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

11 In the Matter of the Accusation Against:

Case No. 5365

12 **JONATHAN HAIM SHOCHAT**
4816 Hollowcorner Rd., Apt. 158
13 Culver City, CA 90230

A C C U S A T I O N

14 Pharmacy Technician Registration No. TCH
136641

15 Respondent.
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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 December 19, 2013, the Board of Pharmacy issued Pharmacy Technician
23 Registration No. TCH 136641 to Jonathan Haim Shohat (Respondent). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought
25 herein and will expire on June 30, 2015, unless renewed.

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1 **JURISDICTION**

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

5 4. Section 4011 of the Code provides that "[t]he board shall administer and enforce this
6 chapter [Pharmacy Law, (Business and Professions Code, Sec 4000 et seq.)] and the Uniform
7 Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and
8 Safety Code)."

9 5. Section 4300, subdivision (a), of the Code states, in pertinent part, that "[e]very
10 license issued may be suspended or revoked."

11 6. Section 4300.1 of the Code states, in pertinent part:

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

17 **STATUTORY PROVISIONS**

18 7. Section 490 of the Code states, in pertinent part:

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

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

27 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
28 conviction following a plea of nolo contendere. Any action that a board is permitted to take

1 following the establishment of a conviction may be taken when the time for appeal has elapsed,
2 or the judgment of conviction has been affirmed on appeal, or when an order granting probation
3 is made suspending the imposition of sentence, irrespective of a subsequent order under the
4 provisions of Section 1203.4 of the Penal Code.

5 "(d) The Legislature hereby finds and declares that the application of this section has been
6 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th
7 554, and that the holding in that case has placed a significant number of statutes and regulations
8 in question, resulting in potential harm to the consumers of California from licensees who have
9 been convicted of crimes. Therefore, the Legislature finds and declares that this section
10 establishes an independent basis for a board to impose discipline upon a licensee, and that the
11 amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session do not
12 constitute a change to, but rather are declaratory of, existing law."

13 8. Section 4059 of the Code states, in pertinent part:

14 "(a) A person may not furnish any dangerous drug, except upon the prescription of a
15 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
16 3640.7. A person may not furnish any dangerous device, except upon the prescription of a
17 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
18 3640.7. . . ."

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

20 "No person shall possess any controlled substance, except that furnished to a person upon
21 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic
22 doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
23 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
24 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
25 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
26 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
27 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
28 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified

1 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
2 labeled with the name and address of the supplier or producer. . . .”

3 10. Section 4301 of the Code states, in pertinent part:

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

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

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

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

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

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21 "(l) The conviction of a crime substantially related to the qualifications, functions, and
22 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
23 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
24 substances or of a violation of the statutes of this state regulating controlled substances or
25 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
26 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
27 The board may inquire into the circumstances surrounding the commission of the crime, in order
28 to fix the degree of discipline or, in the case of a conviction not involving controlled substances

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

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

15 "(p) Actions or conduct that would have warranted denial of a license. . . ."

16 11. Health and Safety Code section 11377 states, in pertinent part:

17 "(a) Except as authorized by law and as otherwise provided in subdivision (b) or Section
18 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the
19 Business and Professions Code, every person who possesses any controlled substance which is
20 (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in
21 subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d),
22 (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2)
23 or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section
24 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to
25 practice in this state, shall be punished by imprisonment in a county jail for a period of not more
26 than one year or pursuant to subdivision (h) of Section 1170 of the Penal Code. . . ."

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1 12. Health and Safety Code section 11378 states, in pertinent part:
2 "Except as otherwise provided in Article 7 (commencing with Section 4211) of Chapter 9
3 of Division 2 of the Business and Professions Code, every person who possesses for sale any
4 controlled substance which is (1) classified in Schedule III, IV, or V and which is not a narcotic
5 drug, except subdivision (g) of Section 11056, (2) specified in subdivision (d) of Section 11054,
6 except paragraphs (13), (14), (15), (20), (21), (22), and (23) of subdivision (d), (3) specified in
7 paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of
8 subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f), except paragraph
9 (3) of subdivision (e) and subparagraphs (A) and (B) of paragraph (2) of subdivision (f), of
10 Section 11055, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of
11 the Penal Code."

12 REGULATORY PROVISION

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

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

20 COST RECOVERY

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

25 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

26 15. Alprazolam, a generic name for brand names Xanax, Invirase, Crixivan, Serzone and
27 Alprazolam Intensol, is a Schedule IV controlled substance pursuant to Health and Safety Code
28 section 11057, subdivision (d) and a dangerous drug pursuant to section 4022 of the Code.

1 16. Benzodiazepine is a Schedule IV controlled substance pursuant to Health and Safety
2 Code section 11057, subdivision (d), and a dangerous drug pursuant to section 4022 of the Code.

3 17. Benzoyllecgonine, a cocaine metabolite, is a Schedule II controlled substance
4 pursuant to Health and Safety Code section 11055, subdivision(b)(4), and a dangerous drug
5 pursuant to section 4022 of the Code.

6 18. Cocaine, and any cocaine base, is a narcotic drug according to Health and Safety
7 Code section 11019, subdivision (e). It is a Schedule I controlled substance pursuant to Health
8 and Safety Code section 11054, subdivision (f)(1), a Schedule II controlled substance pursuant to
9 Health and Safety Code section 11055, subdivision (b)(6), and a dangerous drug pursuant to
10 section 4022 of the Code.

11 19. Marijuana, hashish and tetrahydrocannabinols (concentrated marijuana) are
12 hallucinogenic Schedule I controlled substances pursuant to Health and Safety Code section
13 11054, subdivisions (d)(13) and (20), and United States Code, title 21, section 812 and
14 dangerous drugs pursuant to section 4022 of the Code. Possession of a controlled substance is
15 illegal under federal law (21 U.S.C. § 844), and the Pharmacy Law (Bus. & Prof. Code, § 4000 et
16 seq.) prohibits a person from possessing any controlled substance without a valid prescription.
17 (Bus. & Prof. Code, § 4060.)

18 20. Xanax, a brand name for alprazolam, is a Schedule IV controlled substance pursuant
19 to Health and Safety Code section 11057, subdivision (d)(1), and a dangerous drug pursuant to
20 section 4022(c) of the Code.

21 **FIRST CAUSE FOR DISCIPLINE**

22 **(Convictions of Substantially Related Crimes)**

23 21. Respondent is subject to disciplinary action under sections 490, 4301, subdivision (l),
24 in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent was
25 convicted of crimes substantially related to qualifications, functions, or duties of a licensee or
26 registrant which to a substantial degree evidence his present or potential unfitness to perform the
27 functions authorized by his license or registration in a manner consistent with the public health,
28 safety, or welfare, as follow:

1 a. On or about October 01, 2014, after pleading nolo contendere, Respondent was
2 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (e)
3 [driving under the influence of drugs], in the criminal proceeding entitled *The People of the State*
4 *of California v. Jonathan H. Shohat* (Super. Ct. L.A. County, 2014, No. 4SR00681). The Court
5 placed Respondent on 36 months summary probation and ordered him to perform community
6 service.

7 b. The circumstances underlying the conviction are that on or about January 21, 2014,
8 Los Angeles Police Department officers were dispatched to a single vehicle collision, where
9 Respondent was the driver. Respondent was disoriented, agitated, unable to maintain his balance,
10 and his speech was slurred and repetitive. Respondent admitted to taking Xanax and smoking
11 marijuana earlier. Respondent failed to complete the Standardized Field Sobriety Test and his
12 blood alcohol content was 0.000%. However, Respondent tested positive for benzodiazepines,
13 cocaine metabolite, marijuana metabolite, benzoylecgonine and alprazolam.

14 c. On or about February 11, 2015, after pleading nolo contendere, Respondent was
15 convicted of one interlineated misdemeanor count of violating Health and Safety Code section
16 11375, subdivision (b)(2) [possession of a controlled substance (alprazolam)], in the criminal
17 proceeding entitled *The People of the State of California v. Jonathan Haim Shohat* (Super. Ct.
18 L.A. County, 2015, No. 4WA12977).

19 d. The circumstances underlying the conviction are that on or about June 28, 2014,
20 Culver City Police Department officers responded to a call reporting a person possibly drunk and
21 laying down on the roadway. An officer smelled an odor of marijuana from Respondent and he
22 was subsequently found to be in possession of marijuana, nine white rectangular Xanax tablets
23 without a valid prescription, a digital scale and 53 yellow rectangular Alprazolam (Xanax) tablets
24 in a prescription bottle prescribed to Respondent. Respondent's cellular phone also contained
25 numerous text messages regarding sales of Xanax.

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1 to and by this reference incorporates the allegations set for above in paragraphs 21 through 24,
2 inclusive, as though set forth fully.

3 **PRAYER**

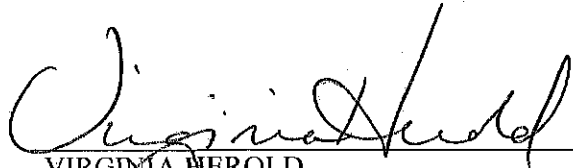
4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
5 and that following the hearing, the Board issue a decision:

- 6 1. Revoking or suspending Pharmacy Technician Registration No. TCH 136641, issued
7 to Respondent;
- 8 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
9 enforcement of this case, pursuant to section 125.3 of the Code; and
- 10 3. Taking such other and further action as deemed necessary and proper.

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DATED: _____

6/13/15



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

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