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BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **RITA LYNN BARNES** 13639 3rd Street #1 Yucaipa, CA 92399 Pharmacy Technician Registration No. TCH 74729 Respondent.	Case No. 4914 **A C C U S A T I O N**

Complainant alleges:

PARTIES

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

2. On or about May 17, 2007, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 74729 to Rita Lynn Barnes (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2014, unless renewed.

JURISDICTION

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 unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 490 states, in pertinent part:

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

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

"(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken 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 the provisions of Section 1203.4 of the Penal Code."

5. Section 4060 states:

"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, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. 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.

"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."

6. Section 4300 provides in pertinent part, that every license issued by the Boards is subject to discipline, including suspension or revocation.

7. Section 4300.1 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."

8. Section 4301 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.

. . . .

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

. . .

"(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."

9. Health and Safety Code section 11170 states, in pertinent part:

"No person shall prescribe, administer, or furnish a controlled substance for himself."

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REGULATORY PROVISIONS

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

"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 the 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."

COST RECOVERY

11. Section 125.3 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, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

12. **CONTROLLED SUBSTANCES/DANGEROUS DRUGS**

a. "Methocarbamol," is a medication that relaxes muscles, and used along with rest and physical therapy to decrease muscle pain and spasms associated with strains, sprains or other muscle injuries

b. "Xanax," a brand name for alprazolam, is an anti-anxiety benzodiazepine and is 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.

FIRST CAUSE FOR DISCIPLINE

(Conviction of a Substantially Related Crime)

13. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and 490, in conjunction with California Code of Regulations, title 16, section 1770, in that,

Respondent was convicted of a crime substantially related to the qualifications, functions or duties of a pharmacy technician, as follows:

a. On or about February 1, 2013, after pleading guilty. Respondent was convicted of one felony count of violating Penal Code section 487, subdivision (a) [grand theft by embezzlement] in the criminal proceeding entitled *The People of the State of California v. Rita Barnes* (Super. Ct. San Bernardino County, 2012, No. FSB1205565.) The Court sentenced Respondent to serve 120 days in San Bernardino County Jail and placed her on 36 months formal probation, with terms and conditions.

b. The circumstances surrounding the conviction are that on or about November 21, 2012, Respondent was employed as a pharmacy technician at CVS Pharmacy, in Yucaipa, CA. Due to a discrepancy in pharmacy's inventory, loss prevention personnel were asked to conduct an investigation. During an interview with CVS Loss Prevention, Respondent admitted in a written statement to activating CVS gift cards for her personal use in the amount of $1,800, and diverting Xanax, Methocarbamol and Vicodin over the course of 6-8 months for self consumption. Respondent admitted in diverting 1 bottle of Xanax and 30 to 40 pills of Methocarbamol in the morning of her arrest. She admitted that she had no physician prescriptions and no permission to take Xanax and Methocarbamol. Respondent stated that she removed Xanax and Methocarbamol from CVS Pharmacy by hiding them in her bra. When asked the most amount of pills she took in one day Respondent replied taking 1 bottle of 1mg and 2 mg Xanax and 60 pills of 500 mg Methocarbamol. When asked how many pills she took in one week on average, Respondent admitted taking 3 to 4 bottles of Xanax and 1 and ½ bottles of Methocarbamol and 30 pills of Vicodin 5/500. Respondent admitted that she caused CVS to suffer a financial loss in the amount of $3,986.96 by taking said medications without permission. When asked how she obtained the gift cards, Respondent stated "[J]ust like I would for a customer using the code." Respondent activated the gift cards for $25 to $35 for her personal use for approximately one year. During the interview CVS determined that Respondent stole approximately 5,040 Xanax pills and 4800 Methocarbamol pills. Further, during the interview

Respondent admitted in having two bottles of medications in her car, which she had taken prior to being contacted by CVS Loss and Prevention Agent.

c. When interviewed by San Bernardino Sheriff's Department, Respondent admitted to stealing the number of pills and gift cards alleged by CVS. When asked by San Bernardino Sheriff's Department if the number of approximately 5000 Xanax pills was correct, since it seemed like a very large amount, Respondent replied affirmatively. Respondent further admitted in taking some pills on November 21, 2012, in the morning of her arrest, by concealing them inside her bra and subsequently concealing them in her vehicle parked outside the CVS store. Respondent gave permission to the San Bernardino Sheriff's Deputy to retrieve the medications from the center console of her vehicle. The deputy recovered an unopened bottle of Xanax and another prescription bottle labeled for an unknown customer for Methocarbamol from the center console of Respondent's vehicle. The San Bernardino Sheriff's Deputy asked the Respondent whether she was selling any of the medication pills referenced above. Respondent replied in negative. The San Bernardino Sheriff's Deputy confronted the Respondent with the fact that 5000 pills over 180 days or 200 days time period meant that she was consuming between 25 and 29 pills daily which seemed to be a large intake of medication pills would have led to overdose and/or organ failure. Respondent replied that she did not take the pills in those quantities every day, but that she did take large amounts. Respondent was subsequently arrested, charged and booked into the Central Detention Center.

SECOND CAUSE FOR DISCIPLINE

(Acts Involving Dishonesty, Fraud, or Deceit)

14. Respondent is subject to disciplinary action under section 4301, subdivision (f), in that while employed as a pharmacy technician for CVS Pharmacy, Respondent committed acts involving dishonesty, fraud, or deceit with the intent to substantially benefit herself, or substantially injure another. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 13, subparagraph (b), as though set forth fully.

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THIRD CAUSE FOR DISCIPLINE

(Illegally Obtained or Possessed Controlled Substances/Dangerous Drugs)

15. Respondent is subject to disciplinary action under section 4301, subdivision (j) and (o), for violating section 4060, in that Respondent illegally obtained or possessed controlled substances while working as a pharmacy technician at CVS Pharmacy. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 13, subparagraph (b), as though set forth fully.

FOURTH CAUSE FOR DISCIPLINE

(Use of Controlled Substances/Dangerous Drugs)

16. Respondent is subject to disciplinary action under section 4301, subdivision (h), on the grounds of unprofessional conduct, in that Respondent, by her own admission, took Xanax and Methocarbamol from the pharmacy for her own use. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 13, subparagraph (b), as though set forth in fully.

FIFTH CAUSE FOR DISCIPLINE

(Furnished Controlled Substances/Dangerous Drugs)

17. Respondent is subject to disciplinary action under section 4301, subdivision (j) in conjunction with Health and Safety Code section 11170, in that Respondent furnished controlled substances/dangerous drugs to herself while working as a pharmacy technician at CVS Pharmacy. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 13, subparagraph (b), as though set forth fully.

SIXTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct/ Violation of Licensing Chapter)

18. Respondent is subject to disciplinary action under section 4301, (o), in that Respondent committed acts of unprofessional conduct and/ or violated provisions of the licensing chapter. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 13-17, inclusive, as though set forth fully.

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SEVENTH CAUSE FOR DISCIPLINE

(Dispensing or Compounding While Under the Influence of Drugs)

19. Respondent is subject to disciplinary action under section 4301, (h), in that Respondent administered to herself controlled substances which impaired her ability to conduct with safety to the public the practice authorized by her license. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 13-18, inclusive, as though set forth fully.

EIGHTH CAUSE FOR DISCIPLINE

(Unlawful Possession and Administration of a Controlled Substance)

20. Respondent is subject to disciplinary action under section 11170 of the Health and safety Code, in that Respondent administered or furnished controlled substances to herself. Respondent admitted in a signed written statement to diverting Xanax, Methocarbamol and Vicodin over the course of 6 to 8 months for self consumption, without any prescription.

Respondent admitted in diverting 1 bottle of Xanax and 30 to 40 pills of Methocarbamol in the morning of her arrest on November 21, 2012. She admitted that she had no physician prescriptions and no permission to take Xanax and Methocarbamol. Respondent stated that she removed Xanax and Methocarbamol from CVS Pharmacy by hiding them in her bra. When asked the most amount of pills she took in one day Respondent replied taking 1 bottle of 1mg and 2 mg Xanax and 60 pills of 500 mg Methocarbamol. When asked how many pills she took in one week on average, Respondent admitted taking 3 to 4 bottles of Xanax and 1 and ½ bottles of Methocarbamol and 30 pills of Vicodin 5/500. . Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 13-19, inclusive, as though set forth fully.

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 74729, 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: 5/8/14

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

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