

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

In the Matter of the Accusation Against:

**CHRISTY CARRILLO**  
2840 Magnolia Avenue  
Long Beach, CA 90806

Pharmacy Technician Registration  
No. TCH 83831

Respondent.

Case No. 4972

OAH No. 2014090871

**DECISION AND ORDER**

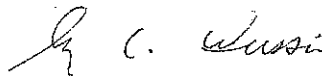
The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on February 2, 2015.

It is so ORDERED on January 2, 2015.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By



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STAN C. WEISSER  
Board President

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

In the Matter of the First Amended  
Accusation Against:

CHRISTY MARIE CARRILLO  
Pharmacy Technician Registration No.  
TCH 83831,

Respondent.

Case No. 4972

OAH No. 2014090871

**PROPOSED DECISION**

On December 1, 2014, Jennifer M. Russell, Administrative Law Judge with the Office of Administrative Hearings, heard this matter in Los Angeles California.

Linda L. Sun, Deputy Attorney General, represented complainant Virginia Herold in her official capacity as Executive Officer, Board of Pharmacy (Board), Department of Consumer Affairs, State of California. Respondent Christy Marie Carrillo represented herself.

The Board alleges that respondent is disqualified from continuing registration as a pharmacy technician on grounds that respondent's diversion of a controlled substance resulted in her conviction for grand theft and that respondent's conduct constitutes, among other things, unprofessional conduct in violation of the Pharmacy Law. Respondent admits to diverting a controlled substance and did not offer sufficient mitigating or rehabilitation evidence.

The matter was submitted for decision on December 1, 2014. The Administrative Law Judge makes the following Factual Findings, Legal Conclusions, and Order revoking respondent's pharmacy technician registration.

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## FACTUAL FINDINGS

1. Complainant filed the Accusation and First Amended Accusation in her official capacity.

2. On June 9, 2008, the Board issued Original Pharmacy Technician Registration number TCH 83831 to Christy Marie Carrillo to work as a pharmacy technician in California. The registration was in full force and effect at all relevant times. The registration, which has no history of prior discipline, expires on November 30, 2015.

3. Respondent is a graduate of Clarita College. Her employment history includes work as a sales associate and as a secretary before she secured employment in 2008 at Walgreens Pharmacy store number 7870, a retail establishment, as pharmacy technician.

4. The discharge of a pharmacy technician's duties and responsibilities at a retail establishment requires access to drugs, medications, and other pharmaceuticals. A pharmacy technician's duties and responsibilities at a retail establishment include, among other things, serving customers at an intake window where confidential personal, health, and insurance information is received for the processing of prescriptions; counting, labeling, and dispensing medications; communicating with prescribing medical doctors' offices; and serving as liaison between customers and pharmacists and between pharmacists and physicians.

5. In summer 2012, respondent was reacquainted with a young man with whom she attended the same high school. He learned about respondent's employment at Walgreens, repeatedly demanded that respondent provide him with hydrocodone tablets, and intimated that respondent's safety and that of her family would be in jeopardy should she not comply with his demands. Respondent became fearful for herself and for her family, but she reported the young man's demands and her fears to no one, including the police.

6. During August through October 2012, and again in January and February 2013, while performing her duties and responsibilities as a pharmacy technician, respondent diverted eight bottles of Hydrocodone/APAP 10/325mg containing no fewer than a total of 4,000 tablets from the pharmacy stock at Walgreens. Hydrocodone/APAP is classified as a Schedule II controlled substance.<sup>1</sup> Respondent gave the hydrocodone tablets to the young man. Respondent received no remuneration in return.

7. A manager noticed a recurring low stock for the medication and that the missing stock was not accounted for in the pharmacy's ledgers. The manager determined that there was a "shrinkage issue" and contacted loss prevention, which in turn conducted an investigation using video surveillance cameras. The video surveillance captured respondent removing a bottle of hydrocodone tablets from its usual display shelf and then concealing the bottle on another shelf where she was able to abscond with it when she exited the store at the conclusion of her work shift.

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<sup>1</sup> See Health and Safety Code section 11056, subdivision (e)(4).

8. On February 12, 2013, Walgreens' management confronted respondent, and respondent admitted, in a written Voluntary Statement, to pilfering six bottles of the medication in 2012 and another two bottles in 2013. Each bottle of Hydrocodone/APAP 10/325mg contained 500 tablets. Respondent signed an Agreement to Repay, in which she promised to pay Walgreens restitution in the amount of \$2,932.67, and she has done so. On February 12, 2013, Walgreens terminated respondent's employment.

9. As a consequence of respondent's conduct set forth above, on July 17, 2014, in the Superior Court of California, Los Angeles County, in case number NA098717, respondent was convicted, on her plea of nolo contendere, for violating Penal Code section 487, subdivision (a) (grand theft), a misdemeanor. The court found a factual basis for respondent's plea, suspended imposition of sentence, and placed respondent on summary probation for a period of three years with standard terms and conditions including serving one day in Los Angeles County Jail (less credit for one day) and paying fines totaling \$220. Respondent has not yet completed paying her court-imposed fines.

10. Respondent's employment as a registered pharmacy technician afforded her access to dangerous drugs such as hydrocodone, and she used her position to misappropriate that drug from her employer and then provide it to another person. Her misconduct and the resulting grand theft conviction evince her unfitness to perform the functions and duties of a registered pharmacy technician in a manner consistent with the public health, safety, and welfare.

11. At the administrative hearing, respondent admitted to her misconduct. After her February 2013 termination from Walgreens, respondent worked as a waitress for an unspecified period of time, then as a pharmacy technician at JWCH Pharmacy MedQuest for one year and five months until her last day on November 26, 2014. In March 2014, respondent obtained PTCB<sup>2</sup> certification. Respondent is currently unemployed. She is not involved in any civic or community organization.

12. The Board incurred \$4,745 as its costs of investigation and prosecution of this matter. These costs are reasonable pursuant to Business and Professions Code section 125.3.

#### LEGAL CONCLUSIONS

1. Business and Professions Code section 490 authorizes the Board to suspend or revoke respondent's pharmacy technician registration on the ground that respondent has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of pharmacy technician. A conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

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<sup>2</sup> Pharmacy Technician Board Certification.

2. Business and Professions Code sections 4300 and 4301 authorize the Board to take disciplinary action against any licensee, such as respondent, who is guilty of unprofessional conduct. Section 4301, in particular, provides that “unprofessional conduct” includes, without limitation, 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, or any other state, or of 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 . . . [the Pharmacy Law]. The record of conviction . . . of a violation of the statutes of . . . [California] regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct[.]”

3. Business and Professional Code section 4022 classifies Hydrocodone/APAP, a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (e)(4), as a dangerous drug.

4. Business and Professions Code section 4060 prohibits the possession of any controlled substance as follows:

A person shall not possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, 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, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to Section 4052.1, 4052.2, or 4052.6. This section does not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, if in stock in containers correctly labeled with the name and address of the supplier or producer.

5. Health and Safety Code section 11171 provides that it is unlawful to furnish a person with a controlled substance in California except in limited circumstances not applicable to this matter.

6. A crime or an act shall be considered to be substantially related to the qualifications, functions, or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness to perform the functions authorized by the license in a manner consistent with the public health, safety, and welfare. (Cal. Code Regs., tit. 16, § 1770.)

7. Complainant has the burden of proving the allegations in the First Amended Accusation by “clear and convincing proof to a reasonable certainty.” (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) Complainant must establish the charging allegations by proof that is clear, explicit and unequivocal—so clear as to leave no substantial doubt, and sufficiently strong to command the unhesitating assent of every reasonable mind. (See *In re Marriage of Weaver* (1990) 224 Cal.App.3d 478.)

8. With respect to the First Cause for Discipline (Unprofessional Conduct—Dishonesty) alleged in the First Amended Accusation, complainant has established by clear and convincing proof to a reasonable certainty that cause exists to suspend or revoke Pharmacy Technician Registration number TCH 83831 issued to respondent Christy Marie Carrillo pursuant to Business and Professions Code sections 4300 and 4301, subdivision (f), and California Code of Regulations, title 16, section 1770, in that respondent committed acts of dishonesty that are substantially related to the qualifications, functions, and duties of a pharmacy technician when she pilfered bottles of hydrocodone tablets during the course of her employment as a pharmacy technician at Walgreens Pharmacy store number 7870 as set forth in Factual Findings 6 through 8 and 10.

9. With respect to the Second Cause for Discipline (Unprofessional Conduct—Illegal Furnishing of Controlled Substance) alleged in the First Amended Accusation, complainant has established by clear and convincing proof to a reasonable certainty that cause exists to suspend and revoke Pharmacy Technician Registration number TCH 83831 issued to respondent Christy Marie Carrillo pursuant to Business and Professions Code sections 4300 and 4301, subdivision (j), in that respondent unlawfully furnished Hydrocodone/APAP 10/325mg, a controlled substance, to another in violation of the Health and Safety Code as set forth in Factual Finding 6 and Legal Conclusion 5.

10. With respect to the Third Cause for Discipline (Illegal Possession of Controlled Substance) alleged in the First Amended Accusation, complainant has established by clear and convincing proof to a reasonable certainty that cause exists to suspend and revoke Pharmacy Technician Registration number TCH 83831 issued to respondent Christy Marie Carrillo pursuant to Business and Professions Code sections 4300 and 4301, subdivision (j), in that respondent unlawfully possessed Hydrocodone/APAP 10/325mg, a controlled substance, in violation of the Pharmacy Law as set forth in Factual Finding 6 and Legal Conclusion 4.

11. With respect to the Fourth Cause for Discipline (Conviction of a Substantially Related Crime) alleged in the First Amended Accusation, complainant has established by clear and convincing proof to a reasonable certainty that cause exists to suspend and revoke

Pharmacy Technician Registration number TCH 83831 issued to respondent Christy Marie Carrillo pursuant to Business and Professions Code sections 490, 4300 and 4301, subdivision (I), and California Code of Regulations, title 16, section 1770, in that respondent has been convicted of grand theft, a crime substantially related to the qualifications, functions, and duties of a registered pharmacy technician as set forth in Factual Findings 9 and 10.

12. A determination that cause exists to discipline respondent's pharmacy technician registration does not end the inquiry. Such cause may be overcome with substantial, persuasive evidence of rehabilitation and good character. The Board has compiled a list of factors to evaluate whether a licensee has been rehabilitated from prior misconduct. That list, found in *A Manual of Disciplinary Guidelines and Model Disciplinary Orders* (Revised 10/2007), and which is incorporated by reference into the Board's regulations,<sup>3</sup> includes the nature and severity of the act under consideration; the actual or potential harm to any consumer or to the public; a licensee's prior disciplinary record; aggravating evidence; rehabilitation evidence; the licensee's compliance with the terms of any sentence, probation, or parole; the time that has elapsed since commission of the act; and evidence of dismissal of any conviction under Penal Code section 1203.4.

13. Respondent's violation of laws prohibiting her possession and furnishing of a controlled substance such as Hydrocodone/APAP 10/325mg constitutes "significant misconduct" under the *Guidelines*. In aggravation, respondent engaged in acts of dishonesty—her theft from her employer—to facilitate her illegal possession and impermissible furnishing of the controlled substance to a third person. Respondent's misconduct occasioned her criminal conviction and the accompanying three-year probationary sentence which she has yet to complete. Respondent offered no evidence of good character or other evidence of mitigation or rehabilitation. Under these circumstances, cause to suspend or revoke respondent's pharmacy technician registration is warranted.

14. Cause exists pursuant to Business and Professions Code section 125.3 to defer an award of costs. Under *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.App.4th 32, 45, the Board must exercise its discretion to reduce or eliminate cost awards so as to prevent cost award statutes from deterring licensees with potentially meritorious claims or defenses from exercising their right to a hearing. "Thus the [Board] may not assess the full costs of investigation and prosecution when to do so will unfairly penalize a [licensee] who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed." (*Id.*) The Board, in imposing costs in such situations, must consider the licensee's subjective good faith belief in the merits of his or her position and the Board must consider whether or not the licensee has raised a colorable defense. The Board must also consider the licensee's ability to make payment.

15. In light of respondent's current unemployment and the likely negative effect that the Order below will have on respondent's earning ability, it would be unduly punitive to require

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<sup>3</sup> Cal. Code Regs., tit 16, § 1760.

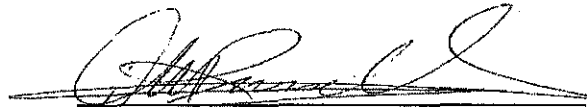
respondent to pay the Board's investigation and prosecutorial costs at this time. The Board may order respondent to pay its costs in the amount of \$4,745 at such time and in such manner as the Board may direct, in the event respondent applies for re-licensure.

### ORDER

1. Pharmacy Technician Registration number TCH 83831 issued to respondent Christy Marie Carrillo is revoked.

2. Respondent Christy Marie Carrillo shall reimburse the Board the amount of \$4,745 at such time and in such manner as the Board in its discretion may direct in the event respondent applies for re-licensure.

DATED: December 5, 2014



JENNIFER M. RUSSELL  
Administrative Law Judge  
Office of Administrative Hearings



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

10 In the Matter of the First Amended Accusation  
11 Against:

Case No. 4972

12 **CHRISTY MARIE CARRILLO**  
13 **2840 Magnolia Avenue**  
**Long Beach, CA 90806**

**FIRST AMENDED ACCUSATION**

14 **Pharmacy Technician Registration No. TCH**  
15 **83831**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

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

22 2. On or about June 9, 2008, the Board of Pharmacy (Board) issued Pharmacy  
23 Technician Registration Number TCH 83831 to Christy Marie Carrillo (Respondent). The  
24 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges  
25 brought herein and will expire on November 30, 2015, unless renewed.

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JURISDICTION

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2       3.     This First Amended Accusation is brought before the Board under the authority of the  
3 following laws. All section references are to the Business and Professions Code unless otherwise  
4 indicated.

5       4.     Section 4300 of the Code states:

6       "(a) Every license issued may be suspended or revoked."

7       5.     Section 4300.1 of the Code states:

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

13       6.     Section 4301 of the Code states:

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

17       .....

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

21       .....

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

24       .....

25       "(l) The conviction of a crime substantially related to the qualifications, functions, and duties  
26 of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
27 (commencing with Section 801) of Title 21 of the United States Code regulating controlled  
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1 substances or of a violation of the statutes of this state regulating controlled substances or  
2 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the  
3 record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The  
4 board may inquire into the circumstances surrounding the commission of the crime, in order to fix  
5 the degree of discipline or, in the case of a conviction not involving controlled substances or  
6 dangerous drugs, to determine if the conviction is of an offense substantially related to the  
7 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a  
8 conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of  
9 this provision. The board may take action when the time for appeal has elapsed, or the judgment of  
10 conviction has been affirmed on appeal or when an order granting probation is made suspending  
11 the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal  
12 Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or  
13 setting aside the verdict of guilty, or dismissing the accusation, information, or indictment."

14 7. Section 4060 of the Code states:

15 "No person shall possess any controlled substance, except that furnished to a person upon  
16 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor  
17 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified  
18 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a  
19 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,  
20 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of  
21 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply  
22 to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,  
23 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified  
24 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly  
25 labeled with the name and address of the supplier or producer.

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

1 8. Health and Safety Code section 11171 states: "No person shall prescribe,  
2 administer, or furnish a controlled substance except under the conditions and in the manner  
3 provided by this division."

4 **REGULATORY PROVISIONS**

5 9. California Code of Regulations, title 16, section 1770 states, in pertinent part:  
6 "For the purpose of denial, suspension, or revocation of a personal or facility license  
7 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a  
8 crime or act shall be considered substantially related to the qualifications, functions or duties of a  
9 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a  
10 licensee or registrant to perform the functions authorized by his license or registration in a manner  
11 consistent with the public health, safety, or welfare."

12 **COST RECOVERY PROVISION**

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

17 **DRUG CLASSIFICATION**

18 11. Norco, brand name for hydrocodone/APAP, is a Schedule III controlled substance  
19 pursuant to Health and Safety Code section 11056(e)(4) and a dangerous drug pursuant to  
20 Business and Professions Code section 4022.

21 **SUMMARY OF FACTS**

22 12. On or about February 12, 2013, Respondent, while working as a pharmacy technician  
23 at Walgreens #7870, was arrested for theft of a controlled substance. Respondent admitted to her  
24 employers that between August 2012 to February 2013, she stole approximately 4,000 tablets (8  
25 bottles) of hydrocodone/APAP 10-325mg for a friend. On or about February 25, 2013, the Board  
26 received a copy of the Report of Theft or Loss of Controlled Substance notification from  
27 Walgreens #7870. The Report documented a loss of 8,159 tablets of hydrocodone/APAP 10-  
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1 325mg due to employee pilferage during the period from April 10, 2009 to approximately  
2 February 12, 2013.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct – Dishonesty)**

5 13. Respondent is subject to disciplinary action under Code section 4301, subdivision (f)  
6 on the grounds of unprofessional conduct, in that while working as a pharmacy technician at  
7 Walgreens #7870, Respondent stole over 4,000 tablets of hydrocodone/APAP 10-325.  
8 Complainant refers to and incorporates all the allegations contained in paragraph 12 above, as  
9 though set forth fully.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Unprofessional Conduct – Illegal Furnishing of Controlled Substance)**

12 14. Respondent is subject to disciplinary action under Code section 4301, subdivision (j)  
13 on the grounds of unprofessional conduct for violating Health and Safety Code section 11171, in  
14 that while working as a pharmacy technician at Walgreens #7870, Respondent illegally prescribed,  
15 administered or furnished hydrocodone/APAP 10-325 to another. Complainant refers to and  
16 incorporates all the allegations contained in paragraph 12 above, as though set forth fully.

17 **THIRD CAUSE FOR DISCIPLINE**

18 **(Illegal Possession of Controlled Substance)**

19 15. Respondent is subject to disciplinary action under Code section 4060, in that while  
20 working as a pharmacy technician at Walgreens #7870, Respondent illegally possessed over 4,000  
21 tablets of hydrocodone/APAP 10-325. Complainant refers to and incorporates all the allegations  
22 contained in paragraph 12 above, as though set forth fully.

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27 **FOURTH CAUSE FOR DISCIPLINE**

28 **(Conviction of a Substantially Related Crime)**

