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

12 In the Matter of the Accusation Against:

Case No. 4620

13 **BRITTNEY ZUNIGA**  
14 **1528 4th Street**  
**Norco, CA 92860**

**A C C U S A T I O N**

15 **Pharmacy Technician Registration**  
16 **No. TCH 126842**

17 Respondent.

18  
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.

23 2. On or about September 24, 2012, the Board of Pharmacy issued Pharmacy Technician  
24 Registration Number TCH 126842 to Brittney Zuniga (Respondent). The Pharmacy Technician  
25 Registration was in full force and effect at all times relevant to the charges brought herein and  
26 will expire on August 31, 2014, unless renewed.

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## JURISDICTION

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

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

5. Section 4300.1 of the Code states:

The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.

## STATUTORY PROVISIONS

6. Section 482 of the Code states:

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

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

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

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

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has 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, and the board may inquire into the circumstances surrounding the commission of 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.

1           As used in this section, "license" includes "certificate," "permit," "authority,"  
2           and "registration."

3           9.     Section 4301 of the Code states:

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

8           ....

9           (f) The commission of any act involving moral turpitude, dishonesty, fraud,  
10          deceit, or corruption, whether the act is committed in the course of relations as a  
11          licensee or otherwise, and 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  
14          dangerous drug or of alcoholic beverages to the extent or in a manner as to be  
15          dangerous or injurious to oneself, to a person holding a license under this chapter, or  
16          to any other person or to the public, or to the extent that the use impairs the ability of  
17          the person to conduct with safety to the public the 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  
20          United States regulating controlled substances and dangerous drugs.

21          ....

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

41          ....

42          (o) Violating or attempting to violate, directly or indirectly, or assisting in or  
43          abetting the violation of or conspiring to violate any provision or term of this chapter

1 or of the applicable federal and state laws and regulations governing pharmacy,  
2 including regulations established by the board or by any other state or federal  
regulatory agency. . .

3 10. Section 4022 of the Code states

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

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

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

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

11 11. Section 4059 of the Code provides, in pertinent part, that a person may not furnish  
12 any dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,  
13 veterinarian, or naturopathic.

14 12. Section 4060 of the Code provides, in pertinent part, that no person shall possess any  
15 controlled substance, except that furnished to a person upon the prescription of a physician,  
16 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor.

17 13. United States Code, title 21, section 843 states, in pertinent part:

18 (a) It shall be unlawful for any person knowingly or intentionally –

19 . . . .

20 (3) to acquire or obtain possession of a controlled substance by  
21 misrepresentation, fraud, forgery, deception, or subterfuge;

22 . . . .

### 23 REGULATORY PROVISIONS

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

25 . . . .

26 (b) When considering the suspension or revocation of a facility or a personal  
27 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  
28 eligibility for a license will consider the following criteria:

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

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

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

12 **COSTS**

13 16. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
14 administrative law judge to direct a licentiate found to have committed a violation or violations of  
15 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
16 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being  
17 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
18 included in a stipulated settlement.

19 **DRUG**

20 17. Alprazolam, the generic name for Xanax, is a Schedule IV controlled substance under  
21 California Health and Safety Code section 11057, subdivision (d)(1), and is classified as a  
22 dangerous drug pursuant to Business and Professions Code section 4022. Alprazolam is indicated  
23 for the management of anxiety disorder or the short-term relief of symptoms of anxiety.

24 **FIRST CAUSE FOR DISCIPLINE**

25 **(November 8, 2012 Criminal Conviction for Theft on September 21, 2012)**

26 18. Respondent has subjected her registration to discipline under sections 490 and 4301,  
27 subdivision (l) of the Code in that she was convicted of a crime that is substantially related to the  
28 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

1 a. On or about November 8, 2012, in a criminal proceeding entitled *People of the*  
2 *State of California v. Brittney Zuniga*, in Riverside County Superior Court, case number  
3 RIM1213919, Respondent was convicted on her plea of guilty to violating Penal Code section  
4 490.5, theft of retail merchandise, a misdemeanor. Pursuant to Respondent's plea agreement, the  
5 court dismissed the original count of violating Penal Code section 488, petty theft.

6 b. As a result of the conviction, on or about November 8, 2012, Respondent was  
7 sentenced to 10 days in jail, to be served in the Sheriff's Labor Program. Respondent was granted  
8 summary probation for 36 months, ordered to pay fees, fines, and restitution, submit to a Fourth  
9 Amendment waiver, and comply with the terms of probation, which included a stay away order  
10 for Walgreens.

11 c. The facts that led to the conviction are that on or about September 21, 2012, a  
12 Riverside County Sheriff's Deputy was dispatched to a Walgreens drug store in Eastvale in  
13 reference to an employee theft of controlled substances. Upon arrival, the deputy spoke to the  
14 store's loss prevention manager who explained that Respondent had started working at the  
15 Walgreens three weeks earlier as part of her externship program. He received an anonymous tip  
16 that Respondent had stolen prescription medications from Walgreens. The loss prevention officer  
17 confronted Respondent who admitted that she had taken a bottle of pills and three makeup  
18 brushes. When questioned by the deputy, Respondent stated that she had recently broken up with  
19 her boyfriend and was depressed. She looked up different medications in her pharmacy  
20 technician textbook and saw that Alprazolam was used to treat depression. On September 11,  
21 2012, while working in the pharmacy, Respondent came across an open bottle of Alprazolam.  
22 Respondent put the bottle in her pocket and took it to the restroom where she removed  
23 approximately 12 tablets and threw the bottle away in the trash. Respondent stated she consumed  
24 two of the tablets, and took the remainder home. Respondent was arrested for embezzlement.

25 **SECOND CAUSE FOR DISCIPLINE**

26 **(Commission of Acts Involving Dishonesty, Fraud, Deceit & Corruption)**

27 19. Respondent has subjected her registration to discipline under section 4301,  
28 subdivision (f) of the Code for unprofessional conduct in that on or around September 11, 2012,

1 Respondent obtained controlled substances from her employer/pharmacy using fraud, deceit, and  
2 dishonesty, as described in paragraph 18, above.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Illegal Use of a Controlled Substance)**

5 20. Respondent has subjected her registration to discipline under section 4301,  
6 subdivision (h) of the Code for unprofessional conduct in that on or around September 11, 2012,  
7 Respondent admitted she administered to herself a controlled substance, without a prescription,  
8 conduct that was dangerous or injurious to herself, and impaired Respondent's ability to safely  
9 conduct practice as a pharmacy technician, as described in paragraph 18, above.

10 **FOURTH CAUSE FOR DISCIPLINE**

11 **(Violation of California Statutes Regulating Controlled Substances)**

12 21. Respondent is subject to disciplinary action under section 4301, subdivision (j)  
13 of the Code for unprofessional conduct in that on or about September 11, 2012, Respondent  
14 knowingly violated Business and Professions Code sections 4022, 4059, and 4060, as described  
15 in paragraph 18, above.

16 **FIFTH CAUSE FOR DISCIPLINE**

17 **(Violating Federal & State Laws & Regulations Governing Pharmacy)**

18 22. Respondent is subject to disciplinary action under section 4301, subdivision (o) of the  
19 Code for unprofessional conduct in that on or about September 11, 2012, Respondent violated  
20 Title 21 U.S.C. section 843, subdivision (a)(3), Board of Pharmacy Regulations (California Code  
21 of Regulations, Title 16, Section 1700, et seq.), and the California Uniform Controlled Substances  
22 Act (Health and Safety Code 11000, et seq.), when she obtained controlled substances using fraud  
23 and deceit, as described in paragraph 18, above.

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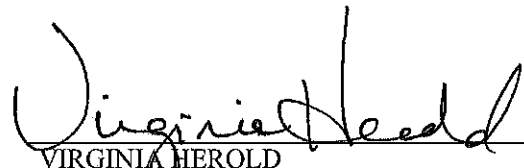
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**PRAYER**

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 TCH 126842, issued to Brittney Zuniga;
2. Ordering Brittney Zuniga 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: 7/22/13



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

SD2013705123