

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 DESIREE I. KELLOGG
Deputy Attorney General
4 State Bar No. 126461
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2996
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 4310

12 **KRISTINA MARIE PINARELLI**
13 **9022 Calle Del Verde**
14 **Santee, CA 92071**

ACCUSATION

15 **Pharmacy Technician Registration No.**
102205

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 October 13, 2010, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number 102205 to Kristina Marie Pinarelli (Respondent). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought
25 herein and will expire on November 30, 2013, unless renewed.

1 **JURISDICTION**

2 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
3 Consumer Affairs, under the authority of the following laws. All section references are to the
4 Business and Professions Code unless otherwise indicated.

5 4. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
6 surrender, cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
7 disciplinary action during the period within which the license may be renewed, restored, reissued
8 or reinstated.

9 5. Section 4300, subdivision (a) of the Code states "Every license issued may be
10 suspended or revoked."

11 **STATUTORY PROVISIONS**

12 6. Section 482 of the Code states:

13 Each board under the provisions of this code shall develop criteria to
14 evaluate the rehabilitation of a person when:

- 15 (a) Considering the denial of a license by the board under Section 480; or
- 16 (b) Considering suspension or revocation of a license under Section 490.

17 Each board shall take into account all competent evidence of rehabilitation
18 furnished by the applicant or licensee.

19 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or
20 revoke a license on the ground that the licensee has been convicted of a crime substantially
21 related to the qualifications, functions, or duties of the business or profession for which the
22 license was issued.

23 8. Section 493 of the Code states:

24 Notwithstanding any other provision of law, in a proceeding conducted by a
25 board within the department pursuant to law to deny an application for a license or
26 to suspend or revoke a license or otherwise take disciplinary action against a
27 person who holds a license, upon the ground that the applicant or the licensee has
28 been convicted of a crime substantially related to the qualifications, functions, and
duties of the licensee in question, the record of conviction of the crime shall be
conclusive evidence of the fact that the conviction occurred, but only of that fact,

1 and the board may inquire into the circumstances surrounding the commission of
2 the crime in order to fix the degree of discipline or to determine if the conviction is
substantially related to the qualifications, functions, and duties of the licensee in
question.

3 As used in this section, "license" includes "certificate," "permit,"
4 "authority," and "registration."

5 9. Section 4059 of the Code provides in part that a person may not furnish any
6 dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist,
7 veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any
8 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist,
9 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

10 10. Section 4060 of the Code states:

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

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

22 11. Section 4301 of the Code states:

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

27 (h) The administering to oneself, of any controlled substance, or the use of
28 any dangerous drug or of alcoholic beverages to the extent or in a manner as to be

1 dangerous or injurious to oneself, to a person holding a license under this chapter,
2 or to any other person or to the public, or to the extent that the use impairs the
3 ability of the person to conduct with safety to the public the practice authorized by
4 the license.

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

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

26 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
27 abetting the violation of or conspiring to violate any provision or term of this
28 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.

REGULATORY PROVISIONS

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

For the purpose of denial, suspension, or revocation of a personal or facility
license pursuant to Division 1.5 (commencing with Section 475) of the Business
and Professions Code, a crime or act shall be considered substantially related to

1 the qualifications, functions or duties of a licensee or registrant if to a substantial
2 degree it evidences present or potential unfitness of a licensee or registrant to
3 perform the functions authorized by his license or registration in a manner
4 consistent with the public health, safety, or welfare.

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

13. California Code of Regulations, title 16, section 1769, states:

....
(b) When considering the suspension or revocation of a facility or a personal license on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) Evidence, if any, of rehabilitation submitted by the licensee.

COST RECOVERY

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

DRUGS

15. Vicodin, a brand name for acetaminophen and hydrocodone, is a Schedule III controlled substance as designated by Health and Safety Code section 11055(b)(1), and is a dangerous drug pursuant to Business & Professions Code section 4022.

16. Xanax, a brand name for alprazolam, is a Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(1), and is a dangerous drug pursuant to Business and Professions Code section 4022.

17. Carisoprodol, a generic name for Soma, is a controlled substance as designated by federal statutes and is a dangerous drug pursuant to Business and Professions Code section 4022.

1 FIRST CAUSE FOR DISCIPLINE

2 **(May 1, 2012 Conviction for Transporting/Selling/Furnishing Controlled Substances and**
3 **Driving Under the Influence on May 17, 2011)**

4 18. Respondent is subject to disciplinary action under Code sections 490 and 4301(l) in
5 that she was convicted of crimes substantially related to the qualifications, functions and duties of
6 a pharmacy technician. The circumstances are as follows:

7 a. On or about May 1, 2012, in a criminal proceeding entitled *The People of the*
8 *State of California v. Kristina Marie Pinarelli*, in Riverside County Superior Court, case number
9 RIF1104016, Respondent was convicted on her plea of guilty for violating Health and Safety
10 Code section 11352(a), transports/sells/furnishes controlled substances, a felony and Vehicle
11 Code section 23152(a), driving under the influence of controlled substance, a misdemeanor.

12 b. As a result of the conviction, on or about May 1, 2012, Respondent was
13 committed to the custody of the Riverside County Sheriff for 145 days, sentenced to three years
14 formal probation, to enroll and successfully complete the electronic monitoring program (ankle
15 bracelet), to pay all applicable fees, fines and restitution and to participate in a counseling or
16 rehabilitation/treatment program deemed appropriate by her probation officer.

17 c. The facts that led to the conviction were that on or about May 17, 2011, the
18 California Highway Patrol responded to a report that Respondent's vehicle was stopped within
19 the center divider of northbound I-15, north of El Cerrito Road in Temecula, California. The
20 officers initiated contact with Respondent. They observed that Respondent's eyes were extremely
21 bloodshot and dilated, she had an unsteady gait, she appeared disoriented and she spoke in a slow
22 and slurred manner. The officers determined that she was under the influence of a CNS
23 depressant. An officer searched Respondent and found 79 tablets of hydrocodone in her right
24 front pocket of her pants and after she told the officer that she did not have any additional pills,
25 the officer found 83 Xanax tablets and 1 Vicodin tablet in the left front pocket of her pants.
26 Another officer found 92 Xanax tablets and 24 Cardisoprodal tablets in Respondent's vehicle.
27 Respondent was subsequently arrested.

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

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Use of Drugs in a Dangerous Manner)

19. Respondent is subject to disciplinary action for unprofessional conduct under section 4301(h) of the Code in that she used controlled substances to the extent or in a manner as to be dangerous or injurious to herself or others, as set forth in paragraph 18, above.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Violating Law Regulating Controlled Substances)

20. Respondent is subject to disciplinary action under section 4301(j) of the Code in that on or about May 17, 2011, Respondent violated the California Uniform Controlled Substances Act (Health and Safety Code 11000, *et seq.*) as is more fully described in paragraph 18 above.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Violations of Chapter)

21. Respondent is subject to disciplinary action under Code section 4301(o) for violation of the Pharmacy Act in that on or about May 17, 2011, Respondent furnished to herself and possessed controlled substances, in violation of Code sections 4059 and 4060 as is more fully described in Paragraph 18, above.

PRAYER

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

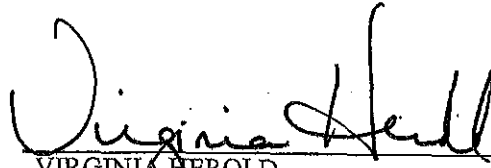
1. Revoking or suspending Pharmacy Technician Registration Number 102205, issued to Kristina Marie Pinarelli;
2. Ordering Kristina Marie Pinarelli to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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. Taking such other and further action as deemed necessary and proper.

DATED:

7/26/12



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

SD2012703445/70562807.doc