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

11 In the Matter of the Accusation Against:
12
13 **ILIANA HERNANDEZ**
P.O. Box 241
Freedom, CA 95019
14
15 **Pharmacy Technician Registration No. TCH**
65649
16
17 Respondent.

Case No. 6078

ACCUSATION

18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity as
21 the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
22 2. On or about February 9, 2006, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 65649 to Iliana Hernandez (Respondent). The Pharmacy Technician
24 Registration was in full force and effect at all times relevant to the charges brought in this
25 Accusation and will expire on April 30, 2019, unless renewed.

26 **JURISDICTION**

- 27 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
28 Consumer Affairs, under the authority of the following laws. All section references are to the

1 Business and Professions Code unless otherwise indicated.

2 4. Section 4300.1 of the Code states:

3 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation
4 of law or by order or decision of the board or a court of law, the placement of a license on a
5 retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of
6 jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding
7 against, the licensee or to render a decision suspending or revoking the license."

8 **STATUTORY PROVISIONS**

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

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

13 ...

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

17 ...

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

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

24 6. Section 4060 of the Code states:

25 No person shall possess any controlled substance, except that furnished to a person
26 upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or
27 naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order
28 issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner
pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1, or
naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either
subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph

1 (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession
2 of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist,
3 physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
4 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers
5 correctly labeled with the name and address of the supplier or producer.

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

9 7. Health and Safety Code section 11170 states that no person shall prescribe, administer,
10 or furnish a controlled substance for himself.

11 8. Health and Safety Code section 11173, subd. (a), states that no person shall obtain or
12 attempt to obtain controlled substances, or procure or attempt to procure the administration of or
13 prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2)
14 by the concealment of a material fact.

15 **COST RECOVERY PROVISION**

16 9. Section 125.3 of the Code states, in pertinent part, that the Board may request the
17 administrative law judge to direct a licentiate found to have committed a violation or violations of
18 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
19 enforcement of the case.

20 **DRUG**

21 10. Carisoprodol, also known by the brand name Soma, is a Schedule IV controlled
22 substance under Health and Safety Code section 11057, and a dangerous drug under Code section
23 4022. It is used as a muscle relaxant.

24 **FACTUAL BACKGROUND**

25 11. Between on or about June of 2016 to on or about August 16, 2016, while working as
26 a pharmacy technician at a CVS pharmacy in Watsonville, Respondent stole approximately 420
27 tablets of carisoprodol 350 mg for her own use—approximately 30 tablets per week. She did not
28 have a prescription for the drug.

29 **FIRST CAUSE FOR DISCIPLINE** (Unprofessional Conduct: Theft of Controlled Substance) (Bus. & Prof. Code, § 4301, subd. (f))

30 12. Respondent has subjected her pharmacy technician registration to discipline for

1 unprofessional conduct in that she committed theft of a controlled substance (Bus. & Prof. Code, §
2 4301, subd. (f)). The circumstances are described in paragraph 11, above.

3 **SECOND CAUSE FOR DISCIPLINE**
4 **(Unprofessional Conduct: Unlawful Possession of Controlled Substance)**
5 **(Bus. & Prof. Code, §§ 4301, subds. (j) and/or (o), and 4060)**

6 13. Respondent has subjected her pharmacy technician registration to discipline for
7 unprofessional conduct in that she unlawfully possessed a controlled substance (Bus. & Prof.
8 Code, §§ 4301, subds. (j) and/or (o), and 4060). The circumstances are described in paragraph 11,
9 above.

10 **THIRD CAUSE FOR DISCIPLINE**
11 **(Unprofessional Conduct: Violation of Controlled Substances Statute—Self-Furnishing)**
12 **(Bus. & Prof. Code, § 4301, subds. (j) and/or (o); Health & Saf. §§ 11170, 11173, subd. (a))**

13 14. Respondent has subjected her pharmacy technician registration to discipline for
14 unprofessional conduct in that she violated a statute regulating controlled substances when she
15 furnished a controlled substance to herself (Bus. & Prof. Code, § 4301, subds. (j) and/or (o);
16 Health & Saf. §§ 11170 and 11173, subd. (a)).

17 **FOURTH CAUSE FOR DISCIPLINE**
18 **(Unprofessional Conduct: Violation of Controlled Substances Statute—Fraud)**
19 **(Bus. & Prof. Code, § 4301, subds. (j) and/or (o); Health & Saf. § 11173, subd. (a))**

20 15. Respondent has subjected her pharmacy technician registration to discipline for
21 unprofessional conduct in that she violated a statute regulating controlled substances when she
22 obtained a controlled substance by fraud, deceit, or subterfuge (Bus. & Prof. Code, § 4301, subds.
23 (j) and/or (o); Health & Saf. § 11173, subd. (a)). The circumstances are described in paragraph
24 11, above.

25 **DISCIPLINARY CONSIDERATION**

26 16. On or about February 2, 2010, the Board issued a letter of admonishment to
27 Respondent based on a December 26, 2008, incident when Salinas Valley State Prison searched
28 the vehicle of Respondent, who was visiting her inmate husband, and found 140 morphine pills,
which Respondent stated she had taken from her mother.

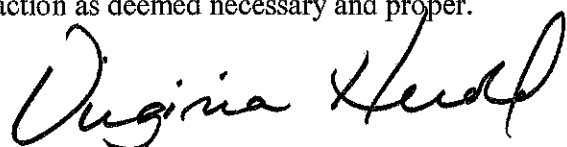
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PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 65649, issued to Iliana Hernandez;
2. Ordering Iliana Hernandez 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: 11/27/17



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

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