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

In the Matter of the Accusation Against:
JOHN DANIEL HERNANDEZ
1031 S. Del Mar Ave.
San Gabriel, CA 91776

Pharmacy Technician Registration No. TCH 101676

Respondent.

Case No. 5360
DEFAULT DECISION AND ORDER
[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about May 21, 2015, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 5360 against John Daniel Hernandez (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)
2. On or about September 9, 2010, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 101676 to Respondent. The Pharmacy Technician Registration expired on August 31, 2014, and has not been renewed.
3. On or about June 22, 2015, Respondent was served by Certified and First Class Mail copies of the Accusation No. 5360, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code section 4100,

1 is required to be reported and maintained with the Board. Respondent's address of record was
2 and is: 1031 S. Del Mar Ave., San Gabriel, CA 91776.

3 4. Service of the Accusation was effective as a matter of law under the provisions of
4 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
5 124.

6 5. Government Code section 11506 states, in pertinent part:

7 (c) The respondent shall be entitled to a hearing on the merits if the respondent
8 files a notice of defense, and the notice shall be deemed a specific denial of all parts
9 of the accusation not expressly admitted. Failure to file a notice of defense shall
10 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
11 may nevertheless grant a hearing.

12 6. Respondent failed to file a Notice of Defense within 15 days after service upon him
13 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
14 5360.

15 7. California Government Code section 11520 states, in pertinent part:

16 (a) If the respondent either fails to file a notice of defense or to appear at the
17 hearing, the agency may take action based upon the respondent's express admissions
18 or upon other evidence and affidavits may be used as evidence without any notice to
19 respondent.

20 8. Pursuant to its authority under Government Code section 11520, the Board finds
21 Respondent is in default. The Board will take action without further hearing and, based on the
22 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
23 taking official notice of all the investigatory reports, exhibits and statements contained therein on
24 file at the Board's offices regarding the allegations contained in Accusation No. 5360, finds that
25 the charges and allegations in Accusation No. 5360, are separately and severally, found to be true
26 and correct by clear and convincing evidence.

27 9. Taking official notice of its own internal records, pursuant to Business and
28 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
and Enforcement are \$2,247.50 as of August 18, 2015.

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DETERMINATION OF ISSUES

1
2 1. Based on the foregoing findings of fact, Respondent John Daniel Hernandez has
3 subjected his Pharmacy Technician Registration No. TCH 101676 to discipline.

4 2. The agency has jurisdiction to adjudicate this case by default.

5 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
6 Registration based upon the following violations alleged in the Accusation which are supported
7 by the evidence contained in the Default Decision Evidence Packet in this case:

8 a. Business and Professions Code sections 490, 4301, subdivision (l), in conjunction
9 with California Code of Regulations, title 16, section 1770, in that Respondent was convicted of
10 crimes substantially related to qualifications, functions, or duties of a licensee or registrant which
11 to a substantial degree evidence his present or potential unfitness to perform the functions
12 authorized by his license or registration in a manner consistent with the public health, safety, or
13 welfare. Specifically, on or about May 23 2014, after pleading guilty, Respondent was convicted
14 of one misdemeanor count of violating Penal Code section 484, subdivision (a) [petty theft], in
15 the criminal proceeding entitled *The People of the State of California v. John Daniel Hernandez*
16 (Super. Ct. L.A. County, 2014, No. 4RI01359). The Court sentenced Respondent to one day in
17 jail, placed him on 36 months summary probation, and ordered him to perform ten days of
18 community labor.

19 b. Business and Professions Code section 4301, subdivision (j), on the grounds of
20 unprofessional conduct, for violating Code sections 4059, subdivision (a), and 4060, in
21 conjunction with Health and Safety Code section 11377, in that Respondent removed, possessed
22 and furnished five tablets of alprazolam from CVS Pharmacy without a valid prescription.

23 c. Business and Professions Code section 4301, subdivisions (h) and (j), on the grounds
24 of unprofessional conduct, for violating Code section 4060, in conjunction of Healthy and Safety
25 Code section 11378, in that Respondent administered and possessed five tablets of alprazolam
26 from CVS Pharmacy without a valid prescription and sold them to a stranger.

27 d. Business and Professions Code section 4301, subdivision (f), on the grounds of
28 unprofessional conduct, in that Respondent committed acts involving moral turpitude, dishonesty,

1 fraud, deceit, or corruption.

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ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 101676, heretofore issued to Respondent John Daniel Hernandez, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on October 19, 2015.

It is so ORDERED September 18, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____
Amy Gutierrez, Pharm.D.
Board President

51872595.DOC
DOJ Matter ID:LA2015500024

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 THOMAS L. RINALDI
Supervising Deputy Attorney General
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5 Los Angeles, CA 90013
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6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

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. 5360

13 **JOHN DANIEL HERNANDEZ**
1031 S. Del Mar Ave.
San Gabriel, CA 91776

ACCUSATION

14 Pharmacy Technician Registration No. TCH 101676
15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board).

21 2. On or about September 9, 2010, the Board issued Pharmacy Technician Registration
22 (Registration) No. TCH 101676 to John Daniel Hernandez (Respondent). The Registration
23 expired on August 31, 2014, and has not been renewed. The Registration was cancelled on
24 November 25, 2014.

25 **JURISDICTION**

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

1 the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment
2 of conviction has been affirmed on appeal, or when an order granting probation is made suspending
3 the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal
4 Code. . . .”

5 9. Section 4059 of the Code states, in pertinent part:

6 “(a) A person may not furnish any dangerous drug, except upon the prescription of a
7 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
8 3640.7. A person may not furnish any dangerous device, except upon the prescription of a
9 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
10 3640.7. . . .”

11 10. Section 4060 of the Code states, in pertinent part:

12 “A person shall not possess any controlled substance, except that furnished to a person upon
13 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
14 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife
15 pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant
16 pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist
17 pursuant to Section 4052.1, 4052.2, or 4052.6. This section does not apply to the possession of any
18 controlled substance by a manufacturer, wholesaler, third-party logistics provider, pharmacy,
19 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
20 nurse-midwife, nurse practitioner, or physician assistant, if in stock in containers correctly labeled
21 with the name and address of the supplier or producer.”

22 11. Section 4301 of the Code states, in pertinent part:

23 “The board shall take action against any holder of a license who is guilty of unprofessional
24 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
25 Unprofessional 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, deceit, or
28 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and

1 whether the act is a felony or misdemeanor or not.

2

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

8

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

11

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

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

"(p) Actions or conduct that would have warranted denial of a license.

"(q) Engaging in any conduct that subverts or attempts to subvert an investigation of the board. . . ."

12. Health and Safety Code section 11377 states, in pertinent part:

"(a) Except as authorized by law and as otherwise provided in subdivision (b) or Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses any controlled substance which is (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) 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), (e), or (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 in a county jail for a period of not more than one year or pursuant to subdivision (h) of Section 1170 of the Penal Code. . . ."

13. Health and Safety Code section 11378 states, in pertinent part:

"Except as otherwise provided in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses for sale 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), (e), or (f), except paragraph (3) of subdivision (e) and subparagraphs (A) and (B) of paragraph (2) of subdivision (f), of

1 Section 11055, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of
2 the Penal Code."

3 **REGULATORY PROVISION**

4 14. California Code of Regulations, title 16, section 1770, states, in pertinent part:

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

11 **COST RECOVERY**

12 15. Section 125.3 of the Code states, in pertinent part, that the Board may request the
13 administrative law judge to direct a licensee found to have committed a violation or violations of
14 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
15 enforcement of the case.

16 **CONTROLLED SUBSTANCE / DANGEROUS DRUG**

17 16. Alprazolam is a generic name for brand names: Xanax, Invirase, Crixivan, Serzone
18 and Alprazolam Intensol. It is a Schedule IV controlled substance pursuant to Health and Safety
19 Code section 11057, subdivision (d), and is categorized as a dangerous drug pursuant to section
20 4022 of the Code.

21 **FIRST CAUSE FOR DISCIPLINE**

22 **(Conviction of Substantially Related Crime)**

23 17. Respondent is subject to disciplinary action under sections 490, 4301, subdivision (l),
24 in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent was
25 convicted of crimes substantially related to qualifications, functions, or duties of a licensee or
26 registrant which to a substantial degree evidence his present or potential unfitness to perform the
27 functions authorized by his license or registration in a manner consistent with the public health,
28 safety, or welfare, as follow:

1 a. On or about May 23 2014, after pleading guilty, Respondent was convicted of one
2 misdemeanor count of violating Penal Code section 484, subdivision (a) [petty theft], in the
3 criminal proceeding entitled *The People of the State of California v. John Daniel Hernandez*
4 (Super. Ct. L.A. County, 2014, No. 4R101359). The Court sentenced Respondent to one day in
5 jail, placed him on 36 months summary probation, and ordered him to perform ten days of
6 community labor.

7 b. The circumstances underlying the conviction are that on or about February 17, 2014,
8 while employed as a pharmacy technician at CVS Pharmacy, Respondent admitted to stealing a
9 bottled drink and five tablets of alprazolam (Xanax) from CVS Pharmacy. Respondent further
10 admitted to selling the five tablets of alprazolam to a stranger for \$5 each. Also, at another time,
11 Respondent authorized a refill for a prescription of alprazolam (Xanax) without a doctor's
12 authorization and then attempted to have the prescription dispensed for sale.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Unlawful Possession and Furnishing of Controlled Substances)**

15 18. Respondent is subject to disciplinary action under Code section 4301, subdivision (j),
16 on the grounds of unprofessional conduct, for violating Code sections 4059, subdivision (a), and
17 4060, in conjunction of Health and Safety Code section 11377, in that Respondent removed,
18 possessed and furnished five tablets of alprazolam from CVS Pharmacy without a valid
19 prescription. Complainant refers to and by this reference incorporates the allegations set for
20 above in paragraph 17, as though set forth fully.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Unlawful Possession of Controlled Substances for Sale)**

23 19. Respondent is subject to disciplinary action under Code section 4301, subdivisions
24 (h) and (j), on the grounds of unprofessional conduct, for violating Code section 4060, in
25 conjunction of Health and Safety Code section 11378, in that Respondent administered and
26 possessed five tablets of alprazolam from CVS Pharmacy without a valid prescription and sold
27 them to a stranger. Complainant refers to and by this reference incorporates the allegations set
28 for above in paragraph 17, as though set forth fully.

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FOURTH CAUSE FOR DISCIPLINE

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

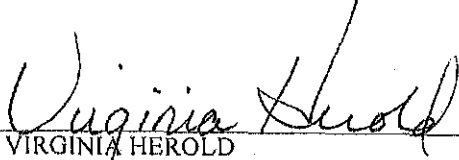
20. Respondent is subject to disciplinary action under section 4301, subdivision (f), on the grounds of unprofessional conduct, in that Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption. Complainant refers to and by this reference incorporates the allegations set for above in paragraphs 17 through 20, inclusive, as though set forth fully.

PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration No. TCH 101676, issued to John Daniel Hernandez;
2. Ordering John Daniel Hernandez to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 5/21/15


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

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