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7  
8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 6003

11 **ALEXIS ZUNIGA**  
12 **2070 Lucretia Ave. # 101**  
13 **San Jose, CA 95122**

**A C C U S A T I O N**

14 **Pharmacy Technician License No. TCH 130272**

15 Respondent.

16 Complainant alleges:

17 PARTIES

- 18 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
19 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 20 2. On or about February 11, 2013, the Board of Pharmacy issued Pharmacy Technician  
21 License Number TCH 130272 to Alexis Zuniga (Respondent). The Pharmacy Technician License  
22 expired on September 30, 2016, and has not been renewed.

23 JURISDICTION

- 24 3. This Accusation is brought before the Board of Pharmacy (Board), Department of  
25 Consumer Affairs, under the authority of the following laws. All section references are to the  
26 Business and Professions Code (Code) unless otherwise indicated.
- 27 4. Section 4300(a) of the Code provides that every license issued by the Board may be  
28 suspended or revoked.



1 8. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous  
2 drug or dangerous device except upon the prescription of an authorized prescriber.

3 9. Section 4060 of the Code provides, in pertinent part, that no person shall possess any  
4 controlled substance, except that furnished upon a valid prescription/drug order.

5 10. Health and Safety Code section 11170 provides that no person shall prescribe,  
6 administer, or furnish a controlled substance for himself or herself.

7 11. Health and Safety Code section 11173, subdivision (a), provides that no person shall  
8 obtain or attempt to obtain controlled substances, or procure or attempt to procure the  
9 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,  
10 or subterfuge; or (2) by the concealment of a material fact.

11 12. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess  
12 any controlled substance listed in Schedule II (Health and Safety Code section 11055),  
13 subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

14 13. Health and Safety Code section 11377, in pertinent part, makes it unlawful to possess  
15 any non-narcotic drug in Schedules III-V, absent a valid prescription.

#### 16 COST RECOVERY

17 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
18 administrative law judge to direct a licentiate found to have committed a violation of the licensing  
19 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

#### 20 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

21 15. Section 4021 of the Code states:

22 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section  
23 11053) of Division 10 of the Health and Safety Code.”

24 16. Section 4022 of the Code states, in pertinent part:

25 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use,  
26 except veterinary drugs that are labeled as such, and includes the following:

27 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without  
28 prescription,’ ‘Rx only,’ or words of similar import.

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

3 17. **Norco, Vicodin, Vicodin ES, Lortab, and Lorcet** are among the brand names for  
4 compounds of varying dosages of acetaminophen (aka APAP) and **hydrocodone**, a Schedule III  
5 controlled substance as designated by Health and Safety Code section 11056(e)(4) and dangerous  
6 drug as designated by Business and Professions Code section 4022. The varying compounds are  
7 also known generically as **Hydrocodone with APAP**. These are all narcotic drugs. Products like  
8 these that combine **hydrocodone** with non-controlled substances are also called **hydrocodone**  
9 **combination products**. Effective October 6, 2014, **hydrocodone combination productions**  
10 were switched at the federal level from Schedule III (21 C.F.R. § 1308.13(e)(1)(iii) and (iv)) to  
11 Schedule II (21 C.F.R. § 1308.12(b)(1)). This includes **Hydrocodone with APAP** drugs.

12 18. **Klonopin** is a brand name for **clonazepam**, a Schedule IV controlled substance as  
13 designated by Health and Safety Code section 11057(d)(7) and a dangerous drug as designated by  
14 Business and Professions Code section 4022. It is a depressant drug.

#### 15 FACTUAL SUMMARY

16 19. Between in or about April 2013 and March 2016, Respondent was employed by  
17 Walgreens Corporation. Between on or about November 7, 2015 and March 15, 2016, he was  
18 employed as a pharmacy technician at a Walgreens Pharmacy store (#02961) in Lodi, California.

19 20. During the tenure of his employment, Respondent took advantage of his access as a  
20 pharmacy technician to divert/steal and self-use controlled substances and dangerous drugs,  
21 including but not limited to narcotic controlled substances.

22 21. The exact number of instances of diversion/theft by Respondent., and the full quantity  
23 of controlled substances or dangerous drugs diverted/stolen by Respondent, are not known, but in  
24 the course of investigations conducted by the pharmacy, by police, and by Board Inspector(s), the  
25 following were among the observations, admissions, and revelations reported:

26 a. In or about 2015, Respondent had received one or more prescriptions for the  
27 controlled substance / dangerous drug **clonazepam (Klonopin)** from an authorized prescriber.  
28 His last authorized prescription for this drug was filled on or about September 3, 2015.

1 b. On or about March 2, 2016, Respondent's physician declined to authorize a  
2 refill for Respondent for **clonazepam (Klonopin)**, denying Respondent's request for same.

3 c. On or about March 3, 2016, Respondent entered a false refill authorization in  
4 the Walgreens computer system which purported to show oral authorization for the refill by his  
5 physician, and falsely attributed the receipt of that authorization to another Walgreens pharmacy  
6 technician. Respondent then filled the false refill for himself, diverting/stealing eighty-four (84)  
7 tablets of **clonazepam (Klonopin)** from Walgreens Pharmacy #02961.

8 d. On or about that same date, Respondent also diverted/stole a bottle containing  
9 sixty (60) tablets of **hydrocodone with APAP 5/325mg** by placing it into his pocket.

10 e. The case was reported to Lodi Police, and Respondent was arrested.

11 e. On or about April 4, 2016 and May 2, 2016, Walgreens Pharmacy #02961  
12 reported losses via employee pilferage of two hundred ninety-three (293) tablets of **hydrocodone**  
13 **with APAP 5/325mg** and fifty-six (56) tablets of **hydrocodone with APAP 7.5/325mg**  
14

15 FIRST CAUSE FOR DISCIPLINE

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

17 22. Respondent is subject to discipline under section 4301(f) of the Code, in that  
18 Respondent, as described in paragraphs 19-21 above, committed acts involving moral turpitude,  
19 dishonesty, fraud, deceit, or corruption.  
20

21 SECOND CAUSE FOR DISCIPLINE

22 (Furnishing of Controlled Substance(s))

23 23. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section  
24 4059 of the Code, and/or Health and Safety Code section 11170, in that Respondent, as described  
25 in paragraphs 19-21 above, furnished to himself or another without a valid prescription, and/or  
26 conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.

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1 THIRD CAUSE FOR DISCIPLINE

2 (Possession of Controlled Substance(s))

3 24. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section  
4 4060 of the Code, and/or Health and Safety Code section 11350 and/or 11377, in that  
5 Respondent, as described in paragraphs 19-21 above, possessed, conspired to possess, and/or  
6 assisted in or abetted possession of, a controlled substance, without a valid prescription.  
7

8 FOURTH CAUSE FOR DISCIPLINE

9 (Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

10 25. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,  
11 and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs  
12 19-21 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a  
13 controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.  
14

15 FIFTH CAUSE FOR DISCIPLINE

16 (Conviction of Substantially Related Crime(s))

17 26. Respondent is subject to disciplinary action under Code section 4301, subsection (l),  
18 in that on or about March 16, 2016, he was convicted of violating Health and Safety Code section  
19 11173, subdivision (a) (Obtaining Controlled Substance by Fraud), a misdemeanor, a substantially  
20 related crime. The circumstances are as follows:

21 27. On or about March 16, 2016, based on the conduct described above in paragraphs 19-  
22 21, Respondent was charged in a criminal case titled *People v. Alexis Zuniga*, Case No. LOD-CR-  
23 MI-2016-0003989 in Sonoma County Superior Court, with violating (1) Penal Code section 484,  
24 subdivision (a) (Petty Theft), a misdemeanor; and (2) Health and Safety Code section 11173,  
25 subdivision (a) (Obtaining Controlled Substance by Fraud), a misdemeanor. Respondent pleaded  
26 *nolo contendere* and was convicted of count (2); count (1) was dismissed. Imposition of sentence  
27 was suspended and Respondent was placed on conditional probation for three (3) years, on terms  
28 and conditions including an order to stay away from the Walgreens in Lodi, and fines and fees.

1 SIXTH CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct)

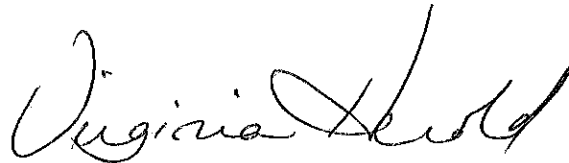
3 28. Respondent is subject to discipline under section 4301 of the Code in that  
4 Respondent, as described in paragraphs 19-27 above, engaged in unprofessional conduct.

5  
6 PRAYER

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

- 9 1. Revoking or suspending Pharmacy Technician License Number TCH 130272, issued  
10 to Alexis Zuniga (Respondent);  
11 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and  
12 enforcement of this case, pursuant to Business and Professions Code section 125.3; and,  
13 3. Taking such other and further action as is deemed necessary and proper.

14  
15  
16 DATED: 3/2/17



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

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