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

10 In the Matter of the Accusation Against:

Case No. 3333

11 **ANGELINA IBARRA**
12 **244 Wisteria Drive**
13 **East Palo Alto, California 94303**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

14 **Pharmacy Technician License No. TCH 18088**

Respondent.

15 FINDINGS OF FACT

16 1. On or about October 27, 2009, Complainant Virginia Herold, in her official capacity
17 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed
18 Accusation No. 3333 against Angelina Ibarra (Respondent) before the Board of Pharmacy.

19 2. On or about January 4, 1996, the Board of Pharmacy (Board) issued Pharmacy
20 Technician License No. TCH 18088 to Respondent. The License was in full force and effect at
21 all times relevant to the charges brought herein and will expire on May 31, 2011, unless renewed.

22 3. On or about November 4, 2009, Fe M. Domingo, an employee of the Department of
23 Justice, served copies of: Accusation No. 3333; a Statement to Respondent, a Notice of Defense,
24 a Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 by
25 Certified and First Class Mail to Respondent's address of record with the Board, which was and
26 is: 244 Wisteria Drive, East Palo Alto, California 94303. Copies of the Accusation and
27 accompanying service materials are attached as exhibit A, and incorporated herein by reference.

28 4. Service of the Accusation was effective as a matter of law under the provisions of
Government Code section 11505, subdivision (c).

1 5. In addition, on or about November 7, 2009, the Certified Mail Return Receipt card
2 was returned to the Department of Justice, dated November 6, 2009 for receipt of the Accusation
3 materials, with a signature showing receipt at Respondent’s address of record. A copy of the
4 Certified Mail Return Receipt card is included with the documents in exhibit A.

5 6. Government Code section 11506 states, in pertinent part:

6 (c) The respondent shall be entitled to a hearing on the merits if the respondent files a
7 notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation
8 not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's
9 right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

10 7. Respondent failed to file a Notice of Defense within 15 days after service of the
11 Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 3333.

12 8. California Government Code section 11520 states, in pertinent part:

13 (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the
14 agency may take action based upon the respondent's express admissions or upon other evidence
15 and affidavits may be used as evidence without any notice to respondent.

16 9. Pursuant to its authority under Government Code section 11520, the Board finds
17 Respondent is in default. The Board will take action without further hearing and, based on the
18 evidence on file herein, finds that the allegations in Accusation No. 3333 are true.

19 10. The total costs for investigation and enforcement in connection with the Accusation
20 are \$5,849.75 as of February 3, 2010.

21 DETERMINATION OF ISSUES

22 1. Based on the foregoing findings of fact, Respondent Angelina Ibarra has subjected
23 her Pharmacy Technician License No. TCH 18088 to discipline.

24 2. A copy of the Accusation is attached.

25 3. The agency has jurisdiction to adjudicate this case by default.

26 4. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
27 License based upon the following violations alleged in the Accusation:

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1 a. In violation of Business and Professions Code section 4301(f), Respondent
2 committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption, by conduct
3 including: diversion or theft between in or around October 2008 and in or around November
4 2008 of multiple doses (at least 10, and as many as 612, tablets) of **Hydrocodone with APAP**
5 products from Anchor Drugs Pharmacy in South San Francisco, CA, by which she was employed
6 as a Pharmacy Technician – drugs which were taken for self-use and consumed by Respondent;

7 b. In violation of Business and Professions Code section 4301(h), Respondent, as
8 described above, on one or more occasions administered controlled substances, including
9 **Hydrocodone with APAP** products, to herself;

10 c. In violation of Business and Professions Code section(s) 4301(j) and/or (o) and/or
11 4059, and/or Health and Safety Code section 11170, Respondent, as described above, furnished to
12 herself or another without valid prescription, and/or conspired to furnish, and/or assisted or
13 abetted furnishing of, controlled substance(s);

14 d. In violation of Business and Professions Code section(s) 4301(j), (o) and/or 4060,
15 and/or Health and Safety Code section 11350, Respondent, as described above, possessed, and/or
16 conspired to, assisted or abetted possession of, a controlled substance, without valid prescription;

17 e. In violation of Business and Professions Code section(s) 4301(j), (o) and/or 4327,
18 Respondent, as described above, sold, dispensed or compounded one or more drugs while under
19 the influence of a dangerous drug, and/or attempted, conspired, or assisted/abetted such conduct;

20 f. In violation of Business and Professions Code section(s) 4301(j) and/or (o) and/or
21 Health and Safety Code section(s) 11170 and/or 11550, Respondent, as described above, self-
22 administered/used, conspired to self-administer/use, and/or assisted in/abetted self-
23 administration/use of, a controlled substance, without prescription;

24 g. In violation of Business and Professions Code section(s) 4301(j) and/or (o) and/or
25 Health and Safety Code section 11173(a), Respondent, as described above, obtained, conspired to
26 obtain, and/or assisted in or abetted the obtaining of a controlled substance, by fraud, deceit,
27 subterfuge, or concealment of material fact;

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1 h. In violation of Business and Professions Code section 4301, Respondent, as described
2 above, engaged in unprofessional conduct.

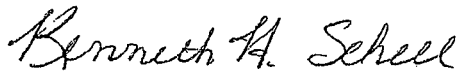
3 ORDER

4 IT IS SO ORDERED that Pharmacy Technician License No. TCH 18088, heretofore issued
5 to Respondent Angelina Ibarra, is revoked.

6 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
7 written motion requesting that the Decision be vacated and stating the grounds relied on within
8 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
9 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

10 This Decision shall become effective on May 26, 2010.

11 It is so ORDERED April 26, 2010.

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13 _____
14 KENNETH H. SCHELL, BOARD PRESIDENT
15 FOR THE BOARD OF PHARMACY
16 DEPARTMENT OF CONSUMER AFFAIRS

17 40428765.DOC
18 DOJ docket number:SF2009403662

19 Attachment:

20 Exhibit A: Accusation No.3333
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Exhibit A
Accusation No. 3333

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2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JOSHUA A. ROOM
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Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

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13 **ANGELINA IBARRA**
14 **244 Wisteria Drive**
15 **East Palo Alto, California 94303**

A C C U S A T I O N

Pharmacy Technician License No. TCH 18088

Respondent.

16 Complainant alleges:

17 PARTIES

18 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
19 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

20 2. On or about January 4, 1996, the Board of Pharmacy issued Pharmacy Technician
21 License Number TCH 18088 to Angelina Ibarra (Respondent). The Pharmacy Technician
22 License was in full force and effect at all times relevant to the charges brought herein and will
23 expire on May 31, 2011, unless renewed.

24 JURISDICTION

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

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

4 5. Section 4300(a) of the Code provides that every license issued by the Board may be
5 suspended or revoked.

6 6. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration,
7 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
8 disciplinary action during the period within which the license may be renewed, restored, reissued
9 or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not
10 renewed within three years following its expiration may not be renewed, restored, or reinstated
11 and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of
12 the Code provides that any other license issued by the Board may be canceled by the Board if not
13 renewed within 60 days after its expiration, and any license canceled in this fashion may not be
14 reissued but will instead require a new application to seek reissuance.

15 STATUTORY AND REGULATORY PROVISIONS

16 7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action
17 against any holder of a license who is guilty of “unprofessional conduct,” defined to include, but
18 not be limited to, any of the following:

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

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

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

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

5 8. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous
6 drug or dangerous device except upon the prescription of an authorized prescriber.

7 9. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
8 controlled substance, except that furnished upon a valid prescription/drug order.

9 10. Section 4327 of the Code, in pertinent part, makes it unlawful, while on duty, to sell,
10 dispense or compound any drug while under the influence of any dangerous drug.

11 11. Health and Safety Code section 11170 provides that no person shall prescribe,
12 administer, or furnish a controlled substance for himself or herself.

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

17 13. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess
18 any controlled substance listed in Schedule II (Health and Safety Code section 11055),
19 subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

20 14. Health and Safety Code section 11550, in pertinent part, makes it unlawful to use or
21 be under the influence of any controlled substance in Schedule II (Health and Safety Code section
22 11055), subdivision (b) or (c), or any Schedule III-V narcotic drug, except when administered by
23 or under the direction of an authorized licensee.

24 COST RECOVERY

25 15. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
26 administrative law judge to direct a licentiate found to have committed a violation of the licensing
27 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

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CONTROLLED SUBSTANCES / DANGEROUS DRUGS

16. Section 4021 of the Code states:

“Controlled substance’ means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.”

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

“Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use, except veterinary drugs that are labeled as such, and includes the following:

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

...

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

18. **Norco, Vicodin, Vicodin ES, Lortab, and Lorcet** are among the brand names for compounds of varying dosages of acetaminophen (aka APAP) and **hydrocodone**, a Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4) and dangerous drug as designated by Business and Professions Code section 4022. The varying compounds are also known generically as **Hydrocodone with APAP**. These are narcotic drugs.

FACTUAL BACKGROUND

19. Between on or about January 8, 2007 and on or about November 4, 2008, Respondent was employed as a pharmacy technician at Anchor Drugs Pharmacy (PHY 41533) in South San Francisco, California. In that position, she had access to controlled substances / dangerous drugs.

20. Beginning no later than October 2008 and continuing through her termination on or about November 4, 2008, on an unknown number of occasions Respondent made use of that access to divert/steal controlled substances and dangerous drugs, including **Hydrocodone with APAP** products, and administer them to herself while on duty as a pharmacy technician. The exact number of occasions and total quantity of drugs diverted/stolen are not known, but during subsequent interviews Respondent admitted to taking and consuming at least 2-3 tablets in this manner at least 1-2 times per week, for a minimum quantity of at least 10-30 tablets.

1 21. An inventory audit performed by Anchor Drugs following or contemporaneous with
2 Respondent's termination, for the period between June 28, 2008 and November 4, 2008, found
3 total losses/shortages of **Hydrocodone with APAP** products of approximately 612 tablets.
4

5 FIRST CAUSE FOR DISCIPLINE

6 (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

7 22. Respondent is subject to discipline under section 4301(f) of the Code in that
8 Respondent, as described in paragraphs 19 to 21 above, committed numerous acts involving
9 moral turpitude, dishonesty, fraud, deceit, or corruption.

10 SECOND CAUSE FOR DISCIPLINE

11 (Self-Administration of Controlled Substance)

12 22. Respondent is subject to discipline under section 4301(h) of the Code, in that
13 Respondent, as described in paragraphs 19 to 21 above, administered one or more controlled
14 substances to herself, including **Hydrocodone with APAP** products.

15 THIRD CAUSE FOR DISCIPLINE

16 (Furnishing of Controlled Substance)

17 23. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
18 4059 of the Code, and/or Health and Safety Code section 11170 in that Respondent, as described
19 in paragraphs 19 to 21 above, furnished to herself or another without a valid prescription, and/or
20 conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.

21 FOURTH CAUSE FOR DISCIPLINE

22 (Possession of Controlled Substance)

23 24. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
24 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described
25 in paragraphs 19 to 21 above, possessed, conspired to possess, and/or assisted in or abetted
26 possession of, a controlled substance, without a prescription.

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1 FIFTH CAUSE FOR DISCIPLINE

2 (Selling, Dispensing, or Compounding While Under the Influence)

3 25. Respondent is subject to disciplinary action under section 4301(j) and/or (o) and
4 section 4327 of the Code, in that as described in paragraphs 19 to 21 above, Respondent sold,
5 dispensed or compounded one or more drugs while under the influence of a dangerous drug,
6 and/or directly or indirectly attempted, conspired, and/or assisted in or abetted such conduct.

7 SIXTH CAUSE FOR DISCIPLINE

8 (Self-Administration/Use of Controlled Substance)

9 26. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
10 and/or Health and Safety Code section(s) 11170 and/or 11550, in that Respondent, as described in
11 paragraphs 19 to 21 above, self-administered/used, conspired to self-administer/use, and/or
12 assisted in/abetted self-administration/use, of a controlled substance, without prescription.

13 SEVENTH CAUSE FOR DISCIPLINE

14 (Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

15 27. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
16 and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs
17 19 to 21 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a
18 controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

19 EIGHTH CAUSE FOR DISCIPLINE

20 (Unprofessional Conduct)

21 28. Respondent is subject to discipline under section 4301 of the Code in that
22 Respondent, as described in paragraphs 19 to 27 above, engaged in unprofessional conduct.

23
24 PRAYER

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

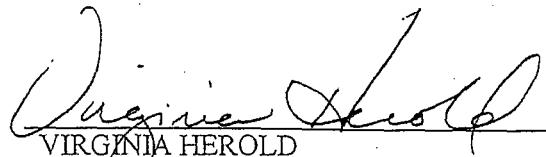
27 1. Revoking or suspending Pharmacy Technician License Number TCH 18088, issued
28 to Angelina Ibarra (Respondent);

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2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as is deemed necessary and proper.

DATED: 10/27/09



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

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