

1 EDMUND G. BROWN JR., Attorney General  
of the State of California  
2 KAREN B. CHAPPELLE  
Supervising Deputy Attorney General  
3 THOMAS L. RINALDI, State Bar No. 206911  
Supervising Deputy Attorney General  
4 300 So. Spring Street, Suite 1702  
Los Angeles, CA 90013  
5 Telephone: (213) 897-2541  
Facsimile: (213) 897-2804

6 Attorneys for Complainant  
7  
8

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

13 In the Matter of the Accusation Against:

Case No. 3229

14 BENITO PLASCENCIA,  
a.k.a. BENITO MARTINEZ PLASCENCIA,  
15 a.k.a. BENNY PLASCENCIA  
6308 Citrus Avenue  
Whittier, CA 90601-3213

**ACCUSATION**

16 Pharmacy Technician License No. TCH 13530

17 Respondent.  
18

19 Complainant alleges:

20 **PARTIES**

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

24 2. On or about July 28, 1994, the Board issued Pharmacy Technician License  
25 Number TCH 13530 to Benito Plascencia, also known as Benito Martinez Plascencia and Benny  
26 Plascencia ("Respondent"). Respondent's pharmacy technician license was in full force and  
27 effect at all times relevant to the charges brought herein and will expire on March 31, 2010,  
28 unless renewed.

STATUTORY PROVISIONS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

3. Business and Professions Code ("Bus. & Prof. Code") section 4202, subdivision (d), states that the Board may suspend or revoke a license issued pursuant to this section on any ground specified in Section 4301.

4. Bus. & Prof. Code section 4300 states, in pertinent part:

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

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

(1) Suspending judgment.

(2) Placing him or her upon probation.

(3) Suspending his or her right to practice for a period not exceeding one year.

(4) Revoking his or her license.

(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper . . .

5. Bus. & Prof. Code section 4301 states, in pertinent part:

The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of 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 this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction

1 occurred. The board may inquire into the circumstances surrounding the  
2 commission of the crime, in order to fix the degree of discipline or, in the case of  
3 a conviction not involving controlled substances or dangerous drugs, to determine  
4 if the conviction is of an offense substantially related to the qualifications,  
5 functions, and duties of a licensee under this chapter. A plea or verdict of guilty  
6 or a conviction following a plea of nolo contendere is deemed to be a conviction  
7 within the meaning of this provision. The board may take action when the time  
8 for appeal has elapsed, or the judgment of conviction has been affirmed on appeal  
9 or when an order granting probation is made suspending the imposition of  
10 sentence, irrespective of a subsequent order under Section 1203.4 of the Penal  
11 Code allowing the person to withdraw his or her plea of guilty and to enter a plea  
12 of not guilty, or setting aside the verdict of guilty, or dismissing the accusation,  
13 information, or indictment.

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
.....  
(o) Violating or attempting to violate, directly or indirectly, or assisting in  
or abetting the violation of or conspiring to violate any provision or term of this  
chapter or of the applicable federal and state laws and regulations governing  
pharmacy, including regulations established by the board or by any other state or  
federal regulatory agency . . .

6. Bus. & Prof. Code section 4051, subdivision (a), states:

Except as otherwise provided in this chapter, it is unlawful for any person  
to manufacture, compound, furnish, sell, or dispense any dangerous drug or  
dangerous device, or to dispense or compound any prescription pursuant to  
Section 4040 of a prescriber unless he or she is a pharmacist under this chapter.

7. Bus. & Prof. Code section 4141 states that "[n]o person shall furnish  
hypodermic needles or syringes, by sale or otherwise, without a license issued by the board,  
except as otherwise provided by this article."

8. Bus. & Prof. Code section 4322 states:

Any person who attempts to secure or secures licensure for himself or  
herself or any other person under this chapter by making or causing to be made  
any false representations, or who fraudulently represents himself or herself to be  
registered, is guilty of a misdemeanor, and upon conviction thereof shall be  
punished by a fine not exceeding five thousand dollars (\$5,000), or by  
imprisonment not exceeding 50 days, or by both that fine and imprisonment.

9. Bus. & Prof. Code section 4329 states:

Any nonpharmacist who takes charge of or acts as manager of any  
pharmacy or who compounds or dispenses a prescription or furnishes dangerous  
drugs except as otherwise provided in this chapter is guilty of a misdemeanor.

///

///

1                   10. Health and Safety Code ("Health & Saf. Code") section 11207,  
2 subdivision (a), states:

3                   No person other than a pharmacist as defined in Section 4036 of the  
4 Business and Professions Code or an intern pharmacist, as defined in Section  
5 4030 of the Business and Professions Code, who is under the personal supervision  
6 of a pharmacist, shall compound, prepare, fill or dispense a prescription for a  
7 controlled substance.

8                   11. Health & Saf. Code section 11352.1, subdivision (b), states:

9                   Notwithstanding Section 4321 of the Business and Professions Code, and  
10 in addition to any other penalties provided by law, any person who knowingly and  
11 unlawfully dispenses or furnishes a dangerous drug or dangerous device, or any  
12 material represented as, or presented in lieu of, any dangerous drug or dangerous  
13 device, as defined in Section 4022 of the Business and Professions Code, or who  
14 knowingly owns, manages, or operates a business that dispenses or furnishes a  
15 dangerous drug or dangerous device or any material represented as, or presented  
16 in lieu of, any dangerous drug or dangerous device, as defined in Section 4022 of  
17 the Business and Professions Code without a license to dispense or furnish these  
18 products, shall be guilty of a misdemeanor. Upon the first conviction, each  
19 violation shall be punishable by imprisonment in a county jail not to exceed one  
20 year, or by a fine not to exceed five thousand dollars (\$5,000), or by both that fine  
21 and imprisonment. Upon a second or subsequent conviction, each violation shall  
22 be punishable by imprisonment in a county jail not to exceed one year, or by a fine  
23 not to exceed ten thousand dollars (\$10,000), or by both that fine and  
24 imprisonment.

25                   12. Penal Code section 530.5, subdivision (a), states:

26                   Every person who willfully obtains personal identifying information, as  
27 defined in subdivision (b) of Section 530.55, of another person, and uses that  
28 information for any unlawful purpose, including to obtain, or attempt to obtain,  
credit, goods, services, real property, or medical information without the consent  
of that person, is guilty of a public offense, and upon conviction therefor, shall be  
punished by a fine, by imprisonment in a county jail not to exceed one year, or by  
both a fine and imprisonment, or by imprisonment in the state prison.

                  13. Penal Code section 530.55, subdivision (b), states:

                  For purposes of this chapter, "personal identifying information" means  
any name, address, telephone number, health insurance number, taxpayer  
identification number, school identification number, state or federal driver's  
license, or identification number, social security number, place of employment,  
employee identification number, professional or occupational number, mother's  
maiden name, demand deposit account number, savings account number,  
checking account number, PIN (personal identification number) or password,  
alien registration number, government passport number, date of birth, unique  
biometric data including fingerprint, facial scan identifiers, voiceprint, retina or  
iris image, or other unique physical representation, unique electronic data

///

///

1 including information identification number assigned to the person, address or  
2 routing code, telecommunication identifying information or access device,  
3 information contained in a birth or death certificate, or credit card number of an  
4 individual person; or an equivalent form of identification.

4 **COST RECOVERY**

5 14. Bus. & Prof. Code section 125.3 states, in pertinent part, that the Board  
6 may request the administrative law judge to direct a licentiate found to have committed a  
7 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the  
8 investigation and enforcement of the case.

9 **RESPONDENT'S CRIMINAL CONVICTIONS**

10 **FIRST CAUSE FOR DISCIPLINE**

11 **(Criminal Convictions Substantially Related to the**  
12 **Qualifications, Functions, and Duties of a Pharmacy Technician)**

13 15. Respondent is subject to disciplinary action pursuant to Code section  
14 4301, subdivision (l), on the grounds of unprofessional conduct, in that Respondent was  
15 convicted of crimes which are substantially related to the qualifications, functions, and duties of  
16 a pharmacy technician, as follows:

17 a. On or about August 28, 2001, in the criminal proceeding titled *People v.*  
18 *Benito Plascencia* (Super. Ct. Los Angeles County, 2001, Case No. 1WH02886), Respondent  
19 was convicted by the court on his plea of nolo contendere to violating Health & Saf. Code  
20 section 11352.1, subdivision (b) (dispensing or furnishing dangerous drugs without a license, a  
21 misdemeanor), and Bus. & Prof. Code section 4141 (furnishing hypodermic needles or syringes  
22 by sale without a license, a misdemeanor). The incidents upon which Respondent's conviction is  
23 based occurred on or about June 23, 2001.

24 b. On or about May 18, 2007, in the criminal proceeding titled *People v.*  
25 *Benito Plascencia* (Super. Ct. Los Angeles County, 2007, Case No. VA099167), Respondent was  
26 convicted by the court on his plea of nolo contendere to violating Penal Code section 530.5,  
27 subdivision (a) (identity theft, a felony). The circumstances of the crime are as follows: On or  
28 about October 27, 2006, Respondent willfully and unlawfully obtained personal identifying

1 information on S. S. and used that information for an unlawful purpose and to obtain, and  
2 attempt to obtain, credit, goods, services, and information in S. S.' name without consent. The  
3 imposition of sentence was suspended and Respondent was placed on formal probation for a  
4 period of three (3) years under terms and conditions, including the following: Respondent was  
5 ordered to serve 180 days in the Los Angeles County Jail, to make restitution in the amount of  
6 \$598.05 to Anda Pharmaceutical, and not to be involved in any manner with the selling of  
7 prescribed medicines in a pharmaceutical like business or other business involving prescribed  
8 medicines.

9 **SECOND CAUSE FOR DISCIPLINE**

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

11 16. Respondent is subject to disciplinary action pursuant to Code section  
12 4301, subdivision (f), on the grounds of unprofessional conduct, in that on or about October 27,  
13 2006, Respondent committed an act or acts involving moral turpitude, dishonesty, fraud, deceit,  
14 or corruption, as set forth in subparagraph 15 (b) above.

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(Violations of State Laws Regulating Dangerous Drugs)**

17 17. Respondent is subject to disciplinary action pursuant to Code section  
18 4301, subdivision (j), on the grounds of unprofessional conduct, in that on or about October 27,  
19 2007, Respondent violated a state law regulating dangerous drugs, specifically, Health & Saf.  
20 Code section 11352.1, subdivision (b), as set forth in subparagraph 15 (a) above.

21 **FOURTH CAUSE FOR DISCIPLINE**

22 **(Violations of State Laws Governing Pharmacy)**

23 18. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code  
24 section 4301, subdivision (o), on the grounds of unprofessional conduct, in that on or about  
25 October 27, 2007, Respondent violated a state law governing pharmacy, specifically, Bus. &  
26 Prof. Code section 4141, as set forth in subparagraph 15 (a) above.

27 ///

28 ///



1 **FIFTH CAUSE FOR DISCIPLINE**

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

3 22. Respondent is subject to disciplinary action pursuant to Code section  
4 4301, subdivision (f), on the grounds of unprofessional conduct, in that in and between April  
5 2006, and August 2007, Respondent committed acts involving moral turpitude, dishonesty, fraud,  
6 deceit, or corruption, as follows:

7 a. Respondent transcribed orally transmitted prescriptions, and furnished,  
8 filled, or dispensed dangerous drugs and controlled substances without a pharmacist's license, in  
9 violation of Bus. & Prof. Code sections 4051, subdivision (a), and 4329, and Health & Saf. Code  
10 section 11207, subdivision (a).

11 b. Respondent acted in the capacity of pharmacist-in-charge at Beyond the  
12 Pharmacy without a pharmacist's license, in violation of Bus. & Prof. Code section 4329.

13 c. Respondent fraudulently represented himself to be licensed pharmacist  
14 R. R. V. in order to work as pharmacist-in-charge at Beyond the Pharmacy, in violation of  
15 Bus. & Prof. Code section 4322.

16 d. Respondent willfully obtained personal identifying information of  
17 R. R. V., including, but not limited to, R. R. V.'s name and pharmacist license number, and used  
18 the information for an unlawful purpose, as set forth in subparagraph (c) above, in violation of  
19 Penal Code section 530.5, subdivision (a).

20 **SIXTH CAUSE FOR DISCIPLINE**

21 **(Violations of State Laws Regulating**  
22 **Controlled Substances and Dangerous Drugs)**

23 23. Respondent is subject to disciplinary action pursuant to Code section  
24 4301, subdivision (j), on the grounds of unprofessional conduct, in that in and between April  
25 2006, and August 2007, Respondent violated state laws regulating controlled substances and  
26 dangerous drugs, specifically, Bus. & Prof. Code sections 4051, subdivision (a), and 4329, and  
27 Health & Saf. Code section 11207, subdivision (a), as set forth in subparagraph 22 (a) above.

28 ///

1 **SEVENTH CAUSE FOR DISCIPLINE**

2 **(Violations of State Laws Governing Pharmacy)**

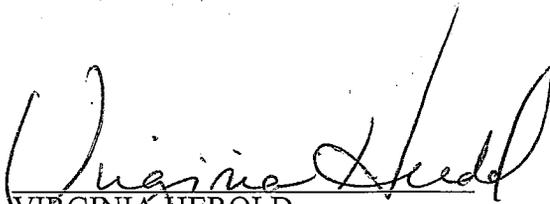
3 24. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code  
4 section 4301, subdivision (o), on the grounds of unprofessional conduct, in that in and between  
5 April 2006, and August 2007, Respondent violated state laws governing pharmacy, specifically,  
6 Bus. & Prof. Code sections 4051, subdivision (a), 4329, and 4322, as set forth in paragraph 22  
7 above.

8 **PRAYER**

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

- 11 1. Revoking or suspending Pharmacy Technician License Number  
12 TCH 13530, issued to Benito Plascencia, also known as Benito Martinez Plascencia and Benny  
13 Plascencia;
- 14 2. Ordering Benito Plascencia, also known as Benito Martinez Plascencia  
15 and Benny Plascencia, to pay the Board of Pharmacy the reasonable costs of the investigation and  
16 enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 17 3. Taking such other and further action as deemed necessary and proper.

18  
19 DATED: 8/4/09

20  
21   
22 VIRGINIA HEROLD  
23 Executive Officer  
24 Board of Pharmacy  
25 Department of Consumer Affairs  
26 State of California  
27 Complainant  
28