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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. 5734

12 **JAVIER SANCHEZ**
13 **24 Whirlaway Street**
14 **Perris, CA 92571**

A C C U S A T I O N

15 **Pharmacy Technician No. TCH 139199**

16 Respondent.

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 (Board), Department of Consumer Affairs.

22 2. On or about March 4, 2014, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 139199 to Javier Sanchez (Respondent). The Pharmacy Technician
24 Registration is in effect until May 31, 2017, and was suspended on February 17, 2016, pursuant to
25 Penal Code section 23.

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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 4300, subdivision (a) of the Code states: "Every license issued may be
6 suspended or revoked."

7 5. Section 4300.1, subdivision (c), of the Code states:

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

12 **STATUTORY PROVISIONS**

13 6. Section 482 of the Code states:

14 Each board under the provisions of this code shall develop criteria to evaluate
15 the rehabilitation of a person when:

16 (a) Considering the denial of a license by the board under Section 480; or

17 (b) Considering suspension or revocation of a license under Section 490.

18 Each board shall take into account all competent evidence of rehabilitation
19 furnished by the applicant or licensee.

20 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or
21 revoke a license on the ground that the licensee has been convicted of a crime substantially
22 related to the qualifications, functions, or duties of the business or profession for which the
23 license was issued.

24 8. Section 493 of the Code states:

25 Notwithstanding any other provision of law, in a proceeding conducted by a
26 board within the department pursuant to law to deny an application for a license or to
27 suspend or revoke a license or otherwise take disciplinary action against a person who
28 holds a license, upon the ground that the applicant or the licensee has been convicted
of a crime substantially related to the qualifications, functions, and duties of the
licensee in question, the record of conviction of the crime shall be conclusive
evidence of the fact that the conviction occurred, but only of that fact, and the board
may inquire into the circumstances surrounding the commission of the crime in order

1 to fix the degree of discipline or to determine if the conviction is substantially related
2 to the qualifications, functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority,"
4 and "registration."

5 9. Section 4022 of the Code states

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

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

10 (b) Any device that bears the statement: "Caution: federal law restricts this
11 device to sale by or on the order of a _____," "Rx only," or words of similar
12 import, the blank to be filled in with the designation of the practitioner licensed to use
13 or order use of the device.

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

16 10. Section 4059 of the Code states, in pertinent part, that a person may not furnish any
17 dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,
18 veterinarian, or naturopathic doctor.

19 11. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
20 controlled substance, except that furnished to a person upon the prescription of a physician,
21 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor.

22 12. Section 4301 of the Code states:

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

27 ...

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

...

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

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1 (l) The conviction of a crime substantially related to the qualifications,
2 functions, and duties of a licensee under this chapter. The record of conviction of a
3 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
4 States Code regulating controlled substances or of a violation of the statutes of this
5 state regulating controlled substances or dangerous drugs shall be conclusive
6 evidence of unprofessional conduct. In all other cases, the record of conviction shall
7 be conclusive evidence only of the fact that the conviction occurred. The board may
8 inquire into the circumstances surrounding the commission of the crime, in order to
9 fix the degree of discipline or, in the case of a conviction not involving controlled
10 substances or dangerous drugs, to determine if the conviction is of an offense
11 substantially related to the qualifications, functions, and duties of a licensee under this
12 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
13 contendere is deemed to be a conviction within the meaning of this provision. The
14 board may take action when the time for appeal has elapsed, or the judgment of
15 conviction has been affirmed on appeal or when an order granting probation is made
16 suspending the imposition of sentence, irrespective of a subsequent order under
17 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
18 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
19 dismissing the accusation, information, or indictment.

20 ...

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

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27 13. Health and Safety Code section 11379, subdivision (a) states:

28 Except as otherwise provided in subdivision (b) and in Article 7 (commencing
with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code,
every person who transports, imports into this state, sells, furnishes, administers, or
gives away, or offers to transport, import into this state, sell, furnish, administer, or
give away, or attempts to import into this state or transport any controlled substance
which is (1) classified in Schedule III, IV, or V and which is not a narcotic drug,
except subdivision (g) of Section 11056, (2) specified in subdivision (d) of Section
11054, except paragraphs (13), (14), (15), (20), (21), (22), and (23) of subdivision (d),
(3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in
paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in
subdivision (d) or (e), except paragraph (3) of subdivision (e), or specified in
subparagraph (A) of paragraph (1) of subdivision (f), of Section 11055, unless upon
the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice
in this state, shall be punished by imprisonment pursuant to subdivision (h) of Section
1170 of the Penal Code for a period of two, three, or four years.

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1 14. United States Code, title 21, section 843 states, in pertinent part:

2 (a) It shall be unlawful for any person knowingly or intentionally –

3 ...
4 (3) to acquire or obtain possession of a controlled substance by
5 misrepresentation, fraud, forgery, deception, or subterfuge. . . .

6 **REGULATORY PROVISIONS**

7 15. California Code of Regulations, title 16, section 1769, subdivision (c) states:

8 (c) When considering the suspension or revocation of a facility or a personal
9 license on the ground that the licensee or the registrant has been convicted of a crime,
10 the board, in evaluating the rehabilitation of such person and his present eligibility for
11 a license will consider the following criteria:

12 (1) Nature and severity of the act(s) or offense(s).

13 (2) Total criminal record.

14 (3) The time that has elapsed since commission of the act(s) or offense(s).

15 (4) Whether the licensee has complied with all terms of parole, probation,
16 restitution or any other sanctions lawfully imposed against the licensee.

17 (5) Evidence, if any, of rehabilitation submitted by the licensee.

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

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

26 **COSTS**

27 17. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
28 administrative law judge to 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, with failure of the licentiate to comply subjecting the license to not being
renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
included in a stipulated settlement.

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1 **DRUGS**

2 18. Alprazolam is a Schedule I or a Schedule IV controlled substance pursuant to Health
3 and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and
4 Professions Code section 4022.

5 19. Acetaminophen/codeine is a Schedule III controlled substance pursuant to Health
6 and Safety Code section 11056, subdivision (e), and a dangerous drug pursuant to Business and
7 Professions Code section 4022.

8 20. Buprenorphine is a Schedule III controlled substance pursuant to Health and
9 Safety Code section 11056, subdivision (d), and a dangerous drug pursuant to Business and
10 Professions Code section 4022.

11 21. Marijuana is a Schedule I controlled substance pursuant to Health and Safety Code
12 section 11054, subdivision (d).

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(May 4, 2016 Criminal Conviction for Possession of a Controlled Substance
15 for Sale and for DUI Under the Combined Influence
16 of Alcoholic Beverage and Drug on December 19, 2015)**

17 22. Respondent has subjected his registration to discipline under sections 490 and 4301,
18 subdivision (l) of the Code, in that he was convicted of crimes that are substantially related to the
19 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

20 a. On or about May 4, 2016, in a criminal proceeding entitled *People of the State*
21 *of California v. Javier Sanchez*, in the Riverside County Superior Court, case number
22 RIF1600401, Respondent was convicted on his plea of guilty to violating Health and Safety Code
23 section 11351 (Possession for Sale and Purchase for Purpose of Sale a Controlled Substance, to
24 wit: Alprazolam), a felony, and Vehicle Code section 23152(f) (DUI while under the combined
25 influence of alcoholic beverage and drug), misdemeanors. Pursuant to a plea agreement, the court
26 dismissed counts for violating Health and Safety Code section 11352(a) (transportation for sale of
27 narcotic and controlled substances), a felony, and 23152(a) (DUI) and 23152(b) (DUI with a
28 blood alcohol concentration of 0.08% or more), misdemeanors.

1 b. As a result of the convictions, on June 3, 2016, Respondent was granted formal
2 probation for 36 months, to expire on June 3, 2019, and was committed to the custody of the
3 sheriff for 45 days, with 4 days credit for time served, with the remaining 41 days to be served in
4 the Work Release Program. Respondent was ordered to pay fees and fines, submit to a Fourth
5 Amendment waiver, abstain from the use or possession of illegal controlled substances, submit to
6 random drug tests, and additional conditions of felony probation.

7 c. The facts that led to the conviction are that on or about December 19, 2015, at
8 approximately 11:30 p.m., Corona Police Department Officers responded to a call of a traffic
9 collision. Upon arrival, the officers made contact with the drivers of the vehicles, one of whom
10 was Respondent. The officers noticed that Respondent was slow to react and that he fumbled
11 through his documents as he retrieved them to hand to the officers. The officers directed
12 Respondent to exit his vehicle and go sit on the curb. As Respondent walked to the curb,
13 Respondent was unsteady on his feet and staggered as he walked. When asked about
14 consumption of alcohol and/or drugs, Respondent admitted to having one shot of vodka, half a
15 beer, and that he smoked "three bowls" of marijuana. The officers had Respondent submit to a
16 field sobriety test, which Respondent failed. An inventory of Respondent's vehicle produced the
17 following dangerous and controlled drugs: 94 Alprazolam 2 mg, 4 Acetaminophen and Codeine
18 300mg/60mg, a bag of marijuana (approximately 2.4 grams), 3 Buprenorphine hydrochloride
19 8mg tablets, 11 Ondansetron 8mg tablets, and two Viagra 100 mg. Respondent did not have a
20 prescription for any of the controlled substances and other drugs that are not controlled
21 substances but require a prescription. Respondent was placed under arrest and transported to the
22 Corona Police Department where he submitted to a blood test. The blood analysis confirmed a
23 0.14 percent blood alcohol concentration and the presence of alprazolam and cannabinoids.

24 d. After Respondent's arrest, Corona Police Department received information from
25 Respondent's former employer, CVS Pharmacy, that Respondent, admitted to diverting and
26 consuming one tablet of Cialis 20 mg in or about February of 2015. Respondent provided his
27 former employer with a signed Declaration dated January 14, 2016.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Commission of Acts Involving Dishonesty, Fraud, Deceit & Corruption)**

3 23. Respondent has subjected his registration to discipline under section 4301,
4 subdivision (f) of the Code for unprofessional conduct in that he stole controlled substances and
5 dangerous drugs from his employer/pharmacy using fraud, deceit, and dishonesty, as described in
6 paragraph 22, which is incorporated here by reference.

7 **THIRD CAUSE FOR DISCIPLINE**

8 **(Violation of California Statutes Regulating Controlled Substances)**

9 24. Respondent has subjected his registration to discipline under section 4301,
10 subdivision (j) of the Code for unprofessional conduct in that he knowingly violated Business and
11 Professions Code sections 4022, 4059, and 4060; and Health and Safety Code section 11379, as
12 described in paragraph 22, which is incorporated here by reference.

13 **FOURTH CAUSE FOR DISCIPLINE**

14 **(Violating Federal & State Laws & Regulations Governing Pharmacy)**

15 25. Respondent has subjected his registration to discipline under section 4301,
16 subdivision (o) of the Code for unprofessional conduct in that he violated Title 21 U.S.C. section
17 843, subdivision (a)(3), Board of Pharmacy Regulations (California Code of Regulations, Title
18 16, Section 1700, et seq.), and the California Uniform Controlled Substances Act (Health and
19 Safety Code 11000, et seq.), when he obtained a controlled substance using fraud and deceit, as
20 described in paragraph 22, which is incorporated here by reference.

21 **PRAYER**

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

24 1. Revoking or suspending Pharmacy Technician Registration Number TCH 139199
25 issued to Javier Sanchez;

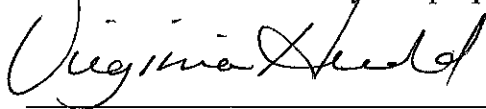
26 2. Ordering Javier Sanchez to pay the Board of Pharmacy the reasonable costs of the
27 investigation and enforcement of this case, pursuant to Business and Professions Code section
28 125.3; and,

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

DATED: _____

1/11/17



VIRGINIA HEROLD

Executive Officer

Board of Pharmacy

Department of Consumer Affairs

State of California

Complainant

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