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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:

Case No. 3654

13 **DALE CURTIS HERZ**  
15231 Magnolia #220  
14 Sherman Oaks, CA 91403

**ACCUSATION**

15 Pharmacy Technician License No. TCH 22940

16 Respondent.

17  
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 June 25, 1997, the Board of Pharmacy (Board) issued Pharmacy  
23 Technician License No. TCH 22940 to Dale Curtis Herz (Respondent). The Pharmacy  
24 Technician License was in full force and effect at all times relevant to the charges brought herein  
25 and will expire on December 31, 2012.

26 **JURISDICTION**

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

STATUTORY PROVISIONS

1  
2       4.     Section 118, subdivision (b) provides, in pertinent part, that the expiration of a license  
3 shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period  
4 within which the license may be renewed, restored, reissued or reinstated.

5       5.     Section 4059, subdivision (a) states, in pertinent part:

6       “A person may not furnish any dangerous drug, except upon the prescription of a physician,  
7 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A  
8 person may not furnish any dangerous device, except upon the prescription of a physician, dentist,  
9 podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.”

10       6.     Section 4060 states, in pertinent part:

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

22       7.     Section 4300 provides, in pertinent part, that every license issued by the Board is  
23 subject to discipline, including suspension or revocation.

24       8.     Section 4301 states, in pertinent part:

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

28       .....



1 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the  
2 case.

3 11. **CONTROLLED SUBSTANCES**

4 a. "Adderall," is the brand name for Amphetamine. It is a Schedule II controlled  
5 substance as defined in Health and Safety Code section 11055, subdivision (d)(1) and is  
6 categorized as a dangerous drug pursuant to section 4022.

7 b. "Alprazolam," is the generic name for Xanax. It is a Schedule IV controlled  
8 substance as defined in Health and Safety Code section 11057, subdivision (d)(1) and is  
9 categorized as a dangerous drug pursuant to section 4022.

10 c. "Oxycontin," is a Schedule II controlled substance as defined in Health and Safety  
11 Code section 11055(b)(1)(N) and is categorized as a dangerous drug pursuant to section 4022.

12 **FIRST CAUSE FOR DISCIPLINE**

13 **(Obtained or Possessed a Controlled Substance)**

14 12. Respondent is subject to disciplinary action under section 4301, subdivisions (j) and  
15 (o), in that the Respondent was found to be in possession of controlled substances, in violation of  
16 section 4060 and Health and Safety Code section 11350, subdivision (a). At all times relevant  
17 herein, Respondent was employed as a pharmacy technician at Maxson's Drugs, in Sherman  
18 Oaks, CA. The circumstances of the violations are as follows:

19 13. On or about October 26, 2009, the Los Angeles Police Department found 40 tablets of  
20 OxyContin in various strengths in Respondent's car and 13 additional pills identified as follows:  
21 six 40mg. OxyContin tablets, three 80mg. OxyContin tablets, three Adderall tablets, one  
22 Aprazolam tablet and one unidentified capsule in Respondent's pant's pocket. Respondent did  
23 not have a valid prescription for the controlled substances.

24 14. Respondent admitted that he unlawfully took the OxyContin tablets from his  
25 pharmacy employer without permission to do so. He had taken OxyContin tablets from work on  
26 a weekly basis for at "least a couple of months" Respondent stole the pills for himself and also  
27 provided them to friends.  
28

1 15. Respondent was arrested for violating Health and Safety Code section 11352,  
2 subdivision (a) [transportation/furnishing a controlled substance]. He was subsequently charged  
3 in the criminal case *The People of the State of California v. Dale C. Herz* (LA Superior Court  
4 Case # LA063635) Respondent entered into the deferred entry of judgment program on July 7,  
5 2010.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Use/Under Influence of a Controlled Substance)**

8 16. Respondent is subject to disciplinary action under section 4301, subdivisions (h) and  
9 (j), in that on or before October 26, 2009, Respondent, used and/or was under the influence of a  
10 controlled substance. Complainant refers to, and by this reference incorporates, the allegations  
11 set forth above in paragraphs 13-15, as though set forth fully.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Furnishing Dangerous Drugs Without a Prescription)**

14 18. Respondent is subject to disciplinary action under section 4301, subdivisions (j) and  
15 (o), for violating section 4059, in that on or before October 26, 2009, Respondent unlawfully took  
16 or received OxyContin pills from his pharmacy employer, without a valid prescription therefore.  
17 Complainant refers to, and by this reference incorporates, the allegations set forth above in  
18 paragraphs 13-15, as though set forth fully.

19 **FOURTH CAUSE FOR DISCIPLINE**

20 **(Dishonest Acts)**

21 19. Respondent is subject to disciplinary action under section 4301, subdivision (f), in  
22 that on or before October 26, 2009, Respondent committed dishonest acts by stealing dangerous  
23 drugs from Maxon's Drugs, which he furnished to friends and himself. Complainant refers to, and  
24 by this reference incorporates, the allegation set forth above in paragraphs 13-15, as though set  
25 forth fully.

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27 ///

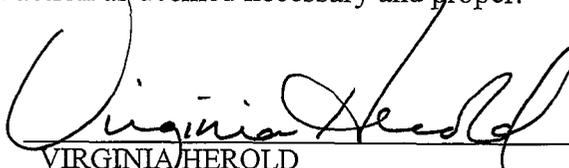
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**PRAYER**

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

1. Revoking or suspending Pharmacy Technician License No. TCH 22940, issued to Respondent;
2. Ordering Respondent to pay the Board reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 4/18/11



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

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