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

In the Matter of the Accusation Against: **GEORGIA NICOLE BANKE** **103 Citrine Court** **Hercules, California 94547** **Pharmacy Technician Registration Number TCH 38759,** Respondent.	Case Number 5047 **A C C U S A T I O N**

Complainant Virginia Herold alleges:

PARTIES

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

2. On or about July 23, 2001, the Board issued Pharmacy Technician Registration Number TCH 38759 to respondent Georgia Nicole Banke. This pharmacy technician registration was in full force and effect at all times relevant to the charges brought in this accusation and will expire on May 31, 2015, 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.

4. Section 4011 states:

"The board shall administer and enforce this chapter and the Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code)."

5. Section 4300 states in part:

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

"(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

"(1) Suspending judgment.

"(2) Placing him or her upon probation.

"(3) Suspending his or her right to practice for a period not exceeding one year.

"(4) Revoking his or her license.

"(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper."

6. 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."

7. Section 4304 states:

"The board may deny, revoke, or suspend any license issued pursuant to Section 4161 for any violation of this chapter or for any violation of Part 5 (commencing with Section 109875) of Division 104 of the Health and Safety Code."

STATUTORY PROVISIONS

8. Section 4060 states in part:

"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, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either Section 4052.1 or 4052.2."

9. Section 4301 states in 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:

. . .

"(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, of any other state, or of the United States regulating controlled substances and dangerous drugs.

. . .

"(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."

10. Section 4327 states:

"Any person who, while on duty, sells, dispenses or compounds any drug while under the influence of any dangerous drug or alcoholic beverages shall be guilty of a misdemeanor."

11. Health and Safety Code section 11057 states in part:

"(a) The controlled substances listed in this section are included in Schedule IV.

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"(b) Schedule IV shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

. . .

"(d) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

"(1) Alprazolam."

12. Health and Safety Code section 11170 provides:

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

COST RECOVERY

13. Section 125.3, subdivision (a), states:

"Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board, upon request of the entity bringing the proceedings, the administrative law judge may 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

14. Alprazolam, also known by the brand name "Xanax," is a Schedule IV controlled substance under Health and Safety Code section 11057, subdivision (d)(1), and a dangerous drug within the meaning of Business and Professions Code section 4022. It is used for the management of anxiety disorders or for the short-term relief of the symptoms of anxiety.

FACTUAL BACKGROUND

15. From 2005 to April 2013, respondent worked at Kaiser Health Plan North in Pleasanton, California. On March 7, 2013, respondent worked as a pharmacy technician and staffed the cash register, returned stock, filled prescriptions, and placed a prescription order.

16. Pharmacy personnel that day noticed respondent shaking, and speaking and blinking slowly. Her eyes were glassy. She could not log into the computer with her password and kept

trying to log in even after being told that the computer had locked her out. She took over 45 minutes to complete a task that should have been done in less than 10 minutes. She walked unsteadily and once walked sideways instead of straight forward. She was asked to reconstitute (add water to powder) a prescription into a 50 ml bottle; about 5 minutes later she brought back two 75 ml bottles. When informed of her mistake, it took her about 3 more minutes to reconstitute the single 50 ml bottle.

17. Respondent consented to a drug test which was positive for alprazolam. She stated that she did not have a prescription for the drug and got it from her stepmother to help her sleep. She found that it helped her cope with the stress of her workplace, the illnesses in her family, and her sleeplessness. She said that she made a mistake by accepting the alprazolam. She had begun taking the alprazolam around the beginning of 2012 and used it about twice a week. She admitted taking alprazolam the night before going to work on March 7, 2013.

18. Kaiser Health Plan North terminated respondent on or about April 15, 2013.

CAUSES FOR DISCIPLINE

FIRST CAUSE FOR DISCIPLINE
Unprofessional Conduct – Possession of Controlled Substance
Business and Professions Code sections 4060 and 4301, subdivisions (j) and (o)

19. The allegations of paragraphs 15-18 are realleged and incorporated by reference as if fully set forth.

20. Respondent has subjected her pharmacy technician registration to disciplinary action under sections 4060 and 4301, subdivisions (j) and (o), for the unprofessional conduct of possession of a controlled substance. As set forth in paragraphs 15-18 above, respondent possessed alprazolam without a prescription or any authorization from a pharmacy.

SECOND CAUSE FOR DISCIPLINE
Unprofessional Conduct – Self-administration of a Controlled Substance so as to Be a Danger to Self or Others, or Impair the Ability to Practice
Business and Professions Code section 4301, subdivision (h)

21. The allegations of paragraphs 15-18 are realleged and incorporated by reference as if fully set forth.

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22. Respondent has subjected her pharmacy technician registration to disciplinary action under section 4301, subdivisions (h), for the unprofessional conduct of self-administration of a controlled substance to the extent as to be dangerous or injurious to oneself or another person, or to the extent that the use impaired her ability to conduct the licensed practice with safety to the public. As set forth in paragraphs 15-18 above, respondent tested positive for alprazolam and admitted taking the drug without a prescription the night before going to work as a pharmacy technician at Kaiser Health Plan North.

THIRD CAUSE FOR DISCIPLINE
Unprofessional Conduct – Self-administration of a Controlled Substance
Business and Professions Code section 4301, subdivision (j), and
Health and Safety Code section 11170

23. The allegations of paragraphs 15-18 are realleged and incorporated by reference as if fully set forth.

24. Respondent has subjected her pharmacy technician registration to disciplinary action under Business and Professions Code section 4301, subdivision (j), and Health and Safety Code section 11170, for the unprofessional conduct of self-administration of a controlled substance. As set forth in paragraphs 15-18 above, respondent tested positive for alprazolam and admitted taking the drug without a prescription.

FOURTH CAUSE FOR DISCIPLINE
Unprofessional Conduct – Under the Influence While on Duty
Business and Professions Code sections 4301, subdivisions (j) and (o), and 4327

25. The allegations of paragraphs 15-18 are realleged and incorporated by reference as if fully set forth.

26. Respondent has subjected her pharmacy technician registration to disciplinary action under Business and Professions Code sections 4301, subdivisions (j) and (o), and 4327, for the unprofessional conduct of being under the influence while on duty. As set forth in paragraphs 15-18 above, respondent tested positive for alprazolam while working as a pharmacy technician at Kaiser Health Plan North and admitted taking the drug without a prescription the night before going to work.

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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 Registration Number TCH 38759 issued to Georgia Nicole Banke

2. Ordering Georgia Nicole Banke 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; and

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

DATED: 4/5/14

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

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