

1 KAMALA D. HARRIS
Attorney General of California
2 GLORIA A. BARRIOS
Senior Assistant Attorney General
3 KATHERINE MESSANA
Deputy Attorney General
4 State Bar No. 272953
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2554
6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

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. 4037

13 **ZAIDA JOHNSON**
14 **a.k.a., ZAIDA MICHELLE JOHNSON**

A C C U S A T I O N

15 5711 Charlotte Place
16 Palmdale, CA 93552

17 Pharmacy Technician Registration No.
18 TCH 27183

Respondent.

19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about September 23, 1998, the Board issued Pharmacy Technician Registration
24 No. TCH 27183 to Zaida Johnson, also known as Zaida Michelle Johnson ("Respondent"). The
25 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges
26 brought herein. The Registration expired on March 31, 2012, and has not been renewed.

27 **JURISDICTION AND STATUTORY PROVISIONS**

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

1 4. Section 4300 of the Code provides, in pertinent part, that every license issued by the
2 Board is subject to discipline, including suspension or revocation.

3 5. Sections 118 subdivision (b) of the Code grants the Board jurisdiction over
4 suspended, expired, forfeited, cancelled, or surrendered licenses:

5 “The suspension, expiration, or forfeiture by operation of law of a license
6 issued by a board in the department, or its suspension, forfeiture, or cancellation by
7 order of the board or by order of a court of law, or its surrender without the written
8 consent of the board, shall not, during any period in which it may be renewed,
9 restored, reissued, or reinstated, deprive the board of its authority to institute or
10 continue a disciplinary proceeding against the licensee upon any ground provided
11 by law or to enter an order suspending or revoking the license or otherwise taking
12 disciplinary action against the licensee on any such ground.”

13 6. Section 490 of the Code states, in pertinent part:

14 “(a) In addition to any other action that a board is permitted to take
15 against a licensee, a board may suspend or revoke a license on the ground that the
16 licensee has been convicted of a crime, if the crime is substantially related to the
17 qualifications, functions, or duties of the business or profession for which the license
18 was issued.

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

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

 7. Section 4060 of the Code states, in pertinent part:

 “No person shall 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 either Section 4052.1 or 4052.2. This section shall 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, when in
stock in containers correctly labeled with the name and address of the supplier or
producer.”

 ///

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

8. Section 4301 of the Code 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.

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

...

(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 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 contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

...

(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.”

///

///

1 **REGULATORY PROVISIONS**

2 9. California Code of Regulations, title 16, section 1770 states, in pertinent part:

3 “For the purpose of denial, suspension, or revocation of a personal or
4 facility license pursuant to Division 1.5 (commencing with Section 475) of the
5 Business and Professions Code, a crime or act shall be considered substantially
6 related to the qualifications, functions or duties of a licensee or registrant if to a
7 substantial degree it evidences present or potential unfitness of a licensee or registrant
8 to perform the functions authorized by his license or registration in a manner
9 consistent with the public health, safety, or welfare.”

10 **COST RECOVERY**

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

15 **CONTROLLED SUBSTANCE**

16 a. “Lorazepam,” is the generic name for Ativan. It is a Schedule IV controlled
17 substance as designated by Health and Safety Code section 11057, subdivision (d)(16) and is
18 categorized as a dangerous drug pursuant to section 4022 of the Code.

19 b. “Methylphenidate,” is a Schedule II controlled substance as designated by Health and
20 Safety Code section 11055, subdivision (d)(6) and is categorized as a dangerous drug pursuant to
21 section 4022 of the Code.

22 c. “Oxycontin,” is the brand name for Oxycodone. It is a Schedule II controlled
23 substance as designated by Health and Safety Code section 11055, subdivision (b)(1) and is
24 categorized as a dangerous drug pursuant to section 4022 of the Code.

25 d. “Phendimetrazine,” is a Schedule III controlled substance as designated by Health
26 and Safety Code section 11056, subdivision (b)(1)(M) and is categorized as a dangerous drug
27 pursuant to section 4022 of the Code.

28 e. “Xanax,” is the brand name for Alprazolam, an anti-anxiety benzodiazepine. It is a
Schedule IV controlled substance as designated by Health and Safety Code section 11057,
subdivision (d)(1) and is categorized as a dangerous drug pursuant to section 4022 of the Code.

1 **FIRST CAUSE FOR DISCIPLINE**

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

3 11. Respondent is subject to disciplinary action under section 4301, subdivision (l) and
4 section 490 of the Code, in conjunction with California Code of Regulations, title 16, section
5 1770, in that Respondent was convicted of a crime substantially related to the qualifications,
6 functions, and duties of a pharmacy technician, as follows:

7 12. On or about October 25, 2010, after pleading guilty, Respondent was convicted of
8 one felony count of violating Health and Safety Code section 11173, subdivision (a) [obtaining a
9 controlled substance by fraud], one felony count of violating Business and Professions Code
10 section 4324, subdivision (a) [forging a prescription], one felony count of violating Penal Code
11 section 530.5, subdivision (a) [identity theft], one felony count of violating Penal Code section
12 487, subdivision (a) [grand theft of personal property], one felony count of violating Health and
13 Safety Code section 11350, subdivision (a) [possession of a controlled substance], one felony
14 count of violating Health and Safety Code section 11377, subdivision (a) [possession a controlled
15 substance], and one felony count of violating Health and Safety Code section 11375, subdivision
16 (b)(1) [possession for sale/sale of a designated controlled substance] in the criminal proceeding
17 entitled *The People of the State of California v. Zaida Michelle Johnson* (Super. Ct. Los Angeles
18 County, 2010, No. BA375970).

19 13. The Court sentenced Respondent to serve 270 days in Los Angeles County Jail,
20 placed her on formal probation for a period of five (5) years with terms and conditions and
21 ordered her to pay restitution to Kaiser Permanente Foundation Health Plan in the amount of \$77,
22 701.00. The circumstances surrounding the conviction are, as follows:

23 14. At or about the time of the misconduct for which she was convicted, Respondent had
24 been employed as a pharmacy technician at Kaiser Permanente ("Kaiser"), in Lancaster, CA. On
25 or about August 19, 2009, Respondent unlawfully obtained and attempted to obtain a controlled
26 substance, to wit: Xanax, and procured and attempted to procure the administration of and
27 prescription for said controlled substance by fraud, deceit and misrepresentation. In addition, she
28 signed the name of another, and of a fictitious person, and falsely made, altered forged, uttered,

1 passed and attempted to pass, as genuine, a prescription for a drug, Xanax. Additionally, on or
2 between February 1, 2010 and March 30, 2010, Respondent willfully and unlawfully obtained
3 personal identifying information of P.T. and used the information for an unlawful purpose and to
4 obtain, and attempted to obtain credit, goods, services, real property, and medical information
5 without the consent of P.T. Furthermore, on or between August 19, 2009 and April 16, 2010,
6 Respondent unlawfully took money and personal property of a value exceeding four hundred
7 dollars (\$400), to wit: Money, the property of Kaiser. On or about April 16, 2010, Respondent
8 unlawfully possessed a controlled substance, to wit: Oxycontin, Methylphenidate, and
9 Phendimetrazine. In addition, on or about April 16, 2010, Respondent unlawfully possessed for
10 sale and sold a designated controlled substance, to wit: Lorazepam, Alprazolam, and Xanax.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Forged Prescriptions)**

13 15. Respondent is subject to disciplinary action under section 4301, subdivision (g) of the
14 Code in that while employed as a pharmacy technician at Kaiser, in Lancaster, CA Respondent
15 forged prescriptions. Additionally, Respondent was criminally convicted of one felony count of
16 violating section 4324, subdivision (a) of the Code [forging a prescription]. Complainant refers
17 to, and by this reference incorporates, the allegations set forth above in paragraphs 11 through 14,
18 as though set forth fully.

19 **THIRD CAUSE FOR DISCIPLINE**

20 **(Illegally Possessed Controlled Substances)**

21 16. Respondent is subject to disciplinary action under section 4060 of the Code in that
22 while employed as a pharmacy technician at Kaiser, in Lancaster, CA, Respondent obtained and
23 possessed controlled substances in violation of the law. Additionally, Respondent was criminally
24 convicted of one felony count of violating Health and Safety Code section 11350, subdivision (a)
25 [possession of a controlled substance], one felony count of violating Health and Safety Code
26 section 11377, subdivision (a) [possession of a controlled substance] and one felony count of
27 violating Health and Safety Code section 113675, subdivision (b)(1) [possession for sale/sale of
28

1 designated controlled substance]. Complainant refers to, and by this reference incorporates, the
2 allegations set forth above in paragraphs 11 through 14, as though set forth fully.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Acts Involving Dishonest Acts, Fraud, or Deceit)**

5 17. Respondent is subject to disciplinary action under section 4301, subdivision (f) of the
6 Code in that while employed as a pharmacy technician at Kaiser, in Lancaster, CA, Respondent
7 committed acts involving dishonesty, fraud, or deceit with the intent to substantially benefit
8 herself, or substantially injure another when she obtained controlled substances by forging
9 prescriptions. Additionally, Respondent was criminally convicted of one felony count of
10 violating Health and Safety Code section 11173, subdivision (a) [obtaining a controlled substance
11 by fraud], one felony count of violating section 4324, subdivision (a) of the Code [forging a
12 prescription], one felony count of violating Penal Code section 530.5, subdivision (a) [identity
13 theft] and one felony count of violating Penal Code section 487, subdivision (a) [grand theft of
14 personal property]. Complainant refers to, and by this reference incorporates, the allegations set
15 forth above in paragraphs 11 through 14, as though set forth fully.

16 **FIFTH CAUSE FOR DISCIPLINE**

17 **(Violation of Laws Regulating Controlled Substances)**

18 18. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the
19 Code in that Respondent violated California statutes regulating controlled substances when she
20 was convicted of two felony counts of violating Health and Safety Code section 11173,
21 subdivision (a), one felony count of violating Health and Safety Code section 11350, subdivision
22 (a) and one felony count of violating Health and Safety Code section 11375, subdivision (b)(1).
23 Complainant refers to, and by this reference incorporates, the allegations set forth above in
24 paragraphs 11 through 14, as though set forth fully.

25 **SIXTH CAUSE FOR DISCIPLINE**

26 **(Unprofessional Conduct)**

27 19. Respondent is subject to disciplinary action under section 4301 of the Code in that
28 Respondent was involved in a conspiracy to obtain controlled substances by fraud. Complainant

1 refers to, and by this reference incorporates, the allegations set forth above in paragraphs 11
2 through 14, as though set forth fully.

3 **SEVENTH CAUSE FOR DISCIPLINE**

4 **(Violation of Pharmacy Law)**

5 20. Respondent is subject to disciplinary action under section 4301, subdivision (o) of the
6 Code in that Respondent violated provisions of the Pharmacy Law when she was involved in a
7 conspiracy to obtain controlled substances by fraud. Complainant refers to, and by this reference
8 incorporates, the allegations set forth above in paragraphs 11 through 19, as though set forth fully.

9 ///

10 ///

11 ///

12 ///

13 ///

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

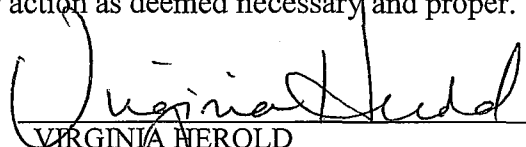
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 Registration No. TCH 27183, issued to Respondent;
2. Ordering Respondent to pay the Board the 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: 5/29/12



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

LA2011600652
51076130.doc