

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 KIM M. SETTLES
Deputy Attorney General
4 State Bar No. 116945
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 622-2138
Facsimile: (510) 622-2270
7 *Attorneys for Complainant*

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. 4342

13 **JAYLENE M. BINSTOCK**
2327 Alice Street
Napa, California 94558

A C C U S A T I O N

14 **Pharmacy Technician License No.**
15 **TCH73691**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about January 22, 2007, the Board of Pharmacy issued Pharmacy Technician
22 License Number TCH73691 to Jaylene M. Binstock (Respondent). The Pharmacy Technician
23 License was in full force and effect at all times relevant to the charges brought in this Accusation.
24 The Pharmacy Technician License expired on June 30, 2012.

25 **JURISDICTION**

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

1 **STATUTORY/REGULATORY PROVISIONS**

2 4. Section 4300 of the Code states, in pertinent part:

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

4 5. Section 4301 of the Code states:

5 "The board shall take action against any holder of a license who is guilty of unprofessional
6 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

7 Unprofessional conduct shall include, but is not limited to, any of the following:

8

9 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
10 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
11 whether the act is a felony or misdemeanor or not.

12

13 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous
14 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
15 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
16 to the extent that the use impairs the ability of the person to conduct with safety to the public the
17 practice authorized by the license.

18

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

21

22 "(l) The conviction of a crime substantially related to the qualifications, functions, and
23 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
24 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
25 substances or of a violation of the statutes of this state regulating controlled substances or
26 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
27 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

28 The board may inquire into the circumstances surrounding the commission of the crime, in order

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

11

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

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

17 "For the purpose of denial, suspension, or revocation of a personal or facility license
18 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
19 crime or act shall be considered substantially related to the qualifications, functions or duties of a
20 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
21 licensee or registrant to perform the functions authorized by his license or registration in a manner
22 consistent with the public health, safety, or welfare."

23 7. Section 4060 of the Code states:

24 "No person shall possess any controlled substance, except that furnished to a person upon
25 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic
26 doctor. . ."

27 8. Section 4022 of the Code states:

28 ///

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

3

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

6 **COST RECOVERY**

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

11 **DRUGS**

12 10. "**Valium**" (generic name "Diazepam") is a muscle relaxant used to relieve anxiety. It
13 is a Schedule IV controlled substance, as designated by Health and Safety Code section 11057,
14 subdivision (d)(9), and a dangerous drug pursuant to Business and Professions Code section
15 4022.

16 11. "**Xanax**" (generic name "Alprazolam") is used to relieve anxiety. It is a Schedule IV
17 controlled substance, as designated by Health and Safety Code section 11057, subdivision (d)(1),
18 and a dangerous drug pursuant to Business and Professions Code section 4022.

19 12. "**Celexa**" (generic name "Citalopram") is used to relieve depression. It is a
20 dangerous drug pursuant to Business and Professions Code section 4022.

21 13. "**Vicodin**" (generic name "Hydrocodone/Acetaminophen") is used to relieve
22 moderate to severe pain. It is a Schedule III controlled substance, as designated by Health and
23 Safety Code section 11056, subdivision (e)(4), and a dangerous drug pursuant to Business and
24 Professions Code section 4022.

25 14. "**Norco**" (generic name "Hydrocodone/Acetaminophen") is used to relieve moderate
26 to severe pain. It is a Schedule III controlled substance, as designated by Health and Safety Code
27 section 11056, subdivision (e)(4), and a dangerous drug pursuant to Business and Professions
28 Code section 4022.

1 15. “**Lortab**” (generic name “Hydrocodone/Acetaminophen”) is used to relieve moderate
2 to severe pain. It is a Schedule III controlled substance, as designated by Health and Safety Code
3 section 11056, subdivision (e)(4), and a dangerous drug pursuant to Business and Professions
4 Code section 4022.

5 16. “**Lorcet**” (generic name “Hydrocodone/Acetaminophen”) is used to relieve moderate
6 to severe pain. It is a Schedule III controlled substance, as designated by Health and Safety Code
7 section 11056, subdivision (e)(4), and a dangerous drug pursuant to Business and Professions
8 Code section 4022.

9 17. “**Methadone**” is used to relieve addiction and moderate to severe pain that has not
10 been relieve by non-narcotic pain relievers. It is a Schedule II controlled substance, as designated
11 by Health and Safety Code section 11055, subdivision (c)(14), and a dangerous drug pursuant to
12 Business and Professions Code section 4022.

13 18. “**Oxycodone HCL**” is used to relieve moderate to severe pain. It is a Schedule II
14 controlled substance, as designated by Health and Safety Code section 11055, subdivision
15 (b)(1)(M), and a dangerous drug pursuant to Business and Professions Code section 4022.

16 19. “**Lyrica**” (generic name “Pregabalin”) is used to releave neuropathic pain. It is a
17 Schedule V controlled substance, as designated by Code of Federal Regulations section 1308.15,
18 subdivision (e)(1), and a dangerous drug pursuant to Business and Professions Code section 4022.

19 20. “**Librium**” (generic name “Chlordiazepoxide”) is used to relieve anxiety. It is a
20 Schedule IV controlled substance, as designated by Health and Safety Code section 11057,
21 subdivision (d)(5), and a dangerous drug pursuant to Business and Professions Code section
22 4022.

23 21. “**Klonopin**” (generic name “Clonazepam”) is used to relieve anxiety. It is a Schedule
24 IV controlled substance, as designated by Health and Safety Code section 11057, subdivision
25 (d)(7), and a dangerous drug pursuant to Business and Professions Code section 4022.

26 22. “**Phenobarbital**” is an anti-convulsant. It is used to relieve anxiety. It is a Schedule
27 IV controlled substance, as designated by Health and Safety Code section 11057, subdivision
28 (d)(26), and a dangerous drug pursuant to Business and Professions Code section 4022.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct - Conviction of Substantially Related Crime)**

3 23. Respondent is subject to disciplinary action under Code section 4301, subdivision (l),
4 in that she was convicted of a crime substantially related to the qualifications, functions, and
5 duties of a pharmacy technician, as defined in title 16, California Code of Regulations, section
6 1770. The circumstances are set forth in paragraph 24, below.

7 24. On or about October 13, 2011, in *People v. Jaylene Marie Binstock*, Napa County
8 Superior Court case number CR158224, Respondent pled guilty to violating Health and Safety
9 Code section 11350, subdivision (a) (possession of controlled substance) and Penal Code section
10 484/488 (petty theft). Imposition of sentence was suspended and Respondent was placed on two
11 years probation under terms which included, but were not limited to completion of an 18-month
12 Drug Treatment Program, two days in jail, 40 hours work program, and payment of fines and
13 fees.

14 The circumstances of the conviction are that on or about July 7, 2011, Respondent was
15 arrested by an American Canyon Police Officer for being under the influence of a controlled
16 substance. Respondent was in possession of Vicodin (62 tablets), Diazepam (13 tablets),
17 Alprazolam (16 tablets), without a valid prescription, and twelve used hypodermic needles, and
18 three packaged hypodermic needles. Binstock informed the officer that she has taken
19 unprescribed Valium, Xanax, Celexa, and Norco, and that she injected herself with Valium earlier
20 that day.

21 Respondent was employed as a pharmacy technician at Veterans Home of California –
22 Pharmacy Service, in Yountville, California, from June 12, 2007 until Respondent voluntarily
23 resigned from her position on July 21, 2011. An investigation and inventory of controlled
24 substances was conducted after Respondent’s July 7, 2011 arrest. The Veterans Home of
25 California – Pharmacy Service completed the inventory on July 12, 2011, and reported to the
26 Drug Enforcement Administration that the following drugs were missing:

<u>Drug</u>	<u>Quantity</u>
Lyrica 75 mg capsule	90

1	Hydrocodone/APAP 5-500 tablet	106
2	Hydrocodone/APAP 10-325 tablet	584
3	Chlordiazepoxide 25 mg capsule	94
4	Diazepam 10 mg tablet	43
5	Clonazepam .5 mg tablet	100
6	Alprazolam .5 mg tablet	136
7	Phenobarbital 15 mg tablet	78

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Violation of State Statutes

Regulating Controlled Substances and Dangerous Drugs)

25. Respondent is subject to disciplinary action under Code section 4301, subdivisions (j) and (o), in that she engaged in unprofessional conduct by violating a statute of this state regulating controlled substances and dangerous drugs, namely Code section 4060. The circumstances are set forth in paragraph 24, above.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Dishonesty)

26. Respondent is subject to disciplinary action under Code section 4301, subdivision (f) in that she engaged in unprofessional conduct by committing an act of dishonesty, namely petty theft. The circumstances are set forth in paragraph 24, above.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Use of Dangerous Drug)

27. Respondent is subject to disciplinary action under Code section 4301, subdivision (h) in that she engaged in unprofessional conduct by administering to herself and/or using controlled substances and/or dangerous drugs, in a manner dangerous to herself and/or to the public.

25 ///
26 ///
27 ///
28 ///

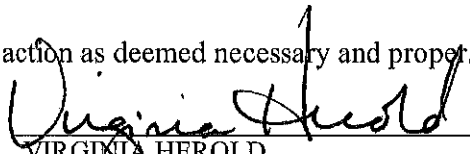
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PRAYER

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

1. Revoking or suspending Pharmacy Technician License Number TCH73691, issued to Jaylene M. Binstock;
2. Ordering Jaylene M. Binstock 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;
3. Taking such other and further action as deemed necessary and proper.

DATED: 10/25/12


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

SF2012401909
90254988.doc