

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

In the Matter of the Accusation Against:

**BRIAN CALVIN BINNIE**

**Pharmacy Technician Registration No. TCH 43562**

Respondent.

Case No. 3811

OAH No. 2011030994

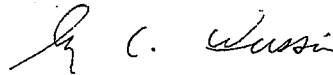
**DECISION AND ORDER**

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as its Decision in the above-entitled matter.

This decision shall become effective on March 14, 2012.

It is so ORDERED on February 13, 2012.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
STANLEY C. WEISSER  
Board President

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**PROPOSED DECISION**

This matter came on regularly for hearing before Roy W. Hewitt, Administrative Law Judge, Office of Administrative Hearings, in San Diego, California, on October 31, 2011.

Deputy Attorney General Thomas L. Rinaldi represented complainant.

Brian C. Binnie (respondent) represented himself.

Oral and documentary evidence was presented, and the matter was submitted on October 31, 2011.

**FACTUAL FINDINGS**

1. The Accusation was filed by Virginia Herold (complainant) in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, State of California (the board).

2. On July 29, 2002, the board issued Pharmacy Technician Registration number TCH 43562 to respondent. At all relevant times respondent's registration was, and currently is, in full force and effect.

3. On January 9, 2007, respondent was driving his vehicle on Sierra Highway in Los Angeles County, California. Respondent's vehicle had no front license plate and he failed to signal for a turn he had just made. A California Highway Patrol officer who observed respondent fail to signal for his turn stopped respondent. During this routine traffic

stop the officer found respondent in possession of 83 Vicodin<sup>1</sup> tablets. Respondent did not have a prescription for the Vicodin.

4. During the instant hearing respondent admitted that at the time of the traffic stop he had a Vicodin addiction problem. He did not obtain the Vicodin by diverting it from the pharmacy where he worked at the time; rather, he bought the Vicodin "on the street."

5. Respondent has taken the following steps to address his Vicodin addiction. Respondent's sobriety date is June 11, 2010. On June 15, 2010, respondent self-admitted to Action Family Counseling, an in-house, residential addiction treatment center. In a June 22, 2011, letter, the Action Family Program Director wrote:

"[Respondent] was admitted to our residential facility on the 15<sup>th</sup> of June, 2010, and completed successfully with a discharge on July 15<sup>th</sup>, 2010. During his stay, he was treated for his addiction, co-occurring psychological issues, and dysfunctional family dynamics. [Respondent] was compliant with treatment. Upon discharge, [respondent] was referred to 12-step meetings to continue working on his recovery." (Exh. A)

Respondent was 24 years old when he became addicted to Vicodin as a result of having Vicodin prescribed to address an injury. Respondent is now 29 years old and he has committed himself to his addiction recovery as well as that of others. After "getting out of rehab [Action Family Counseling], I flipped my life around." Currently respondent lives with his parents in Running Springs, California. Needless to say, respondent's parents are extremely supportive of respondent's recovery. Respondent is an active participant in Narcotics Anonymous (NA). Respondent is a Group Support Representative (GSR) with the local NA group. On Friday nights respondent is the secretary of the NA meetings and "runs the meetings for 70 addicts." Respondent is working the 12-Step program and is on step number four; self-assessment. Respondent has a sponsor and intends to become a sponsor after he "gets 18 months" of NA participation under his belt. As respondent so aptly phrased it, "my recovery is first." Respondent's self assessment is that he is now "a changed person, five years ago I was a different person."

#### *Costs*

6. The reasonable costs of investigation and prosecution of the instant matter against respondent total \$2,035 and complainant is seeking recovery of those costs pursuant to Business and Professions Code section 125.3.

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<sup>1</sup> Vicodin is the trade name for the narcotic substance hydrocodone or dihydrocodeinone. Vicodin is a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (e), and is a dangerous drug within the meaning of Health and Safety Code section 4022. A valid prescription is required in order to legally possess and/or ingest Vicodin.

7. Respondent lacks the ability to pay cost recovery. He is currently unemployed and lives with his parents who are financially supporting him. Additionally, since this matter will result in respondent being placed on probation, respondent will have probation monitoring costs to address.

## LEGAL CONCLUSIONS

1. Cause exists for discipline pursuant to Business and Professions Code sections 4300<sup>2</sup> and 4301, subdivision (j)<sup>3</sup>, for violating Business and Professions Code section 4060<sup>4</sup> by possessing Vicodin, a controlled and dangerous substance, without having a valid prescription. (Finding 3.)

2. The factors indicating rehabilitation, as set forth in Finding 5, in conjunction with the fact that respondent's possession of Vicodin was not due to his having diverted the Vicodin from his employer, leads to the conclusion that it would not be adverse to the public health, safety, or welfare to place respondent on probation with appropriate terms and conditions.

### *Cost Recovery*

3. The reasonable costs of investigation and prosecution of the instant matter against respondent total \$2,035 and complainant is seeking recovery of those costs pursuant to Business and Professions Code section 125.3.

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<sup>2</sup> Business and Professions Code section 4300 provides that every license issued by the department may be disciplined.

<sup>3</sup> Business and Professions Code section 4301 provides, in pertinent part:

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

“.....

“(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. . . .”

<sup>4</sup> Business and Professions Code section 4060 provides, in pertinent part, that “[n]o person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor. . . .”

In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth four factors to consider in deciding whether to reduce or eliminate costs: (1) whether the licensee used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; (2) whether the licensee had a "subjective" good faith belief in the merits of his/[her] position; (3) whether the licensee raised a "colorable challenge" to the proposed discipline; and (4) whether the licensee had the financial ability to make payments.

After applying the *Zuckerman* criteria in the instant matter, it is concluded that respondent lacks the financial ability to make any payments toward the requested cost recovery; therefore, issuing an order requiring him to pay any costs would be unreasonable and unjust.

### ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

1. Complainant's cost recovery request is denied.
2. Registration number TCH 43562, issued to respondent is revoked; however, the revocation is stayed and respondent is placed on probation for three (3) years upon the following terms and conditions:

#### **1. Certification Prior to Resuming Work**

Respondent shall be automatically suspended from working as a pharmacy technician until he is certified as defined by Business and Professions Code section 4202, subdivision (a)(4) and provides satisfactory proof of certification to the board. Respondent shall not resume working as a pharmacy technician until notified by the board. Failure to achieve certification within one (1) year shall be considered a violation of probation. Respondent shall not resume working as a pharmacy technician until notified by the board.

During suspension, respondent shall not enter any pharmacy area or any portion of any other board licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer, or assist any licensee of the board. Respondent shall not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances. Respondent shall not resume work until notified by the board.

Subject to the above restrictions, respondent may continue to own or hold an interest in any board licensed premises in which he or she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

**2. Abstain from Drugs and Alcohol Use**

Respondent shall completely abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon request of the board or its designee, respondent shall provide documentation from the licensed practitioner that the prescription for the drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Respondent shall ensure that he is not in the same physical location as individuals who are using illicit substances even if respondent is not personally ingesting the drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia not supported by the documentation timely provided, and/or any physical proximity to persons using illicit substances, shall be considered a violation of probation.

**3. Attend Substance Abuse Recovery Relapse Prevention and Support Groups**

Within thirty (30) days of the effective date of this decision, respondent shall begin regular attendance at a recognized and established substance abuse recovery support group in California, (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been approved by the board or its designee. Respondent must attend at least one group meeting per week unless otherwise directed by the board or its designee. Respondent shall continue regular attendance and submit signed and dated documentation confirming attendance with each quarterly report for the duration of probation. Failure to attend or submit documentation thereof shall be considered a violation of probation.

**4. Random Drug Screening**

Respondent, at his own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug screening program as directed by the board or its designee. Respondent may be required to participate in testing for the entire probation period and the frequency of testing will be determined by the board or its designee. At all times respondent shall fully cooperate with the board or its designee, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its designee may direct. Failure to timely submit to testing as directed shall be considered a violation of probation. Upon request of the board or its designee, respondent shall provide documentation from a licensed practitioner that the prescription for a detected drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall be considered a violation of probation and shall result in the automatic suspension of work by respondent. Respondent may not resume work as a pharmacy technician until notified by the board in writing.

During suspension, respondent shall not enter any pharmacy area or any portion of or any other board licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer, or assist any licensee of the board. Respondent shall not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances. Respondent shall not resume work until notified by the board.

Respondent shall not direct, control or perform any aspect of the practice of pharmacy. Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises in which he holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

**5. Work Site Monitor**

Within ten (30) days of the date respondent is certified to resume working, respondent shall identify a work site monitor, for prior approval by the board, who shall be responsible for supervising respondent during working hours. Respondent shall be responsible for ensuring that the work site monitor reports in writing to the board quarterly. Should the designated work site monitor determine at any time during the probationary period that respondent has not maintained sobriety, he shall notify the board immediately, either orally or in writing as directed. Should respondent change employment, a new work site monitor must be designated, for prior approval by the board, within ten (10) days of commencing new employment. Failure to identify an acceptable initial or replacement work site monitor, or to ensure quarterly reports are submitted to the board, shall be considered a violation of probation.

**6. Notification of Departure**

Prior to leaving the probationary geographic area designated by the board or its designee for a period greater than twenty-four (24) hours, respondent shall notify the board verbally and in writing of the dates of departure and return. Failure to comply with this provision shall be considered a violation of probation.

**7. Obey All Laws**

Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the board, in writing, within seventy-two (72) hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's pharmacy technician license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

Failure to timely report any such occurrence shall be considered a violation of probation.

#### **8. Report to the Board**

Respondent shall report to the board quarterly, on a schedule as directed by the board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the board.

#### **9. Interview with the Board**

Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the board or its designee, at such intervals and locations as are determined by the board or its designee. Failure to appear for any scheduled interview without prior notification to board staff, or failure to appear at two (2) or more scheduled interviews with the board or its designee during the period of probation, shall be considered a violation of probation.

#### **10. Cooperate with Board Staff**

Respondent shall cooperate with the board's inspection program and with the board's monitoring and investigation of respondent's compliance with the terms and conditions of his or her probation. Failure to cooperate shall be considered a violation of probation.

#### **11. Notice to Employers**

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 3811 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:



Within fifteen (15) days of the date respondent is certified to resume working as a pharmacy technician (provided respondent seeks and obtains employment), and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause his direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number 3811 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify his direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the decision in case number 3811 in advance of the respondent commencing work at each pharmacy. A record of this notification must be provided to the board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause his direct supervisor with the pharmacy employment service to report to the board in writing acknowledging that he has read the decision in case number 3811 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

Failure to timely notify present or prospective employer(s) or to cause that/those employer(s) to submit timely acknowledgements to the board shall be considered a violation of probation.

"Employment" within the meaning of this provision shall include any full-time, part-time, temporary or relief service or pharmacy management service as a pharmacy technician or in any position for which a pharmacy technician license is a requirement or criterion for employment, whether the respondent is considered an employee, independent contractor or volunteer.

## **12. Probation Monitoring Costs**

Respondent shall pay any costs associated with probation monitoring as determined by the board each and every year of probation. Such costs shall be payable to the board on a schedule as directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

## **13. Status of License**

Respondent shall, at all times while on probation, maintain an active, current pharmacy technician license with the board, including any period during which suspension or

probation is tolled. Failure to maintain an active, current license shall be considered a violation of probation.

If respondent's pharmacy technician license expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof due to tolling or otherwise, upon renewal or reapplication respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

#### **14. License Surrender While on Probation/Suspension**

Following the effective date of this decision, should respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender his pharmacy technician license to the board for surrender. The board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the respondent's license history with the board.

Upon acceptance of the surrender, respondent shall relinquish his pharmacy technician license to the board within ten (10) days of notification by the board that the surrender is accepted. Respondent may not reapply for any license, permit, or registration from the board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board.

#### **15. Notification of a Change in Name, Residence Address, Mailing Address or Employment**

Respondent shall notify the board in writing within ten (10) days of any change of employment. Said notification shall include the reasons for leaving, the address of the new employer, the name of the supervisor and owner, and the work schedule if known. Respondent shall further notify the board in writing within ten (10) days of a change in name, residence address and mailing address, or phone number.

Failure to timely notify the board of any change in employer(s), name(s), address(es), or phone number(s) shall be considered a violation of probation.

#### **16. Tolling of Probation**

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of 40 hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation.

Should respondent, regardless of residency, for any reason (including vacation) cease working as a pharmacy technician for a minimum of 40 hours per calendar month in California, respondent must notify the board in writing within ten (10) days of cessation of work and must further notify the board in writing within ten (10) days of the resumption of the work. Any failure to provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for respondent's probation to remain tolled pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding thirty-six (36) months.

"Cessation of work" means calendar month during which respondent is not working for at least 40 hours as a pharmacy technician, as defined in Business and Professions Code section 4115. "Resumption of work" means any calendar month during which respondent is working as a pharmacy technician for at least 40 hours as a pharmacy technician as defined by Business and Professions Code section 4115.

#### **17. Violation of Probation**

If respondent has not complied with any term or condition of probation, the board shall have continuing jurisdiction over respondent, and probation shall automatically be extended, until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

If respondent violates probation in any respect, the board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed against respondent during probation, the board shall have continuing jurisdiction, and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

#### **18. Completion of Probation**

Upon written notice by the board indicating successful completion of probation, respondent's pharmacy technician license will be fully restored.

DATED: November 4, 2011

  
ROY W. HEWITT  
Administrative Law Judge  
Office of Administrative Hearings

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

11 In the Matter of the Accusation Against:

Case No. 3811

12 **BRIAN CALVIN BINNIE**  
16919 Shinedale Drive  
13 Canyon Country, CA 91387

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

14 Pharmacy Technician Registration No. TCH 43562

15 Respondent.  
16

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 (Board).

22 2. On or about July 29, 2002, the Board issued Pharmacy Technician Registration No.  
23 TCH 43562 to Brian Calvin Binnie (Respondent). The Pharmacy Technician Registration was in  
24 full force and effect at all times relevant to the charges brought herein and will expire on  
25 December 31, 2011, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board under the authority of the following  
28 laws. All section references are to the Business and Professions Code unless otherwise indicated.



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

3 CONTROLLED SUBSTANCE / DANGEROUS DRUG

4 10. Vicodin is a trade name for the narcotic substance hydrocodone or dihydrocodeinone  
5 with the non-narcotic substance acetaminophen (pain reliever and fever reducer). Vicodin is a  
6 Schedule III controlled substance pursuant to Health and Safety Code section 11056(e), and is a  
7 dangerous drug within the meaning of section 4022.

8 CAUSE FOR DISCIPLINE

9 (Illegal Possession of Controlled Substance)

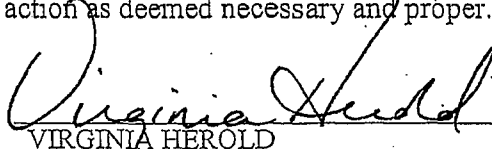
10 11. Respondent is subject to disciplinary action under sections 4300 and 4301,  
11 subdivision (j), for violating section 4060, in that on or about January 9, 2007, Respondent  
12 possessed 83 Vicodin tablets, a controlled substance and dangerous drug, without a valid  
13 prescription.

14 PRAYER

15 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
16 and that following the hearing, the Board issue a decision:

- 17 1. Revoking or suspending Pharmacy Technician Registration No. TCH 43562, issued  
18 to Respondent;
- 19 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and  
20 enforcement of this case, pursuant to section 125.3; and
- 21 3. Taking such other and further action as deemed necessary and proper.

22 DATED: 1/27/11

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

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