonopin) is a Schedule IV controlled
22 substance as designated by Title 21, Code of Federal Regulations section 1308.14, subdivision
23 (c)(2), and it is designated as Schedule IV controlled substance under (California) Health and
24 Safety Code section 11057, subdivision (d)(7). It is a dangerous drug pursuant to Business and
25 Professions Code section 4022.

26 22. Buprenorphine/naloxone (common brand name Suboxone) is a Schedule V
27 controlled substance as designated by Title 21, Code of Federal Regulations section 1308.14,
28 subdivision (c)(2), and it is designated as Schedule V controlled substance under (California)

1 Health and Safety Code section 11058, subdivision (d). It is a dangerous drug pursuant to
2 Business and Professions Code section 4022.

3 **FACTUAL ALLEGATIONS**

4 **CVS STORE # 9145**

5 23. On or about December 17, 2014, the Board received notification from CVS Pharmacy
6 #9145 in Santee, California of the theft of controlled substances by Respondent. The notification
7 indicated that Respondent had admitted to the theft. A DEA Form 106¹ indicated that 2,868
8 tablets of hydrocodone /acetaminophen 10/325 mg (HPAP), 8,509 ml of promethazine with
9 codeine, and 1,922 tablets of alprazolam 2 mg were lost from its inventory. In a written statement,
10 Respondent admitted that she stole HPAP, promethazine with codeine, and alprazolam.
11 (Respondent also admitted that she had taken Viagra and suboxone from the pharmacy without
12 payment, causing a loss to the store). Respondent admitted that she had hidden the drugs in the
13 trash, would then take the trash to the bathroom, retrieve the drugs from the trash and conceal
14 them in her shirt. Respondent stated that her thefts occurred in July and August, 2013.
15 Respondent admitted that she sold the drugs to a family member, who would then sell them to
16 others. Respondent admitted to stealing from another CVS Pharmacy where she subsequently
17 worked (CVS Pharmacy # 9112) with the thefts occurring between November 2013 and
18 November 2014. The total loss attributed to Respondent's diversion at CVS Pharmacy #9145,
19 based on her own admission, was 1,500 tablets of HPAP, 1,892 ml of promethazine with codeine,
20 and 500 tablets of alprazolam 2 mg. (The total shortages discovered by the pharmacy's audit
21 were substantially higher (2,868 tablets of HPAP, 8,509 ml of promethazine with codeine, and
22 1,922² tablets of alprazolam 2 mg), and it was suspected that Respondent was responsible for
23 significantly more theft than that which she admitted to). Respondent agreed to reimburse CVS

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26 ¹ Upon discovery of a theft or significant loss of controlled substances, a pharmacy must
report the loss in writing to the area Drug Enforcement Administration (DEA) field office on
DEA Form 106, either electronically or manually, within one business day.

27 ² An audit of CVS pharmacy #9145 performed by an investigator for the Board of
28 Pharmacy at this time revealed a shortage of 1,913 tablets of alprazolam 2 mg.

1 Pharmacy in the amount of \$11,843.92³ for the stolen drugs. Respondent's employment with
2 CVS pharmacy #9145 was terminated.

3 CVS STORE # 9112

4 24. On or about December 17, 2014, the Board received notification from CVS
5 Pharmacy #9112 in Lemon Grove, California of the theft of controlled substances by Respondent
6 and one additional pharmacy technician. The notification indicated that Respondent had admitted
7 to the theft. A DEA Form 106 indicated that 17,513 tablets of hydrocodone /acetaminophen
8 10/325 mg (HPAP 10), 8,043 ml of promethazine with codeine, 5,704 tablets of alprazolam 2 mg,
9 505 tablets of clonazepam 1 mg, 887 tablets of hydrocodone /acetaminophen 7.5/325 mg (HPAP
10 7.5), 433 tablets of alprazolam 0.25 mg, 300 tablets of alprazolam 1 mg, 60 tablets of Suboxone
11 8/2 mg, and 15,000 tablets of hydrocodone /acetaminophen 5/325 mg (HPAP 5) were lost from its
12 inventory.⁴ In a written statement, Respondent admitted that she stole 77 bottles of 100 count
13 HPAP 10, 55 bottles of 100 count alprazolam 2mg, 10 bottles of promethazine, 30 tablets of
14 Viagra 100 mg, and 2 bottles of 30 count Suboxone 8/2 mg. Respondent admitted that she had
15 hidden the drugs in the trash, would then take the trash to the bathroom, retrieve the drugs from
16 the trash and conceal them in her shirt. Respondent stated that her thefts occurred from November
17 of 2013 until November of 2014. Respondent admitted that she sold the drugs to a family
18 member. Respondent agreed to reimburse CVS Pharmacy in the amount of \$11,843.92 for the
19 stolen drugs. It was again suspected that Respondent was responsible for more theft than that
20 which she admitted to. Respondent's employment with CVS pharmacy #9112 was terminated.

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23 ³ The amount of \$11,843.92 is the total restitution owed for Respondent's theft from CVS
Pharmacy #9145 and #9112.

24 ⁴ CVS pharmacy #9112 based the quantities listed on the DEA Form 106 on the quantities
25 admittedly stolen by Respondent and the other technician, rather than their own internal audit.
26 The drug quantities listed on the DEA Form 106 differ from the quantities determined in the
27 internal audit. CVS pharmacy #9112's internal audit reported an overage of 547 tablets of
28 hydrocodone /acetaminophen 5/325 mg (HPAP 5), an overage of 26 tablets of alprazolam 1 mg,
an overage of 64 tablets of Suboxone 8/2 mg, and a shortage of 8,354 ml of promethazine with
codeine. An audit performed by an investigator for the Board of Pharmacy at this time revealed a
shortage of 557 tablets of hydrocodone /acetaminophen 7.5/325 mg (HPAP 7.5), and not the 887
tablets as reported.

1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Possession of Controlled Substances without a Prescription)**

3 29. Respondent is subject to disciplinary action under Code section 4060, and Health and
4 Safety Code sections 11350(a), and 11377(a), for unprofessional conduct, in that she possessed
5 controlled substances without a prescription, as is more fully detailed at paragraphs 23 through
6 24, which are incorporated herein by reference.

7 **SIXTH CAUSE FOR DISCIPLINE**

8 **(Possession of Controlled Substances for Sale)**

9 30. Respondent is subject to disciplinary action under Code section 4301, subdivisions
10 (f), (j), and (o), and Health and Safety Code section 11351, in that she possessed controlled
11 substances for sale, as is more fully detailed at paragraphs 23 through 24, which are incorporated
12 herein by reference.

13 **SEVENTH CAUSE FOR DISCIPLINE**

14 **(Moral Turpitude and Violation of State Laws and Regulations)**

15 31. Respondent is subject to disciplinary action under section 4301, subdivisions (f), (j)
16 and (o) of the Code for unprofessional conduct in that she violated Business and Professions Code
17 section 4060, Health and Safety Code sections 11350, subdivision (a) and 11377(a) for possession
18 of controlled substances without a prescription, as is more fully detailed at paragraphs 23 through
19 24, which are incorporated herein by reference.

20 **EIGHTH CAUSE FOR DISCIPLINE**

21 **(Unprofessional Conduct-Subverting an Investigation)**

22 32. Respondent is subject to disciplinary action under Code section 4301, subdivision (q),
23 for unprofessional conduct, in that Respondent failed to respond to two separate letters requesting
24 her to contact the inspector for an interview. The letters were sent to both addresses on file with
25 the Board of Pharmacy. Respondent is required to maintain an updated address of record on file
26 with the Board pursuant to Code section 4100. Accordingly, Respondent subverted or attempted
27 to subvert the Board's investigation.

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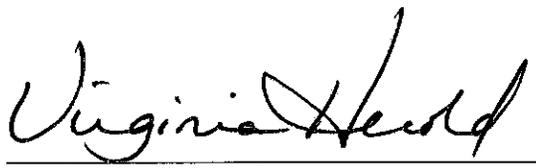
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PRAYER

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 98731, issued to Mindy Louise Luna;
2. Ordering Mindy Louise Luna 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: 6/30/17



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

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