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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. 4129

13 **RINA LEANN SMITH**
14 **15622 Chadron Avenue**
15 **Gardena, CA 90249**

A C C U S A T I O N

16 **Pharmacy Technician Registration No. TCH**
17 **107236**

Respondent.

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 (Board).

22 2. On or about September 21, 2010, the Board issued Pharmacy Technician Registration
23 Number TCH 107236 to Rina Leann Smith (Respondent). The Pharmacy Technician
24 Registration was in full force and effect at all times relevant to the charges brought herein and
25 will expire on June 30, 2014, unless renewed.

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 (Code) unless otherwise
indicated.

1 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
2 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
3 of this provision. The board may take action when the time for appeal has elapsed, or the
4 judgment of conviction has been affirmed on appeal or when an order granting probation is made
5 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
6 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
7 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
8 indictment.

9

10 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
11 violation of or conspiring to violate any provision or term of this chapter or of the applicable
12 federal and state laws and regulations governing pharmacy, including regulations established by
13 the board or by any other state or federal regulatory agency.

14 6. Code section 4021 provides:

15 "Controlled substance" means any substance listed in Chapter 2 (commencing with Section
16 11053) of Division 10 of the Health and Safety Code.

17 7. Section 4022 of the Code states

18 "Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in
19 humans or animals, and includes the following:

20 "(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without
21 prescription," "Rx only," or words of similar import.

22 "(b) Any device that bears the statement: "Caution: federal law restricts this device to sale
23 by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled
24 in with the designation of the practitioner licensed to use or order use of the device.

25 "(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
26 prescription or furnished pursuant to Section 4006."

27 8. Section 4060 of the Code states:
28

1 "No person shall possess any controlled substance, except that furnished to a person upon
2 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
3 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
4 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
5 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
6 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
7 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
8 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
9 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
10 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
11 labeled with the name and address of the supplier or producer.

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

15 9. Section 490 of the Code states:

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

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

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

3 "(d) The Legislature hereby finds and declares that the application of this section has been
4 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal. App.
5 4th 554, and that the holding in that case has placed a significant number of statutes and
6 regulations in question, resulting in potential harm to the consumers of California from licensees
7 who have been convicted of crimes. Therefore, the Legislature finds and declares that this section
8 establishes an independent basis for a board to impose discipline upon a licensee, and that the
9 amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session do not
10 constitute a change to, but rather are declaratory of, existing law."

11 10. Section 492 of the Code states:

12 "Notwithstanding any other provision of law, successful completion of any diversion
13 program under the Penal Code, or successful completion of an alcohol and drug problem
14 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of
15 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2
16 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that
17 division, from taking disciplinary action against a licensee or from denying a license for
18 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a
19 record pertaining to an arrest.

20 This section shall not be construed to apply to any drug diversion program operated by any
21 agency established under Division 2 (commencing with Section 500) of this code, or any
22 initiative act referred to in that division."

23 REGULATORY PROVISIONS

24 11. California Code of Regulations, title 16, section 1770, states:

25 "For the purpose of denial, suspension, or revocation of a personal or facility license
26 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
27 crime or act shall be considered substantially related to the qualifications, functions or duties of a
28 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a

1 licensee or registrant to perform the functions authorized by his license or registration in a manner
2 consistent with the public health, safety, or welfare."

3 **CONTROLLED SUBSTANCES AND DANGEROUS DRUGS**

4 12. Marijuana is listed as a Schedule I controlled substance per Health and Safety Code
5 section 11054(d) (13).

6 13. Xanax, a brand name for alprazolam, a benzodiazepine, is a Schedule IV controlled
7 substance as designated by Health and Safety Code section 11057(d) (1) and is categorized as a
8 dangerous drug pursuant to section 4022.

9 14. Cocaine is listed as a Schedule II controlled substance as designated by Health and
10 Safety Code section 11055 and is categorized as a dangerous drug pursuant to section 4022.

11 **COST RECOVERY**

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

16 **FIRST CAUSE FOR DISCIPLINE**

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

18 16. Respondent has subjected her pharmacy technician registration to discipline under
19 Code section 490, Code section 4301 (l), and (o), in accordance with California Code of
20 Regulations, Title 16, section 1770 for unprofessional conduct because Respondent was convicted
21 of crimes substantially related to the qualifications, functions or duties of a pharmacy technician
22 which to a substantial degree evidence her present and potential unfitness to practice in a manner
23 consistent with the public health, safety, or welfare. The conviction is as follows:

24 a. On February 27, 2013, after pleading nolo contendere pursuant to Vehicle Code
25 section 23103.5, Respondent was convicted of one misdemeanor count of violating Vehicle Code
26 section 23103 in the criminal proceeding entitled the *People of the State of California v. Rina*
27 *Leann Smith* (Super. Ct. Los Angeles County, 2013, No. 2LT01072). The court placed her on
28

1 three (3) years summary probation, ordered her to pay a fine or do jail in lieu of the fine, and pay
2 restitution.

3 b. The circumstances underlying the conviction are that on or about December 17,
4 2011, Respondent was driving a black BMW while under the influence of marijuana. While
5 attempting to make a right turn she struck a power pole and totaled her car. She was transported
6 to the hospital with injuries. At the hospital, the arresting officer found Respondent had marijuana
7 in her possession and thirteen capsules containing an unknown white powdery substance.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Violation of a Statute Involving Controlled Substances and Dangerous Drugs)**

10 17. The Respondent has subjected her pharmacy technician registration to discipline under
11 Code section 492, Code section 4301(j) and (o), in accordance with Code section 4060, and
12 California Code of Regulations, Title 16, section 1770 for unprofessional conduct because
13 Respondent committed an act in violation of a statute of this state, of any other state, or of the
14 United States regulating controlled substances and dangerous drugs.

15 a. On March 6, 2011, at approximately 1 a.m., Gardena Police officers came across a
16 suspicious parked car. When they approached the car, they noted a strong smell of marijuana
17 coming from within the car. Respondent was asleep in the driver's seat of the car and the owner
18 of the car was asleep in the passenger seat of the car. Officers asked Respondent if they could
19 search the car. Respondent consented to the search and told them that there was marijuana and
20 Xanax in the car. The officers found marijuana inside Respondent's purse. In the center console,
21 the officers located a super glue container that contained six white tablets that read "ONAX."
22 Respondent admitted to the officers that those were "Zannies" and that they belonged to her. She
23 stated that she knew she had to have a prescription for them; but she had none. Respondent told
24 officers that she had bought them from a person known as, "White Chocolate." She stated that she
25 paid \$3.00 for a pill, and uses them for personal use.

26 b. On or about June 8, 2011, Respondent pled guilty to one misdemeanor count
27 of violating Business and Professions Code section 4060 [possession of a controlled substance
28 without a prescription], in the criminal proceeding entitled *The People of the State of California v.*

1 *Rina Leann Smith* (Super. Ct. Los Angeles, 2011, No. 1SY03431.) The court placed Respondent
2 on 18 months deferred entry of judgment, ordered Respondent to complete a 6 months drug
3 counseling program; and fined her. Respondent successfully completed the deferred entry of
4 judgment program on December 7, 2011. The court set aside the guilty plea and dismissed the
5 criminal case on December 7, 2011.

6 **THIRD CAUSE FOR DISCIPLINE**

7 **(Dangerous Use of Alcoholic Beverage)**

8 18. Respondent is subject to disciplinary action under section 4301(h) on the grounds of
9 unprofessional conduct in that on or about February 27, 2013, Respondent was convicted of a
10 crime involving the consumption of alcoholic beverage. Complaint refers to and by this reference
11 incorporates the allegations set forth above in paragraph 16, subparagraphs a and b, inclusive, as
12 though set forth fully.

13 **OTHER DISCIPLINARY CONSIDERATIONS**

14 19. On September 25, 2011, Respondent was arrested for violation of Health and Safety
15 Code section 11350(a), possession of cocaine. The circumstances surrounding that arrest are that
16 police officers contacted Respondent in the driver's seat of a parked car at a Travelodge motel in
17 Torrance, California. Respondent was alone and admitted to having marijuana in her possession.
18 A search of the vehicle recovered white and powdery substances in the center console of the car
19 next to the front passenger seat. Respondent identified the substance as cocaine. She stated that
20 earlier a friend had pulled out a bag of cocaine inside Respondent's car, and that some of the
21 cocaine spilled out from the bag into the center console.

22 **PRAYER**

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

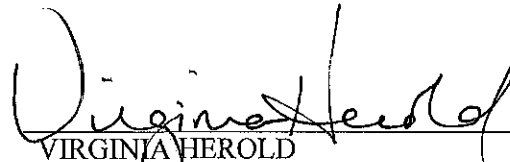
25 1. Revoking or suspending Pharmacy Technician Registration Number TCH 107236,
26 issued to Rina Leann Smith
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1 2. Ordering Rina Leann Smith to pay the Board of Pharmacy the reasonable costs of the
2 investigation and enforcement of this case, pursuant to Business and Professions Code section
3 125.3;

4 3. Taking such other and further action as deemed necessary and proper.
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8 DATED: _____

7/22/13



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

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