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

12 In the Matter of the Accusation Against:

Case No. 5602

13 **CRYSTAL NICHOLE CUSIC**
14 **1530 Fulton Ave., #154**
15 **Sacramento, CA 95825**

ACCUSATION

16 **Pharmacy Technician Registration**
17 **No. TCH 110409**

Respondent.

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 ("Board"), Department of Consumer Affairs.
- 22 2. On or about February 7, 2011, the Board issued Pharmacy Technician Registration
23 Number TCH 110409 ("registration") to Crystal Nichole Cusic ("Respondent"). On or about
24 February 23, 2016, pursuant to the Decision on Petition for Interim Suspension Order in the
25 disciplinary action entitled "In the Matter of the Petition for Interim Suspension Order Against:
26 Crystal Nichole Cusic", Case No. CI 2015 6657 I, an interim suspension order was issued against
27 Respondent pursuant to Business and Professions Code section 494, subdivision (a), suspending
28 her from practicing as a pharmacy technician until the within Accusation is filed and a decision is

1 rendered thereon. A true and correct copy of the Decision is attached hereto as exhibit A and
2 incorporated herein by reference. The registration will expire on June 30, 2016, unless renewed.

3 **JURISDICTION/STATUTORY PROVISIONS**

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

7 4. Code section 4300 states, in pertinent part:

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

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

11 (1) Suspending judgment.

12 (2) Placing him or her upon probation.

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

15 (4) Revoking his or her license.

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

17 5. Code section 4300.1 states:

18 The expiration, cancellation, forfeiture, or suspension of a board-issued
19 license by operation of law or by order or decision of the board or a court of law, the
20 placement of a license on a retired status, or the voluntary surrender of a license by a
21 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.

22 6. Code section 4301 states, in pertinent part:

23 The board shall take action against any holder of a license who is guilty of
24 unprofessional conduct . . . Unprofessional conduct shall include, but is not limited
to, any of the following:

25 (a) Gross immorality.

26 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
27 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.

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

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

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

13 7. Code section 4022 states, pertinent part:

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

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

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

20 8. Code section 4060 states, in pertinent part:

21 A person shall not possess any controlled substance, except that furnished to
22 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
23 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
24 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
25 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant
26 pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a
27 pharmacist pursuant to Section 4052.1, 4052.2, or 4052.6. . . .

28 9. Health and Safety Code section 11170 states that no person shall prescribe,
administer, or furnish a controlled substance for himself.

10. Health and Safety Code section 11173, subdivision (a), states, in pertinent part, that
"[n]o person shall obtain or attempt to obtain controlled substances, or procure or attempt to
procure the administration of or prescription for controlled substances, (1) by fraud, deceit,
misrepresentation, or subterfuge . . ."

COST RECOVERY

11. Code section 125.3 provides, in pertinent part, that a Board may request the
administrative law judge to direct a licentiate found to have committed a violation or violations of

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case.

3 DRUG CLASSIFICATIONS

4 12. **Alprazolam** is a Schedule IV controlled substance as designated by Health and Safety
5 Code section 11057, subdivision (d)(1), and a dangerous drug within the meaning of Code section
6 4022 in that it can only be obtained by a valid prescription. Alprazolam is a depressant and
7 belongs to the benzodiazepine class of central nervous system drugs. Alprazolam is used to treat
8 anxiety and panic disorders. Xanax is a brand of Alprazolam.

9 13. **Buprenorphine** is a Schedule V controlled substance as designated by Health and
10 Safety Code section 11058, subdivision (d), and a dangerous drug within the meaning of Code
11 section 4022 in that it can only be obtained by a valid prescription. Buprenorphine is a Schedule
12 III controlled substance according to the Federal Drug Enforcement Administration. Buprenor-
13 phine is a narcotic analgesic and is used to treat moderate to severe pain and for opioid addiction.
14 Subutex and Buprenex are brands of Buprenorphine.

15 14. **Zolpidem Tartrate** is a Schedule IV controlled substance as designated by Health
16 and Safety Code section 11057, subdivision (d)(32), and a dangerous drug within the meaning of
17 Code section 4022 in that it can only be obtained by a valid prescription. Zolpidem Tartrate is
18 used to treat insomnia. Ambien is a brand of Zolpidem Tartrate.

19 FACTUAL ALLEGATIONS

20 15. In and between March 2013 and July 28, 2015, Respondent was employed as a
21 pharmacy technician at CVS/Pharmacy Store #9992 located on Arden Way in Sacramento,
22 California ("CVS/Pharmacy #9992").

23 16. On or about June 15, 2015, CVS headquarters directed CVS/Pharmacy #9992 to
24 conduct a random, routine audit of the number of Alprazolam/Xanax 1mg tablets in its inventory.
25 The audit revealed that Alprazolam/Xanax tablets were missing from the pharmacy's inventory.
26 In and between June 2015 and July 28, 2015, CVS conducted an investigation of the missing
27 Alprazolam/Xanax and interviewed pharmacy staff including Respondent.

28

1 17. On or about July 28, 2015, during an interview with the Regional Diversion Manager
2 for CVS Health and the CVS Pharmacy Supervisor, District 3, Respondent admitted that she had
3 stolen approximately 150 tablets of Zolpidem Tartrate 10mg, 600 tablets of Alprazolam 1mg, and
4 30 tablets of Buprenorphine 8mg from CVS/Pharmacy #9992. That same day, Respondent signed
5 a written statement, admitting that she had taken the controlled substances and had placed them in
6 her pants packet while on duty. Respondent also admitted that: on numerous occasions during
7 the period of approximately July 2014 to July 2015, she had stolen approximately 600 tablets of
8 Alprazolam 1mg; on one occasion during the period of approximately January 2015 to July 2015,
9 she had stolen approximately 30 tablets of Buprenorphine 8mg on one occasion; and, on
10 numerous occasions during the period of approximately January 2015 to July 2015, she had stolen
11 approximately 150 tablets of Zolpidem Tartrate 10mg. Based upon Respondent's admissions, the
12 Diversion Manager determined that the reimbursement value of all of the tablets stolen by
13 Respondent was \$676.74. Respondent signed a promissory note, agreeing to reimburse CVS the
14 amount of \$676.74. Respondent was terminated from CVS on or about July 28, 2016. She paid
15 \$30.00 toward the reimbursement in August 2015 and the remaining balance on February 12,
16 2016.

17 18. On or about July 28, 2015, the Diversion Manager reported the theft of the
18 Alprazolam 1mg, Buprenorphine 8mg, and Zolpidem Tartrate 10mg to law enforcement, and
19 informed them that she was detaining Respondent. Respondent fled the scene prior to law
20 enforcement's arrival at CVS/Pharmacy #9992.

21 **FIRST CAUSE FOR DISCIPLINE**

22 **(Gross Immorality)**

23 19. Respondent is subject to disciplinary action for unprofessional conduct pursuant to
24 Code section 4301, subdivision (f), in that while employed and on duty as a pharmacy technician
25 at CVS/Pharmacy #9992, Respondent committed acts that were grossly immoral, as follows: In
26 and between July 2014 and January 2015, Respondent stole or diverted approximately 150 tablets
27 of Zolpidem Tartrate 10mg, 600 tablets of Alprazolam 1mg, and 30 tablets of Buprenorphine 8mg
28 from the pharmacy for self-administration.

1 **SECOND CAUSE FOR DISCIPLINE**

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

3 20. Respondent is subject to disciplinary action for unprofessional conduct pursuant to
4 Code section 4301, subdivision (f), in that while employed and on duty as a pharmacy technician
5 at CVS/Pharmacy #9992, Respondent committed acts involving moral turpitude, dishonesty,
6 fraud, deceit, or corruption, as follows: In and between July 2014 and January 2015, Respondent
7 stole or diverted approximately 150 tablets of Zolpidem Tartrate 10mg, 600 tablets of Alprazolam
8 1mg, and 30 tablets of Buprenorphine 8mg from the pharmacy for self-administration.

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Self-Administration and Use of Controlled Substances and Dangerous Drugs)**

11 21. Respondent is subject to disciplinary action for unprofessional conduct pursuant to
12 Code section 4301, subdivision (h), in that in and between July 2014 and January 2015, while
13 employed and/or on duty as a pharmacy technician at CVS/Pharmacy #9992, Respondent self-
14 administered the controlled substances Zolpidem Tartrate 10mg, 600 tablets of Alprazolam 1mg,
15 and 30 tablets of Buprenorphine 8mg and/or used the dangerous drugs to an extent or in a manner
16 dangerous or injurious to herself, others, and/or the public.

17 **FOURTH CAUSE FOR DENIAL**

18 **(Violations of State Laws Regulating Controlled Substances and Dangerous Drugs)**

19 22. Respondent is subject to disciplinary action for unprofessional conduct pursuant to
20 Code section 4301, subdivision (j), in that in and between July 2014 and January 2015, while
21 employed and/or on duty as a pharmacy technician at CVS/Pharmacy #9992, Respondent did the
22 following:

23 a. Respondent obtained the controlled substances Zolpidem Tartrate 10mg, Alprazolam
24 1mg, and Buprenorphine 8mg by fraud, deceit, misrepresentation, or subterfuge, in violation of
25 Health and Safety Code section 11173, subdivision (a).

26 b. Respondent self-administered the controlled substances Zolpidem Tartrate 10mg,
27 Alprazolam 1mg, and Buprenorphine 8mg in violation of Health and Safety Code section 11170.

28

1 c. Respondent possessed the controlled substances Zolpidem Tartrate 10mg, Alprazolam
2 1mg, and Buprenorphine 8mg without valid prescriptions from a physician, dentist, podiatrist,
3 optometrist, veterinarian, or naturopathic doctor, in violation of Code section 4060.

4 **FIFTH CAUSE FOR DENIAL**

5 **(Violations of the Pharmacy Law)**

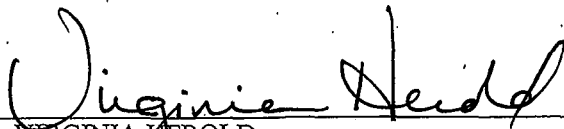
6 23. Respondent is subject to disciplinary action for unprofessional conduct pursuant to
7 Code section 4301, subdivision (o), in that in and between July 2014 and January 2015, while
8 employed and on duty as a pharmacy technician at CVS/Pharmacy #9992, Respondent violated or
9 attempted to violate, directly or indirectly, a provision or term of the Pharmacy Law (Bus. & Prof.
10 Code § 4300, et seq.), specifically, Code section 4060, as set forth above.

11 **PRAYER**

12 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
13 and that following the hearing, the Board of Pharmacy issue a decision:

- 14 1. Revoking or suspending Pharmacy Technician Registration Number TCH 110409,
15 issued to Crystal Nichole Cusic;
- 16 2. Ordering Crystal Nichole Cusic to pay the Board of Pharmacy the reasonable costs of
17 the investigation and enforcement of this case, pursuant to Business and Professions Code section
18 125.3; and
- 19 3. Taking such other and further action as deemed necessary and proper.

20
21 DATED: 3/2/16



22 VIRGINIA HEROLD
23 Executive Officer
24 Board of Pharmacy
25 Department of Consumer Affairs
26 State of California
27 Complainant
28

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EXHIBIT A

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

In the Matter of the Petition for Interim
Suspension Order Against:

CRYSTAL NICHOLE CUSIC
Sacramento, CA 95825,

Pharmacist Technician Registration License
No. TCH 110409,

Respondent.

Case No. CI 2015 6657 1

OAH No. 2016020347

DECISION ON PETITION FOR INTERIM SUSPENSION ORDER

A Petition for Interim Suspension Order (Petition) was heard before Erin R. Koch-Goodman, Administrative Law Judge, Office of Administrative Hearings (OAH), on February 19, 2016.

Leslie A. Burgermyer, Deputy Attorney General, appeared on behalf of Virginia Herold (petitioner), Executive Officer of the Board of Pharmacy (Board).

Crystal Nichole Cusic (respondent) appeared and represented herself.

Evidence was received, the record was closed, and the matter was submitted for decision on February 19, 2016.

SUMMARY OF DECISION

Petitioner filed the Petition seeking an Interim Suspension Order (ISO) against respondent under Business and Professions Code section 494, based upon allegations that respondent: (1) repeatedly diverted controlled substances and/or dangerous drugs from her employer, and (2) used the stolen controlled substances and/or dangerous drugs to an extent dangerous to herself and the public. The declarations petitioner submitted, and respondent's testimony demonstrate: (1) respondent has engaged in acts constituting violations of the Business and Professions Code; and (2) permitting respondent to continue practicing

pharmacy would endanger the public health, safety, and welfare. An ISO is therefore issued against respondent pursuant to Business and Professions Code section 494.

FACTUAL FINDINGS

1. On February 4, 2016, a Notice of Hearing on Petition for Interim Suspension Order (Notice of Hearing), a Petition and Memorandum of Points and Authorities for Interim Suspension Order with the Declarations of Leslie A. Burgermyer, Amanda J. Stallings, CVS Regional Diversion Manager, Trong Nghia Quoc Tran, CVS Pharmacy Supervisor, District 3, and Inspector Diann Wiedmann Potter, and supporting documentation, and the Sacramento County Sheriff's Department Report were served on respondent at her home address. The Notice of Hearing informed respondent that petitioner's Petition was scheduled for hearing on February 19, 2016, at 9:00 a.m., in OAH's Sacramento office. Respondent appeared.

2. On February 7, 2011, the Board issued Original Pharmacist Technician Registration Number TCH 110409 (license) to respondent. Respondent's license is currently in full force and effect.

3. From March 2013 through July 28, 2015, respondent was employed by CVS, at 3338 Arden Way, Sacramento, California, 95825 (Store #9992), as a Pharmacy Technician. In June 2015, CVS #9992, confirmed Alprazolam (Zanax) was missing from the pharmacy's inventory. From June 2015 through July 28, 2015, Stallings and Tran conducted an investigation of the missing Zanax and interviewed CVS #9992 pharmacy staff regarding the missing drug. On July 28, 2015, Stallings and Tran interviewed respondent.

4. During her interview, respondent admitted the following: on numerous occasions during the period of approximately July 2014 to July 2015, respondent stole and diverted approximately 600 tablets of Zanax 1 mg and 30 tablets of Buprenorphine 8 mg., and on numerous occasions during the period of approximately January 2015 to July 2015, respondent stole and diverted 150 tablets of Zolpidem Tartrate (Ambien) 10 mg. Respondent admitted to taking the drugs for her own use. She signed a statement admitting the same.

In addition, respondent admitted to taking Methadone prior to her employment with CVS, paid for by Medi-Care. When respondent began receiving medical benefits through CVS, her Medi-Care benefits ended and she could no longer afford the Methadone. A "friend" told respondent to start taking Buprenorphine to replace the Methadone, so she stole Buprenorphine from CVS. Respondent also admitted she had a personal prescription for Zanax .25 mg for anxiety and panic attacks, but it was not helping, so she stole Zanax 1 mg.

5. Zanax is a Schedule II controlled substance. (Health & Saf. Code, § 11057, subd. (d)(1).) Ambien is a Schedule IV controlled substance. (Health & Saf. Code, § 11057, subd. (d)(32).) Buprenorphine is a Schedule V controlled substance (Health & Saf. Code, § 11058, subd. (d)) and a Schedule III controlled substance according to the federal Drug

Enforcement Administration. These controlled substances are all dangerous drugs and require a valid prescription.

6. Stallings researched the prices for the drugs stolen by respondent. Stallings calculated the following: 30 Zanax 1mg tablets, 20 times, totaling \$245.80; 30 Buprenorphine 8 mg tablets totaling \$157.99; 30 Ambien 10 mg tablets, three times, totaling \$272.95. Stallings calculated the total price of the drugs stolen by respondent as \$676.74. Stallings presented her calculations to respondent during the interview and respondent signed a promissory note and agreed to reimburse CVS for the total amount of \$676.74. Respondent made one \$30 payment to CVS in August 2015, and had her mother pay the remaining balance on February 12, 2016, in anticipation of the instant Petition hearing.

7. Following her interview, CVS contacted the Sacramento County Sheriff's Department and reported respondent's theft. CVS then suspended respondent and released her. Later, CVS terminated respondent.

8. When all the declarations submitted during the hearing are considered, along with respondent's testimony, they establish that permitting respondent to continue to practice as a pharmacy technician pending the filing of an accusation and a decision rendered thereon would endanger the public health, safety, and welfare.

LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 494, an ISO may be issued when: (1) a licensee has "engaged in acts or omissions constituting a violation" of the Business and Professions Code; and (2) permitting the licensee to continue to engage in the licensed activity "would endanger the public health, safety, or welfare."


2. While working as a pharmacy technician, respondent stole controlled substances from her employer, and used the stolen controlled substances to an extent dangerous to herself and the public. (Factual Findings 3 through 7.) These acts constitute violations of the Business and Professions Code. (Bus. & Prof. Code, § 4301, subds. (f), (h), (j) & (o).)

3. The declarations submitted by petitioner, as well as respondent's testimony at the hearing demonstrate: (1) respondent has engaged in acts that constitute violations of the Business and Professions Code; and (2) permitting respondent to continue to practice as a pharmacy technician pending the filing of an accusation and a decision rendered thereon would endanger the public health, safety, and welfare. Petitioner therefore established that an ISO should be issued under Business and Professions Code section 494, subdivision (a), suspending respondent's license until an accusation may be filed against respondent in accordance with Business and Professions Code section 494, subdivision (f), and a decision is rendered thereon.

ORDER

Pursuant to Business and Professions Code section 494, subdivision (a), an interim suspension order is hereby issued against Pharmacist Technician Registration License No. TCH 110409 issued to respondent Crystal Nichole Cusic. Respondent is suspended from practicing as a pharmacy technician until an accusation is filed in accordance with Business and Professions Code section 494, subdivision (f), and a decision is rendered thereon. Failure to comply with the requirements of Business and Professions Code section 494, subdivision (f), shall dissolve the interim suspension order by operation of law, unless the parties agree otherwise.

DATED: February 23, 2016

DocuSigned by:

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ERIN R. KOCH-GOODMAN
Administrative Law Judge
Office of Administrative Hearings