

1 XAVIER BECERRA
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 STEPHEN A. ARONIS
Deputy Attorney General
4 State Bar No. 204995
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 738-9451
7 Facsimile: (619) 645-2581
Attorneys for Complainant

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. 6035

12 **CHRISTIAN TAPIA**
13 **473 Smoky Circle**
14 **Chula Vista, CA 91910**

A C C U S A T I O N

15 **Pharmacy Technician Registration No. 54039**

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, Department of Consumer Affairs.
- 22 2. On or about January 20, 2004, the Board of Pharmacy (Board) issued Pharmacy
23 Technician Registration Number 54039 to Christian Tapia (Respondent). The Pharmacy
24 Technician License was in full force and effect at all times relevant to the charges brought herein
25 and will expire on January 31, 2018, unless renewed.¹

26 ¹ On January 11, 2017, Respondent entered into a Stipulation with the Board restricting
27 Respondent from conducting any activities associated with or permitted by his pharmacy
28 technician registration until the final conclusion of the then pending criminal proceedings *and*
until the conclusion of any disciplinary action initiated by the Board, whichever occurred last.

1 **JURISDICTION**

2 3. This Accusation is brought before the Board, Department of Consumer Affairs, under
3 the authority of the following laws. All section references are to the Business and Professions
4 Code unless otherwise 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 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
investigation of, or action or disciplinary proceeding against, the licensee or to render
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
furnished by the applicant or licensee.

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

23 8. Section 493 of the Code states:

24 Notwithstanding any other provision of law, in a proceeding conducted by a
25 board within the department pursuant to law to deny an application for a license or to
26 suspend or revoke a license or otherwise take disciplinary action against a person who
27 holds a license, upon the ground that the applicant or the licensee has been convicted
28 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, subdivision (a) of the Code states, in pertinent part, that a person may
17 not furnish any dangerous drug except upon the prescription of a physician, dentist, podiatrist,
18 optometrist, 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 issued by mistake. Unprofessional
25 conduct shall include, but is not limited to, any of the following:

26 ...

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

...

///

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 or federal
25 regulatory agency. . .

26 13. Health and Safety Code section 11173, subdivision (a), states:

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

14. Health and Safety Code section 11375, subdivision (b)(1), states:

Every person who possesses for sale, or who sells, any substance specified in
subdivision (c) shall be punished by imprisonment in the county jail for a period of
not more than one year or state prison.

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

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

1 subparagraph (A) of paragraph (1) of subdivision (f), of Section 11055, unless upon
2 the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice
3 in this state, shall be punished by imprisonment pursuant to subdivision (h) of Section
4 1170 of the Penal Code for a period of two, three, or four years.

5 16. United States Code, title 21, section 843 states, in pertinent part:

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

7 ...

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

10

11 REGULATORY PROVISIONS

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

13 When considering the suspension or revocation of a facility or a personal
14 License on the ground that the licensee or the registrant has been convicted of a
15 crime, the board, in evaluating the rehabilitation of such person and his present
16 eligibility for a license will consider the following criteria:

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

18 (2) Total criminal record.

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

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

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

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

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

///

///

///

///

1 **COSTS**

2 19. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
6 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
7 included in a stipulated settlement.

8 **DRUG**

9 20. Alprazolam is a Schedule IV controlled substance pursuant to Health and Safety
10 Code section 11057, subdivision (d)(1), and a dangerous drug pursuant to Business and
11 Professions Code section 4022.

12 21. Tylenol #3 is a brand name for Acetaminophen 300mg and Codeine 30mg, which
13 is a Schedule III controlled substance pursuant to Health and Safety Code section 11056,
14 subdivision (e)(2), and a dangerous drug pursuant to Business and Professions Code section 4022.

15 **FIRST CAUSE FOR DISCIPLINE**

16 **(January 11, 2017 Criminal Conviction for Possession for Sale of Designated Controlled**
17 **Substances and for Grand Theft by Employee on October 7, 2016)**

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

21 a. On or about January 11, 2017, in a criminal proceeding entitled *People of the*
22 *State of California v. Christian Tapia*, in the San Diego County Superior Court, Central Division,
23 case number CD269150, Respondent was convicted on his plea of guilty to violating Health and
24 Safety Code section 11375, subdivision (b)(1) (possession for sale of a designated controlled
25 substance), and 487, subdivision (b)(3) (grand theft by employee over \$950), felonies. As a result
26 of a plea agreement, a count for violating Penal Code section 459 (burglary), a felony, was
27 dismissed.

1 b. As a result of the convictions, on February 9, 2017, Respondent was granted
2 formal probation for five (5) years, to February 8, 2022, and was committed to the custody of the
3 sheriff for 365 days. Respondent was ordered to pay various fees and fines, and restitution to the
4 victim in the amount of \$23,065.74.

5 c. The facts that led to the convictions are that on October 13, 2016, members of a
6 Drug Enforcement Administration task force (DEA), comprised of various law enforcement
7 agencies, met with Vons Grocery Store Asset Protection staff (Vons staff) regarding an employee
8 pharmaceutical drug theft case. Vons staff informed the DEA that a Vons pharmacy technician
9 (Respondent) was suspected of stealing a large quantity of Alprazolam (Xanax) 2 mg pills from
10 the Vons store on Regents Road in San Diego. The DEA were provided with a Memorex DVD
11 disk which contained a video recording of Respondent concealing bottles of alprazolam while at
12 the pharmacy on October 7, 2016.

13 d. On October 17, 2016, the DEA arrived at Vons and set up surveillance of
14 Respondent. When Respondent arrived at work, he was interviewed by Vons staff in an interview
15 room regarding the missing controlled substances. Respondent admitted to Vons staff that
16 Respondent stole 30,000 pills from the Vons pharmacy over the past 15 months, and Vons staff
17 obtained a written a written statement from Respondent. Vons staff escorted the DEA to the
18 interview room and Respondent was arrested for theft of controlled substances, burglary,
19 embezzlement, and grand theft. Respondent provided the DEA with a consent to search his
20 vehicle which was parked nearby. During the search of Respondent's vehicle, the DEA found
21 and seized a bottle containing 12 white tablets imprinted with "IP33," which were identified as
22 being 300 mgs of Acetaminophen and 30 mgs of Codeine Phosphate, a Schedule III controlled
23 substance, for which Respondent did not have a prescription. Respondent was transported to the
24 DEA where he was further interviewed. Respondent told the DEA that he met an "Andrew"
25 (Andrew) at a bar some months back who, and after learning that Respondent was a pharmacy
26 technician, Andrew offered to pay Respondent two to three dollars per pill. Respondent started
27 selling Xanax to Andrew, citing financial reasons for his actions. Respondent told task force
28 members that he started selling one bottle of 100 Xanax pills, 2 milligram dose, to Andrew for

1 \$700 in cash, and that after a while, he sold one to two bottles of 500 Xanax pills to Andrew
2 every two to three weeks. Respondent further told the DEA that he sold approximately 36,000
3 pills of Xanax to Andrew over an 18- month period. Respondent was arrested and booked at the
4 county jail.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Obtained Controlled Substances by Fraud, Deceit, Misrepresentation, or Subterfuge)**

7 23. Respondent has subjected his registration to discipline under section 4301,
8 subdivisions (f) and (j) of the Code for unprofessional conduct in that he violated Health and
9 Safety Code section 11173, subdivision (a), when he obtained controlled substances by fraud,
10 deceit, misrepresentation, or subterfuge, as is more fully described in paragraph 22, which is
11 incorporated here by reference.

12 **THIRD CAUSE FOR DISCIPLINE**

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

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

18 **FOURTH CAUSE FOR DISCIPLINE**

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

20 25. Respondent has subjected his registration to discipline under section 4301,
21 subdivision (j) of the Code for unprofessional conduct in that he knowingly violated Business and
22 Professions Code sections 4022, 4059(a), and 4060; and Health and Safety Code sections
23 11173(a) and 11379(a), as described in paragraph 22, which is incorporated here by reference.

24 ///

25 ///

26 ///

27 ///

28 ///

1 **FIFTH CAUSE FOR DISCIPLINE**

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

3 26. Respondent has subjected his registration to discipline under section 4301,
4 subdivision (o) of the Code for unprofessional conduct in that he violated Title 21 U.S.C. section
5 843, subdivision (a)(3), Board of Pharmacy Regulations (California Code of Regulations, Title
6 16, Section 1700, et seq.), and the California Uniform Controlled Substances Act (Health and
7 Safety Code 11000, et seq.), when he obtained a controlled substance using fraud and deceit, as
8 described in paragraph 22, which is incorporated here by reference.

9 **PRAYER**

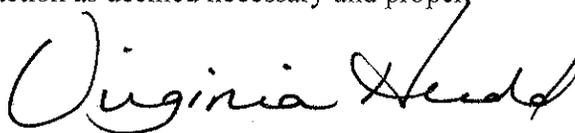
10 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
11 and that following the hearing, the Board of Pharmacy issue a decision:

12 1. Revoking or suspending Pharmacy Technician Registration Number 54039 issued to
13 Christian Tapia;

14 2. Ordering Christian Tapia to pay the Board of Pharmacy the reasonable costs of the
15 investigation and enforcement of this case, pursuant to Business and Professions Code section
16 125.3; and,

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

18
19 DATED: 8/11/17



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

20
21
22
23
24 SD2017703675
81645687.doc