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

11 In the Matter of the Accusation Against:
12 **RYAN HOWARD NITKIN**
7044 Newton Place
13 Rancho Cucamonga, CA 91701
14 Pharmacy Technician Registration No. TCH
122975
15 Respondent.
16

Case No. 5293

A C C U S A T I O N

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 (Board).

22 2. On or about April 9, 2012, the Board issued Pharmacy Technician Registration
23 Number TCH 122975 to Ryan Howard Nitkin (Respondent). The Pharmacy Technician
24 Registration was in full force and effect at all times relevant to the charges brought herein and
25 will expire on October 31, 2015, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board under the authority of the following
28 laws. All section references are to the Business and Professions Code unless otherwise indicated.

1 9. Section 4060 of the Code states, in pertinent part:

2 "No person shall possess any controlled substance, except that furnished to a person upon
3 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic
4 doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
5 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
6 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
7 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
8 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
9 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
10 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
11 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
12 labeled with the name and address of the supplier or producer.

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

16 10. Section 4301 of the Code states:

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

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

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

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

5 ...”

6 11. Health and Safety Code section 11350, subdivision (a), states, in pertinent part:

7 “Except as otherwise provided in this division, every person who possesses (1) any
8 controlled substance specified in subdivision (b), (c), (e), or paragraph (1) of subdivision (f) of
9 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or
10 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section
11 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic
12 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian
13 licensed to practice in this state, shall be punished by imprisonment in a county jail for not more
14 than one year, except that such person shall instead be punished pursuant to subdivision (h) of
15 Section 1170 of the Penal Code if that person has one or more prior convictions for an offense
16 specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of
17 the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290
18 of the Penal Code.”

19 12. Health and Safety Code section 11377, subdivision (a), states, in pertinent part:

20 “Except as authorized by law and as otherwise provided in subdivision (b) or Section
21 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the
22 Business and Professions Code, every person who possesses any controlled substance which is
23 (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in
24 subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d),
25 (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2)
26 or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section
27 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to
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1 practice in this state, shall be punished by imprisonment in a county jail for a period of not more
2 than one year or pursuant to subdivision (h) of Section 1170 of the Penal Code.

3 **REGULATORY PROVISIONS**

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

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

11 **COST RECOVERY**

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

16 **CONTROLLED SUBSTANCES / DANGEROUS DRUGS**

17 15. Alprazolam is a generic name for brand names: Xanax, Invirase, Crixivan, Serzone
18 and Alprazolam Intensol. It is a Schedule IV controlled substance pursuant to Health and Safety
19 Code section 11057(d) and is categorized as a dangerous drug pursuant to Code section 4022.

20 16. Hydrocodone, with trade names of Lorcet, Lortab, Norco and Vicodin, are Schedule
21 III controlled substances pursuant to Health and Safety Code section 11056(e)(4), and are
22 categorized as dangerous drugs pursuant to Code section 4022.

23 **FACTUAL BACKGROUND**

24 17. On and between August 1, 2012 and December 21, 2012, Respondent was employed
25 as a pharmacy technician at Walgreens (the Pharmacy).

26 18. On or about December 20, 2012, the Pharmacy's loss prevention agent received a call
27 from the Pharmacy's manager regarding a theft by Respondent. On or about December 21, 2012,
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1 the loss prevention officer interviewed Respondent, and Respondent admitted to stealing a soft
2 drink and approximately 120 hydrocodone pills in the past, which he kept at his residence.

3 19. San Bernardino Police Department officers responded to the Pharmacy's theft report
4 and came in contact with Respondent. With Respondent's consent, the officers arrived and
5 searched Respondent's residence and car. After the inspection, the officers found approximately
6 271 Hydrocodone tablets and more than 200 Alprazolam tablets at Respondent's residence.
7 Respondent admitted to taking Hydrocodone from the pharmacy on two occasions. Respondent
8 was subsequently arrested for violating Penal Code section 459 [burglary] and Health & Safety
9 Code section 11351 [possession of a controlled substance for sale].

10 20. The Board subsequently requested an audit from the Pharmacy from June 19, 2012 to
11 June 9, 2013, and the Pharmacy was missing the following drugs: approximately 10,920 tablets
12 of Hydrocodone/Acetaminophen 10/325 mg, and 2,160 tablets of Hydrocodone/Acetaminophen
13 7.5/750 mg.

14 21. On or about September 13, 2013, the Pharmacy completed its inventory of
15 Alprazolam losses and reported the loss to the Federal Drug Enforcement Administration. The
16 Pharmacy's filed "Report of Theft or Loss of Controlled Substances" (DEA Form 106)
17 acknowledged the loss of 275 Hydrocodone/Acetaminophen 10/325 mg tablets due to employee
18 pilferage.

19 22. On or about June 22, 2014, the Pharmacy completed its inventory of Alprazolam
20 losses and reported the loss to the Federal Drug Enforcement Administration. The Pharmacy's
21 filed "Report of Theft or Loss of Controlled Substances" (DEA Form 106) acknowledged losses
22 of 61 Alprazolam 1 mg tablets, and 163 Alprazolam 2 mg tablets due to employee pilferage.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Unlawful Possession of Controlled Substances: Hydrocodone/Acetaminophen)**

3 23. Respondent is subject to disciplinary action under Code section 4301, subdivision (j),
4 on the grounds of unprofessional conduct, for violating Code section 4060 and Health and Safety
5 Code section 11350, subdivision (a), in that on or between August 1, 2012 and December 21,
6 2012, Respondent possessed and removed from the Pharmacy 275 Hydrocodone/Acetaminophen
7 tablets without a valid prescription. On or about December 21, 2012, Respondent admittedly
8 possessed and removed from the Pharmacy approximately 120 Hydrocodone/Acetaminophen
9 tablets without a valid prescription, and approximately 271 Hydrocodone/Acetaminophen tablets
10 were found at Respondent's residence. Complainant refers to and by this reference incorporates
11 the allegations set for above in paragraphs 17 through 22, inclusive, as though set forth fully.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Unlawful Possession of Controlled Substances: Alprazolam)**

14 24. Respondent is subject to disciplinary action under Code section 4301, subdivision (j),
15 on the grounds of unprofessional conduct, for violating Code section 4060 and Health and Safety
16 Code section 11377, subdivision (a), in that on or between August 1, 2012 and December 21,
17 2012, Respondent possessed and removed from the Pharmacy more than 200 Alprazolam tablets
18 without a valid prescription. On or about December 21, 2012, more than 200 Alprazolam tablets
19 were found at Respondent's residence. Complainant refers to and by this reference incorporates
20 the allegations set for above in paragraphs 17 through 22, inclusive, as though set forth fully.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

23 25. Respondent is subject to disciplinary action under Code section 4301, subdivision (f),
24 on the grounds of unprofessional conduct, in that Respondent committed acts involving moral
25 turpitude, dishonesty, fraud, deceit, or corruption. Complainant refers to and by this reference
26 incorporates the allegations set for above in paragraphs 17 through 22, inclusive, as though set
27 forth fully.

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FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct/ Violation of Licensing Chapter)

26. Respondent is subject to disciplinary action under section 4301, subdivision (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 17-22, 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 Number TCH 122975, issued to Ryan Howard Nitkin;
2. Ordering Ryan Howard Nitkin 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:

5/9/15

Virginia Herold

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

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