

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

In the Matter of the Accusation Against:

Case No. 4563

JESSICA YASMEEN ROMERO

OAH No. 2013080714

2314 Victoria Street
San Bernardino, CA 92410

Pharmacy Technician Registration
No. TCH 116513

Respondent.

DECISION AND ORDER

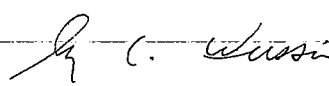
The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on May 19, 2014.

It is so ORDERED on April 17, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STAN C. WEISSER
Board President

BEFORE THE
BOARD OF PHARMACY
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In the Matter of the Accusation Against:

JESSICA YASMEEN-ROMERO

Case No. 4563

Pharmacy Technician Registration No. TCH
116513,

OAH No. 2013080714

Respondent.

PROPOSED DECISION

Administrative Law Judge Angela Villegas, State of California, Office of Administrative Hearings, heard this matter on February 13, 2014, in Los Angeles, California.

Katherine Messana, Deputy Attorney General, represented Complainant.

Respondent was present and represented herself.

Evidence was received. Over Complainant's objection on grounds of untimeliness, the record was held open until March 14, 2014, for Respondent to submit, by March 7, 2014, character reference(s) and/or letter(s) of recommendation, and for Complainant to submit, by March 14, 2014, any response or objection thereto.

On March 5, 2014, Respondent filed two letters of reference. The letter dated February 1, 2014, from David S. Duncan, Pharm. D., was marked for identification as Exhibit A. The letter dated March 2, 2014, from Kathy Dinh, was marked for identification as Exhibit B.

On March 10, 2014, Complainant filed a letter asserting objections to both Exhibits A and B. Complainant's letter was marked for identification as Exhibit 6.

Complainant objected to Exhibits A and B on grounds of hearsay and want of cross-examination. The hearsay objection is overruled as to any portions of those exhibits that are either offered for a non-hearsay purpose, or within a recognized hearsay exception. The hearsay objection is sustained as to any portions of those exhibits that constitute hearsay not within any recognized exception—but the portions constituting hearsay not within a

recognized exception are admitted nonetheless to supplement and/or explain other evidence, pursuant to Government Code section 11513, subdivision (d). To the extent the objection on grounds of inability to cross-examine is subsumed within the hearsay objection (inability to cross-examine a hearsay declarant being a principal rationale for the hearsay rule), then the ruling on that objection is likewise subsumed within the ruling on the hearsay objection. To the extent a separate objection is intended, it is overruled. The appropriate weight will be accorded to Exhibits A and B, given the absence of opportunity to cross-examine Respondent or their authors about them.

Complainant further objected to Exhibit B on grounds of improper authentication, citing Evidence Code section 1400, and noting that Exhibit B arrived by email in native word-processing file format, rather than in .pdf or another electronically inalterable format. The objection is overruled. Government Code section 11513, subdivision (c), provides that “[a]ny relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions.” Accordingly, the technical requirements of authentication set forth by Evidence Code section 1400 and other authorities need not be met. A letter of reference, even if not preserved in an electronically inalterable format, is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Exhibit B will be given the appropriate weight, in light of the potential infirmities pointed out by Complainant.

The record was closed, and the matter submitted for decision, on March 14, 2014.

REDACTION OF PERSONAL IDENTIFYING INFORMATION

During and after the hearing, it was discovered that Exhibits 4 and 5 contained unredacted names of third parties and personal identifying numbers. These references were redacted from the Office of Administrative Hearings’ file.

FACTUAL FINDINGS

1. Complainant Virginia Herold, Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board), filed the Accusation in her official capacity. Respondent filed a notice of defense requesting a hearing.
2. Respondent is a pharmacy technician, registered with the Board under number TCH 116513 since September 20, 2011. Her registration has no disciplinary history, and is due to expire November 30, 2014, unless renewed.
3. (a) On November 8, 2012, in the Superior Court of California, County of San Bernardino, case number MWV1203012, Respondent pled nolo contendere to charges of

violating Penal Code section 484, subdivision (a) (petty theft of personal property), a misdemeanor substantially related to the qualifications, functions, and duties of a pharmacy technician.

(b) No judgment of conviction has yet been entered on Respondent's plea. Instead, she was conditionally released for 24 months, during which she was, and is, required to adhere to certain terms and conditions, including serving two days in county jail (less two days' credit), paying \$688 in fines (which included a victim restitution fine), and staying away from JC Penney stores. She paid the amount ordered, in full, on November 13, 2012, and is in compliance with the other terms of her conditional release; the period of which is scheduled to expire in November 2014.

(c) The incident that led to Respondent's arrest, charge, and plea occurred on June 5, 2012.¹ While working as a sales clerk at JC Penney, Respondent rang up a transaction for her mother, in which she scanned items and then deleted the charges and/or excessively reduced the prices,² thereby effectively charging nothing for some items, and trivial amounts for others. The merchandise had a retail value of \$220. Upon Respondent's arrest, she offered to return or pay for the merchandise, but that offer was refused.

4. Respondent's demeanor at the hearing was sincere and contrite, and she was a credible self-representative and witness. Now 21 years old, she was 19 when she engaged in the criminal conduct. She has had no other brushes with the law, and is embarrassed and sorry about her behavior. She explained that, at the time, she was feeling frustrated and "depressed" (Respondent's characterization) about her economic and family situation, particularly her breakup with her boyfriend, who is the father of her young daughter (now age 3). One day at work, she overheard some other employees discussing stealing from the company, and impulsively decided to see if she could get away with doing the same. The merchandise she stole consisted of baby clothes for a child her sister was then expecting, and clothes for Respondent herself. Since the time of Respondent's crime, she and her boyfriend have reunited, which has improved her mental state, and she is currently expecting their second child. Moreover, Respondent and her family have become more financially stable, largely because Respondent and her boyfriend are both working full-time. Although Respondent does not have time at present to attend school, her ambition is to return to school in the future, and eventually become a pharmacist.

¹ The Accusation alleges the incident date to have been June 12, 2012 (Accusation at para. 11), but the police report indicates the actual date was June 5, 2012. June 12, 2012 was when the incident was reported to police.

² The police report (Exhibit 5) indicates that Respondent also gave some items to her mother without scanning them, but according to Respondent, this aspect of the police report is erroneous. Although she did give some of the items to her mother at no charge, she remembers scanning them all.

5. Respondent feels certain she will never again engage in conduct similar to her crime. The main reasons for this feeling are her shame and regret over her behavior, and her desire to stay out of trouble so that she will be able to provide for her daughter. When Respondent was asked why thoughts of her daughter did not stop her from engaging in criminal behavior at JC Penney, she did not know, but answered, "The whole feelings I was going through— my head wasn't really set on my shoulders. I wasn't thinking." She did, and still does recognize, however, that stealing from one's employer is wrong, and causes problems, including the cost of policing employees to detect theft. Respondent acknowledged that her work as a pharmacy technician involves handling retail transactions, filling prescriptions (with concomitant access to controlled substances), and processing insurance claims (with access to patients' medical and financial information). She nonetheless believes that the security measures employed by pharmacies are strict enough to prevent employee malfeasance—and even if she learned of a way to circumvent those measures, she feels certain she would not do so, because of what she has learned from her experience. Respondent submitted two letters of reference (Exhibits A and B) praising her work habits and customer-service skills, though it was not clear whether the authors were aware of her criminal charges and/or plea.

6. The Board's reasonable costs of investigation and enforcement in this matter total \$2,865.

LEGAL CONCLUSIONS

1. Complainant failed to establish cause to discipline Respondent's pharmacy technician registration on grounds of a substantially-related criminal conviction, because no *conviction* has been entered. (Factual Finding 3.) Instead, the evidence established only Respondent's *nolo contendere* plea (*id.*), which, without a concomitant judgment of conviction, is not a "conviction" within the meaning of the applicable license-discipline statutes. (*Id.*) (Bus. & Prof. Code §§ 490, subs. (a) – (c); 4301, subd. (l).)

2. Complainant did establish cause to discipline Respondent's registration based on her dishonest act: i.e., the conduct leading to her arrest, charge, and plea. (Factual Finding 3.) (Bus. & Prof. Code §§ 4300, subd. (a); 4301, subd. (f).)

3. Complainant established further cause to discipline Respondent's registration based on her criminal conduct, which also violated licensing provisions. (Factual Finding 3.) (Bus. & Prof. Code §§ 4300, subd. (a); 4301, subs. (f) and (o).)

4. Respondent's showing of rehabilitation was insufficient to support her contention that no discipline at all should be imposed, especially since she is still on conditional release (Factual Finding 3), but it was compelling enough to justify discipline short of outright revocation. The Board's Disciplinary Guidelines, incorporated by reference into California Code of Regulations, title 16 (Regulation), section 1760, provide that "revocation is typically the appropriate penalty when grounds for discipline are found to

exist[.]” because pharmacy technicians work under the supervision of a pharmacist, and “[t]o place a pharmacy technician on probation places an additional burden on the pharmacist . . . to ensure that the respondent pharmacy technician complies with the terms and conditions of his or her probation.” (Disciplinary Guidelines (Rev. 10/2007) (Guidelines) at p. 43.) But the Guidelines are not monolithic, and “[d]eviation from the[m] . . . , including the standard terms of probation, is appropriate where the board . . . determines that the facts of the particular case warrant [.]” (Regulation § 1760.)

5. In this case, Respondent’s showing warrants discipline short of outright revocation of her pharmacy technician registration.

(a) Her criminal conduct was serious in the sense that it involved deviousness and a breach of the trust placed in her by her former employer, but minor in the sense that it did not physically endanger anyone, involved relatively low-value merchandise, and constituted the only such instance of misconduct. (Factual Finding 3.) (Regulation § 1769, subs. (b)(1) and (b)(2); Guidelines, p. 3, (1), (2), (5), (6), and (11).) On the other hand, although Respondent credibly described the incident as stemming from an impulsive decision (Factual Finding 4), it could not have been an entirely impulsive act. By its nature, it must have required some advance planning—for example, to select the merchandise and arrange to ring up the transaction—and it unquestionably was intended to benefit Respondent and her family financially. (Factual Findings 3 and 4.) (Regulation § 1769, subd. (b)(1); Guidelines, p. 3, (7), (14), and (15).) Moreover, relatively little time has passed since the incident, and Respondent will remain on conditional release until November 2014. (Factual Finding 3.) (Regulation § 1769, subd. (b)(3); Guidelines, p. 3 (13).)

(b) Still, Respondent was very young when she engaged in the criminal conduct—only 19 years old—with the responsibility of being, at that time, a single parent coping with financial stresses. (Factual Findings 4 and 5.) Although not an excuse for her conduct, it is noteworthy that the merchandise she stole consisted of necessities: i.e., clothing for herself and another family member. (Factual Finding 4.) Respondent, now 21, is still very young, but has matured as a result of the incident. (Factual Findings 4 and 5.) She has reflected on her conduct and recognized its harmful effects on herself and her former employer, and its potential to affect her daughter. (Factual Findings 4 and 5.) She is genuinely remorseful and has accepted full responsibility for her behavior. (Factual Findings 4 and 5.) Moreover, her commitment never to engage in such conduct again appeared sincere, and Respondent appeared willing, able, and determined to live up to that commitment—and not merely to avoid punishment. (See *In re Gossage* (2000) 23 Cal.4th 1080, 1099 (“[L]ittle weight is generally placed on the fact that [a convicted person] did not commit additional crimes . . . while in prison or while on probation or parole.”).) Instead, Respondent’s motivation appeared principally to be her desire to be a responsible parent and to advance in her career. (Factual Findings 4 and 5.) Thus, Respondent impressively demonstrated that she has achieved, to a significant degree, the “state of mind” of “reformation and regeneration” that characterizes true rehabilitation. (*Pacheco v. State Bar*

(1987) 43 Cal.3d 1041, 1058.) (Regulation § 1769, subd. (b)(5); Guidelines, p. 3, (9).) (See *Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940 (fully acknowledging wrongdoing “is an essential step towards rehabilitation”).)

(c) Respondent is in compliance with the terms of her conditional release. (Factual Finding 3.) (Regulation § 1769, subd. (b)(4); Guidelines, p. 3, (10).) In addition to paying the fines imposed on her, she also tendered restitution to the store. (Factual Finding 3.) (Regulation § 1769, subd. (b)(4); Guidelines, p. 3, (10).) Her registration has no disciplinary history. (Factual Finding 2.) (Guidelines, p. 3, (3) and (4).)

6. On the whole, the evidence justifies deviating from the Guidelines’ recommended discipline of revocation, by staying the revocation and placing Respondent on probation. (Guidelines at p. 43.) Respondent’s achievement of significant rehabilitation demonstrates that the public will be adequately protected, and the responsibilities placed upon Respondent’s supervising pharmacist will not be excessively onerous, if she is given this lighter discipline.

7. Complainant established entitlement to the reasonable costs of investigation and enforcement in this case, in the amount of \$2,865. (Factual Finding 6.) (Bus. & Prof. Code § 125.3, subd. (a).)

ORDER

Pharmacy technician license number TCH 116513 is revoked; however, the revocation is stayed, and Respondent is placed on probation for three years upon the following terms and conditions.

1. *Certification Prior to Resuming Work.* Respondent shall be automatically suspended from working as a pharmacy technician until she is certified as defined by Business and Professions Code section 4202(a)(4), and provides satisfactory proof of certification to the Board. Respondent shall not resume working as a pharmacy technician until notified by the Board. Failure to achieve certification within one year shall be considered a violation of probation. Respondent shall not resume working as a pharmacy technician until notified by the Board. During suspension, Respondent shall not enter any pharmacy area or any portion of any other Board licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall Respondent manage, administer, or assist any licensee of the Board. Respondent shall not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances. Respondent shall not resume work until notified by the Board. Subject to the above restrictions, Respondent may

continue to own or hold an interest in any licensed premises by the Board in which he or she holds an interest at the time this decision becomes effective unless otherwise specified in this order. Failure to comply with this suspension shall be considered a violation of probation.

2. *Obey All Laws.* Respondent shall obey all state and federal laws and regulations. Respondent shall report any of the following occurrences to the Board, in writing, within 72 hours of such occurrence: (a) an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws; (b) a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment; (c) a conviction of any crime; and/or (d) discipline, citation, or other administrative action filed by any state or federal agency which involves Respondent's pharmacy technician license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance. Failure to timely report any such occurrence shall be considered a violation of probation.

3. *Report to the Board.* Respondent shall report to the Board quarterly, on a schedule as directed by the Board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, Respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the Board.

4. *Interview with the Board.* Upon receipt of reasonable prior notice, Respondent shall appear in person for interviews with the Board or its designee, at such intervals and locations as are determined by the Board or its designee. Failure to appear for any scheduled interview without prior notification to Board staff, or failure to appear at two or more scheduled interviews with the Board or its designee during the period of probation, shall be considered a violation of probation.

5. *Cooperate with Board Staff.* Respondent shall cooperate with the Board's inspection program and with the Board's monitoring and investigation of Respondent's compliance with the terms and conditions of his or her probation. Failure to cooperate shall be considered a violation of probation.

6. *Notice to Employers.* During the period of probation, Respondent shall notify all present and prospective employers of the decision in case number 4563 and the terms, conditions and restrictions imposed on Respondent by the decision, as follows:

(a) Within 30 days of the effective date of this decision, and within 15 days of Respondent undertaking any new employment, Respondent shall cause her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during

Respondent's tenure of employment) and owner to report to the Board in writing acknowledging that the listed individual(s) has/have read the decision in case number 4563 and the terms and conditions imposed thereby. It shall be Respondent's responsibility to ensure that his or her employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the Board.

(b) If Respondent works for or is employed by or through a pharmacy employment service, Respondent must notify her direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the decision in case number 4563 in advance of Respondent commencing work at each pharmacy. A record of this notification must be provided to the Board upon request. Furthermore, within 30 days of the effective date of this decision, and within 15 days of Respondent undertaking any new employment by or through a pharmacy employment service, Respondent shall cause her direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that he or she has read the decision in case number 4563 and the terms and conditions imposed thereby. It shall be Respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board. Failure to timely notify present or prospective employer(s) or to cause that/those employer(s) to submit timely acknowledgements to the Board shall be considered a violation of probation.

(c) "Employment" within the meaning of this provision shall include any full-time, part-time, temporary or relief service or pharmacy management service as a pharmacy technician or in any position for which a pharmacy technician license is a requirement or criterion for employment, whether Respondent is considered an employee, independent contractor or volunteer.

7. *Reimbursement of Board Costs.* As a condition precedent to successful completion of probation, Respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$2,865. Respondent may repay this entire amount within 30 days of the effective date of this decision, or, upon approval by the Board, Respondent may repay the amount in installments as follows, or upon such other terms as may be acceptable to the Board: 34 monthly payments of \$82 each, followed by one final monthly payment of \$77. The first monthly payment shall be due on the 30th day following the effective date of this decision, with additional monthly payments due on the same date of each month thereafter, until the amount of \$2,865 has been repaid in full. There shall be no deviation from this schedule absent prior written approval by the Board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation. The filing of bankruptcy by Respondent shall not relieve Respondent of his or her responsibility to reimburse the Board its costs of investigation and prosecution.

8. *Probation Monitoring Costs.* Respondent shall pay any costs associated with probation monitoring as determined by the Board each and every year of probation. Such costs shall be payable to the Board on a schedule as directed by the Board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

9. *Status of License.* Respondent shall, at all times while on probation, maintain an active, current pharmacy technician license with the Board, including any period during which suspension or probation is tolled. Failure to maintain an active, current license shall be considered a violation of probation. If Respondent's pharmacy technician license expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof due to tolling or otherwise, upon renewal or reapplication Respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

10. *License Surrender While on Probation/Suspension.* Following the effective date of this decision, should Respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, Respondent may tender his or her pharmacy technician license to the Board for surrender. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, Respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the Respondent's license history with the Board. Upon acceptance of the surrender, Respondent shall relinquish her pharmacy technician license to the Board within 10 days of notification by the Board that the surrender is accepted. Respondent may not reapply for any license, permit, or registration from the Board for three years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

11. *Notification of a Change in Name, Residence Address, Mailing Address or Employment.* Respondent shall notify the Board in writing within 10 days of any change of employment. Said notification shall include the reasons for leaving, the address of the new employer, the name of the supervisor and owner, and the work schedule if known. Respondent shall further notify the Board in writing within 10 days of a change in name, residence address and mailing address, or phone number. Failure to timely notify the Board of any change in employer(s), name(s), address(es), or phone number(s) shall be considered a violation of probation.

12. *Tolling of Probation.* Except during periods of suspension, Respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of 50 hours per calendar month, excluding period(s) of employer-approved sick leave. Any month during which this minimum is not met shall toll the period of probation: that is, the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, Respondent must nonetheless comply with all terms and conditions of probation. Should Respondent, regardless of residency, for any reason (including vacation, but not including employer-approved sick leave), cease working as a pharmacy technician for a minimum of 50 hours per calendar month in California, Respondent must notify the Board in writing within 10 days of cessation of work and must further notify the Board in writing within 10 days of the

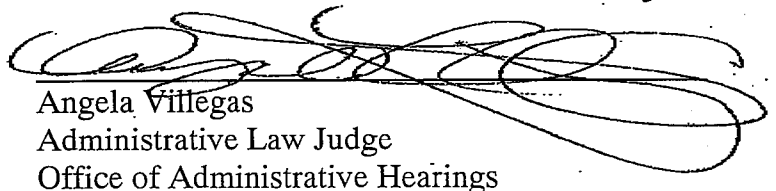
resumption of the work. Any failure to provide such notification(s) shall be considered a violation of probation. It is a violation of probation for Respondent's probation to remain tolled pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding 36 months. "Cessation of work" means any calendar month during which Respondent is not working for at least 50 hours as a pharmacy technician, as defined in Business and Professions Code section 4115. "Resumption of work" means any calendar month during which Respondent is working as a pharmacy technician for at least 50 hours as a pharmacy technician as defined by Business and Professions Code section 4115.

13. *Violation of Probation.* If Respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over Respondent, and probation shall automatically be extended, until all terms and conditions have been satisfied or the Board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed. If Respondent violates probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed against Respondent during probation, the Board shall have continuing jurisdiction, and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

14. *Completion of Probation.* Upon written notice by the Board indicating successful completion of probation, Respondent's pharmacy technician license will be fully restored.

15. *No Ownership of Licensed Premises.* Respondent shall not own, have any legal or beneficial interest in, or serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the Board.

Dated: March 21, 2014


Angela Villégas
Administrative Law Judge
Office of Administrative Hearings

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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. 4563

12 **JESSICA YASMEEN ROMERO**

13 2314 Victoria Street
14 San Bernardino, CA 92410

15 Pharmacy Technician Registration No. TCH
16 116513

Respondent.

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 September 20, 2011, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 116513 to Jessica Yasmeeen Romero ("Respondent"). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought
25 herein and will expire on November 30, 2014, unless renewed.

26 **JURISDICTION AND STATUTORY PROVISIONS**

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 ("Code") unless otherwise indicated.

2 4. Section 4300, subdivision (a) of the Code provides that "[e]very license issued may
3 be suspended or revoked."

4 5. Section 490 of the Code states, in pertinent part:

5 "(a) In addition to any other action that a board is permitted to take
6 against a licensee, a board may suspend or revoke a license on the ground that the
7 licensee has been convicted of a crime, if the crime is substantially related to the
8 qualifications, functions, or duties of the business or profession for which the license
9 was issued.

8 (b) Notwithstanding any other provision of law, a board may exercise
9 any authority to discipline a licensee for conviction of a crime that is independent of
10 the authority granted under subdivision (a) only if the crime is substantially related to
11 the qualifications, functions, or duties of the business or profession for which the
12 licensee's license was issued.

11 (c) A conviction within the meaning of this section means a plea or
12 verdict of guilty or a conviction following a plea of nolo contendere. Any action that
13 a board is permitted to take following the establishment of a conviction may be taken
14 when the time for appeal has elapsed, or the judgment of conviction has been
15 affirmed on appeal, or when an order granting probation is made suspending the
16 imposition of sentence, irrespective of a subsequent order under the provisions of
17 Section 1203.4 of the Penal Code."

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

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

19 ...

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

22 ...

23 (l) The conviction of a crime substantially related to the qualifications,
24 functions, and duties of a licensee under this chapter. The record of conviction of a
25 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
26 States Code regulating controlled substances or of a violation of the statutes of this
27 state regulating controlled substances or dangerous drugs shall be conclusive
28 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

1 convicted of one misdemeanor of violating Penal Code section 484(a) [theft of personal property]
2 in the criminal proceeding entitled *The People of the State of California v. Jessica Yasmeen*
3 *Romero* (Super. Ct. San Bernardino County, 2012, Case No. MWV1203012). The court
4 sentenced Respondent to two (2) days jail, placed her on 24 months probation, with terms and
5 conditions. The circumstances underlying the criminal conviction are, as follows:

6 11. On or about June 12, 2012, Respondent, while working as a cashier at J.C. Penny's
7 department store, scanned items and deleted the transactions, giving away \$220.00 worth of
8 merchandise to her mother.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Act Involving Dishonesty)**

11 12. Respondent is subject to disciplinary action under section 4300 and section 4301,
12 subdivision (f) of the Code on the grounds of unprofessional conduct in that on or about June 12,
13 2012, Respondent committed an act involving dishonesty when she scanned items and deleted the
14 transactions giving away \$220.00 worth of merchandise to her mother. The conduct is described
15 in more particularity in paragraph 11 above, inclusive and hereby incorporated by reference.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Violation of Licensing Chapter)**

18 13. Respondent is subject to disciplinary action under section 4301, subdivision (o) of the
19 Code in that Respondent violated provisions of the licensing chapter. The violations are
20 described in more particularity in paragraphs 9 through 12 above, inclusive and hereby
21 incorporated by reference.

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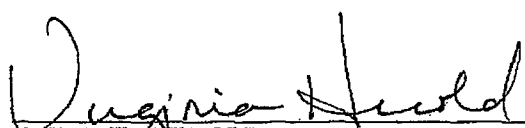
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PRAYER

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 116513, issued to Jessica Yasmeeen Romero;
2. Ordering Jessica Yasmeeen Romero 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;
3. Taking such other and further action as deemed necessary and proper.

DATED: 7/22/13



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

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