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

11 In the Matter of the Accusation Against:

Case No. 5561

12 **NIEKO ANTHONY RODRIGUEZ**
13 **7829 Hurst Ct.**
14 **Sacramento, CA 95829**

A C C U S A T I O N

15 **Original Pharmacy Technician Registration**
16 **No. TCH 113517**

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 July 28, 2011, the Board of Pharmacy issued Original Pharmacy
24 Technician Registration Number TCH 113517 to Nieko Anthony Rodriguez (Respondent). The
25 Pharmacy Technician Registration expired on April 30, 2015, and has not been renewed.

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1 **JURISDICTION**

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

5 4. Section 4300 of the Code states, in pertinent part:

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

7 5. Section 4300.1 of the Code states:

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

13 **BUSINESS AND PROFESSIONS CODE**

14 6. Section 4022 of the Code states, in pertinent part:

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

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

19 "...

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

22 7. Section 4060 of the Code states:

23 "No person shall possess any controlled substance, except that furnished to a person upon
24 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
25 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse
26 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
27 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
28 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of

1 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
2 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
3 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
4 nurse midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
5 labeled with the name and address of the supplier or producer.

6 Nothing in this section authorizes a certified nurse midwife, a nurse practitioner, a
7 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and
8 devices.”

9 8. Section 4301 of the Code states, in pertinent part:

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

13 “... ”

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

19 “... ”

20 “(j) The violation of any of the statutes of this state, or any other state, or of the United
21 States regulating controlled substances and dangerous drugs. . . .”

22 **HEALTH AND SAFETY CODE**

23 9. California Health and Safety Code section 11170 states, “No person shall prescribe,
24 administer, or furnish a controlled substance for himself.”

25 10. California Health and Safety Code section 11171 states, “No person shall prescribe,
26 administer, or furnish a controlled substance except under the conditions and in the manner
27 provided by this division.”

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1 11. California Health and Safety Code section 11173 states, in pertinent part:

2 “(a) No person shall obtain or attempt to obtain controlled substances, or procure or
3 attempt to procure the administration of or prescription for controlled substances, (1) by fraud,
4 deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact. . . .”

5 12. California Health and Safety Code section 11350 states, in pertinent part:

6 “(a) Except as otherwise provided in this division, every person who possesses (1) any
7 controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of
8 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or
9 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section
10 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic
11 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian
12 licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of
13 Section 1170 of the Penal Code. . . .”

14 **COST RECOVERY**

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

19 **CONTROLLED SUBSTANCES**

20 14. “Xanax,” a trade name for Alprazolam, is a dangerous drug as defined in Code
21 section 4022, and a schedule IV controlled substance as defined by section 1308.14, subdivision
22 (c)(2) of Title 21 of the Code of Federal Regulations.

23 15. “Klonopin” (formerly known as Clonopin), a trade name for Clonazepam, an
24 anticonvulsant of the benzodiazepine class of drugs, is a dangerous drug as defined in Code
25 section 4022, and a schedule IV controlled substance as defined by section 11057, subdivision
26 (d)(17), of the Health and Safety Code.

27 16. “Hydrocodone w/APAP” or hydrocodone with acetaminophen tablets are produced
28 by several drug manufacturers. Hydrocodone bitartrate is semisynthetic narcotic analgesic, a

1 dangerous drug as defined in Code section 4022, a Schedule III controlled substance and narcotic
2 as defined by section 11056, subdivision (e) of the Health and Safety Code, and a Schedule III
3 controlled substance as defined by section 1308.13, subdivision (e) of Title 21 of the Code of
4 Federal Regulations. As of October 5, 2014 the substance was reclassified as a Schedule II drug.

5 17. "Percocet" is the trade name for the combined generic substance Oxycodone
6 Hydrochloride and Acetaminophen. It is a semisynthetic narcotic analgesic with multiple actions
7 qualitatively similar to those of morphine, and is a controlled substance as defined in Schedule II,
8 section 11055, subdivision (b)(1)(M) of the Health and Safety Code. Percocet is a dangerous
9 drug as defined in Code section 4022.

10 BACKGROUND

11 18. From on or about July 28, 2011 through September 25, 2014, Respondent worked as
12 a Pharmacy Technician at CVS Pharmacy store number 4950, located in Rancho Cordova,
13 California, and CVS Pharmacy store number 9923, located in Folsom, California.

14 19. On or about October 1, 2014, the Board received an e-mail notification from CVS
15 Pharmacy regarding Respondent's admission to stealing controlled substances for self-use. The
16 controlled substances were hydrocodone/APAP 10/325, hydrocodone/APAP 5/325, alprazolam
17 1mg, alprazolam 2mg, and clonazepam 2mg. The controlled substance loss appeared at CVS
18 Pharmacy #4950. According to the notification, Respondent also admitted to stealing one tablet
19 of alprazolam from CVS Pharmacy store #9923.

20 20. Attached to the October 1, 2014 e-mail was a DEA form 106 for CVS Pharmacy
21 #4950, dated October 1, 2014. The form indicated the date of theft/loss as September 2, 2014.
22 The form indicated the following losses: (1) 2,007 tablets of Xanax 1mg; (2) 1,013 tablets of
23 Xanax 2mg; (3) 121 tablets of Klonopin; (4) 1,698 tablets of hydrocodone/APAP 5-325mg;
24 (5) 4,881 tablets of hydrocodone/APAP 10-325mg; and (6) 111 tablets of Percocet.

25 21. On or about September 19, 2014, Respondent was interviewed by S. R. regarding his
26 theft of controlled substances. During this interview, Respondent admitted that he removed
27 medication from the pharmacy without a valid prescription, and he admitted to taking Norco,
28 Xanax, and Klonopin. Respondent admitted to stealing approximately 100 tablets of

1 hydrocodone about once a week from the pharmacy. Respondent estimated he took about 2,240
2 tablets of hydrocodone/APAP 10-325mg and 560 tablets of hydrocodone/APAP 5-325mg from
3 the pharmacy. Respondent also admitted to stealing alprazolam 1mg (approximately 480 tablets),
4 alprazolam 2mg (approximately 1,920 tablets), and clonazepam 2mg (approximately 1,200
5 tablets). Respondent said he stole the medication because he became addicted to hydrocodone.
6 Respondent said he stole the medication when his valid prescription expired. Respondent
7 admitted to putting whole bottles of controlled substances in his pocket to conceal the removal of
8 the medication from the pharmacy.

9 22. On or about October 17, 2014, the Board received an e-mail from CVS Pharmacy
10 providing the DEA 106 form for CVS Pharmacy #9923. The DEA 106 form was transmitted on
11 October 17, 2014, with a date of loss of September 19, 2014. According to the form, 461 tablets
12 of Xanax were lost.

13 23. On or about January 9, 2015, during an interview with Board Inspector D. P.,
14 Respondent admitted to stealing medication from CVS pharmacy #4950. Respondent said he
15 increased his stealing when he could no longer get a valid prescription for pain medication.
16 Respondent admitted that he knew what he was doing was wrong but he became addicted to pain
17 medication. Respondent said his addiction took over his mind and he made poor decisions and
18 lost integrity. Respondent said he realized there was something in him which made it easier to
19 become addicted to pain medication, and he realized he should not work with medication.
20 Respondent said if he was around medication, he may be tempted.

21 **FIRST CAUSE FOR DISCIPLINE**

22 **(Obtaining Controlled Substances by Fraud, Deceit, or Subterfuge)**

23 24. Respondent is subject to disciplinary action under section 4301(j) of the Code, by and
24 through sections 11171 and 11173, subdivision (a) of the Health and Safety Code, in that from in
25 or about 2010 through September 19, 2014, Respondent stole controlled substances from CVS
26 Pharmacy. The facts and circumstances are described with more particularity in paragraphs 18-
27 23.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct—Unlawful Possession of Controlled Substances)**

3 25. Respondent is subject to disciplinary action under section 4301(j) of the Code, by and
4 through section 4060 of the Code, and sections 11171 and 11350 of the Health and Safety Code,
5 in that Respondent violated the statutes of this state regulating controlled substances and
6 dangerous drugs as follows:

7 a. From in or about 2010 through September 19, 2014, Respondent possessed various
8 controlled substances from CVS Pharmacy without possessing a current, valid prescription, and
9 these controlled substances were for self-administration.

10 b. The facts and circumstances are described with more particularity in paragraphs 18-
11 23.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Unprofessional Conduct—Unlawful Self-Administration of Controlled Substances)**

14 26. Respondent is subject to disciplinary action under section 4301(h) of the Code, by
15 and through sections 11170 and 11171 of the Health and Safety Code, in that Respondent
16 administered to himself controlled substances or dangerous drugs to the extent or in a manner as
17 to be dangerous or injurious to himself, any person of the public, or to the extent that the use
18 impaired his ability to conduct with safety to the public the practice authorized by his license as
19 follows:

20 a. On or about January 9, 2015, Respondent admitted that he stole and consumed
21 controlled substances from CVS Pharmacy because he became addicted to pain medication, that
22 he stole the controlled substances when he did not have a current, valid prescription for pain
23 medication, and that he stole the controlled substances for self-administration.

24 b. The facts and circumstances are set forth with more particularity in paragraphs 18-23.

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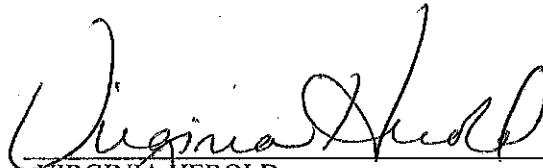
PRAYER

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 Original Pharmacy Technician Registration Number TCH 113517, issued to Nieko Anthony Rodriguez;
2. Ordering Nieko Anthony Rodriguez 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: _____

10/16/15



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

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