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10 **BEFORE THE**  
11 **BOARD OF PHARMACY**  
12 **DEPARTMENT OF CONSUMER AFFAIRS**  
13 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. 3359

14 CHRISTOPHER D. VARGAS  
2036 Crosscreek Road  
15 Chula Vista, CA 91913

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

16 462 Avenida Gabriel  
Chula Vista, CA 91914

17 Pharmacy Technician Registration  
18 No. TCH 31717

19 Respondent.

20  
21 Complainant alleges:

22 **PARTIES**

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

25 2. On or about December 3, 1999, the Board of Pharmacy issued Pharmacy  
26 Technician Registration Number TCH 31717 to Christopher D. Vargas (Respondent). The  
27 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges  
28 brought herein and will expire on June 30, 2011, unless renewed.

**JURISDICTION**

1  
2           3.     This Accusation is brought before the Board of Pharmacy (Board), Department of  
3 Consumer Affairs, under the authority of the following laws of the Business and Professions  
4 Code:

5           4.     Section 4300(a) of the Code states in pertinent part:

6                   (a) Every license issued may be suspended or revoked.

7           5.     Section 118(b) of the Code provides that the expiration of a license shall not  
8 deprive the Board of jurisdiction to proceed with a disciplinary action during the period within  
9 which the licensee may be renewed, restored, reissued or reinstated.

**STATUTORY PROVISIONS**

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

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

16                   .....

17                   (f) The commission of any act involving moral turpitude, dishonesty,  
18 fraud, deceit, or corruption, whether the act is committed in the course of relations  
19 as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

20                   .....

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

23                   .....

24                   (l) The conviction of a crime substantially related to the qualifications,  
25 functions, and duties of a licensee under this chapter. The record of conviction of  
26 a violation of Chapter 13 (commencing with Section 801) of Title 21 of the  
27 United States Code regulating controlled substances or of a violation of the  
28 statutes of this state regulating controlled substances or dangerous drugs shall be  
conclusive evidence of unprofessional conduct. In all other cases, the record of  
conviction shall be conclusive evidence only of the fact that the conviction  
occurred. The board may inquire into the circumstances surrounding the  
commission of the crime, in order to fix the degree of discipline or, in the case of  
a conviction not involving controlled substances or dangerous drugs, to determine  
if the conviction is of an offense substantially related to the qualifications,  
functions, and duties of a licensee under this chapter. A plea or verdict of guilty  
or a conviction following a plea of nolo contendere is deemed to be a conviction  
within the meaning of this provision. The board may take action when the time  
for appeal has elapsed, or the judgment of conviction has been affirmed on appeal

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or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

7. Section 4059 of the Code states:

(a) A person may not furnish any dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

8. Section 4060 of the Code states:

No 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 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices.

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

10. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who 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 to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

1 As used in this section, "license" includes "certificate," "permit,"  
2 "authority," and "registration."

3 11. Health & Safety Code (H&S Code) section 11170 states that "[n]o person shall  
4 prescribe, administer, or furnish a controlled substance for himself."

5 12. H&S Code section 11173 states in pertinent part that no person shall obtain a  
6 controlled substance by fraud, deceit, subterfuge or concealment of a material fact.

7 13. H&S Code section 11350(a) states in pertinent part that:

8 Except as otherwise provided in this division, every person who possesses  
9 (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1)  
10 of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of  
11 subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section  
12 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled  
13 substance classified in Schedule III, IV, or V which is a narcotic drug, unless  
14 upon the written prescription of a physician, dentist, podiatrist, or veterinarian  
15 licensed to practice in this state, shall be punished by imprisonment in the state  
16 prison.

17 14. H&S Code section 11375(b)(1) states in pertinent part that:

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

### 21 REGULATORY PROVISIONS

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

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

### 29 COST RECOVERY

30 16. Section 123.5 provides that the Board may request the administrative law judge to  
31 direct any licentiate found to have committed a violation or violations of the licensing act to  
32 pay the Board a sum not to exceed the reasonable costs of investigation and enforcement of the  
33 case, including charges imposed by the Attorney General. Under section 125.3(c), a certified  
34 copy of the actual costs or a good faith estimate of costs where actual costs are not available,  
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1 including investigative and enforcement costs and charges of the Attorney General up to the date  
2 of the hearing, signed by the designated representative of the entity bringing the proceeding shall  
3 be *prima facie* evidence of the reasonable costs of investigation and prosecution of the case.

4 **DRUG**

5 17. Hydrocodone/Acetaminophen (APAP) is a narcotic Schedule III controlled  
6 substance, pursuant to H&S Code section 11056(e)(4) and is used to relieve moderate to severe  
7 pain.

8 18. Xanax, a brand name for alprazolam, is a Schedule IV controlled substance as  
9 designated by Health and Safety Code section 11057(d)(1), and is a dangerous drug pursuant to  
10 Business and Professions Code section 4022. Xanax tablets are indicated for the management of  
11 anxiety disorder or the short-term relief of symptoms of anxiety.

12 19. Baclofen is a prescription drug and is used as a muscle relaxer and an antispastic  
13 agent.

14 **CHARGES AND ALLEGATIONS**

15 **FIRST CAUSE FOR DISCIPLINE**

16 **(Unprofessional Conduct: Acts of Dishonesty, Fraud and Deceit)**

17 20. Respondent is subject to disciplinary action under Code section 4301(f) for acts of  
18 dishonesty, fraud or deceit, as more particularly alleged below:

19 a. Between November 1, 2006 and March 7, 2008, Respondent was employed as a  
20 pharmacy technician at Life Wellness Pharmacy. Respondent used personal identifying  
21 information of the pharmacist he worked for and completed a wholesaler application form with  
22 Hygen Pharmaceuticals Inc. (Hygen) listing himself as "a duly authorized officer of Life  
23 Wellness Pharmacy, Inc." Respondent was not an officer of Life Wellness Pharmacy and was not  
24 authorized by Life Wellness Pharmacy to open an account with Hygen. Respondent ordered  
25 ~~pharmaceutical drugs from Hygen under Life Wellness Pharmacy's name and had them~~  
26 delivered to himself at Life Wellness Pharmacy.

27 b. During that time period, Respondent ordered Hydrocodone and Xanax along with  
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1 numerous other drugs without the knowledge or authorization of the owner of Life Wellness  
2 Pharmacy and Respondent kept the drugs for his own use. Respondent ordered and took  
3 approximately 80,000 pills of Hydrocodone, 20,000 pills of Xanax, numerous ibuprofen pills and  
4 numerous other pharmaceutical drugs.

5 c. The owner of Life Wellness Pharmacy confronted Respondent regarding the  
6 drugs that were ordered and missing. Respondent admitted to ordering an unknown amount of  
7 Hydrocodone, Baclofen, and Lamisil without Life Wellness Pharmacy's authorization and  
8 without paying for them.

9 d. The owner of Life Wellness Pharmacy reported the theft to the police. A search  
10 warrant was issued for Respondent's house and the police found 82 pills of alprazolam, over  
11 4,500 800 mg and 400 mg Ibuprofen pills along with numerous new and opened bottles and bags  
12 of other drugs. Police also found invoices from ParMed, another wholesale pharmaceutical  
13 company, for large quantities of Hydrocodone.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Unprofessional Conduct: Possession of a Controlled Substance Without A Prescription)**

16 21. Respondent is subject to disciplinary action under Code section 4301(j) in  
17 conjunction with Code section 4060 and H&S Code section 11350(a) for possession of  
18 controlled substances without a legitimate prescription, as more particularly alleged in paragraph  
19 20 above and incorporated herein by reference.

20 **THIRD CAUSE FOR DISCIPLINE**

21 **(Unprofessional Conduct: Illegal Furnishing of a Controlled Substance to Oneself)**

22 22. Respondent is subject to disciplinary action under Code section 4301(j) in  
23 conjunction with Code section 4059(a) and H&S Code section 11170 for illegally furnishing  
24 controlled substances to himself, as more particularly alleged in paragraph 20 above and  
25 incorporated herein by reference.

26 **FOURTH CAUSE FOR DISCIPLINE**

27 **(Unprofessional Conduct: Obtaining a Controlled Substance by Fraud, Subterfuge)**

28 23. Respondent is subject to disciplinary action under Code section 4301(j) in

1 conjunction with H&S Code section 11173 for obtaining controlled substances by fraud, deceit,  
2 subterfuge or concealment of a material fact, as more particularly alleged in paragraph 20 above  
3 and incorporated herein by reference.

4 **FIFTH CAUSE FOR DISCIPLINE**

5 **(July 10, 2008 Criminal Conviction - Use of Personal Information of Another and**  
6 **Possession for Sale of Controlled Substances on February 28, and April 9, 2008 )**

7 24. Respondent is subject to disciplinary action under Code sections 490 and 4301(l)  
8 for conviction of a crime substantially related to the qualifications, functions, or duties of a  
9 pharmacy technician, as more particularly alleged below:

10 a. On or about July 10, 2008, in San Diego County Superior Court Case No.  
11 CN244057, Respondent pled guilty to a violation of Penal Code section 530.5(a) (use of personal  
12 identifying information of another) and Health and Safety Code section 11375(b)(1) (possession  
13 for sale of designated controlled substance).

14 b. The facts and circumstances surrounding the conviction are that on or about  
15 February 28, 2008, Respondent used personal identifying information of the pharmacist he  
16 worked for and completed a wholesaler application form with Hygen listing himself as a duly  
17 authorized officer of Life Wellness Pharmacy, Inc. Respondent was not an officer of Life  
18 Wellness Pharmacy and was not authorized by Life Wellness Pharmacy to open an account with  
19 Hygen. Respondent ordered pharmaceutical drugs from Hygen under Life Wellness Pharmacy's  
20 name and had them delivered to himself at Life Wellness Pharmacy. Additionally, on or about  
21 April 9, 2008, the police executed a search warrant on Respondent's home and found a  
22 substantial amount of dangerous drugs, including 82 tablets of alprazolam, as more particularly  
23 alleged in paragraph 20 above and incorporated herein by reference.

24 c. Respondent was sentenced to serve 210 days in jail, placed on formal probation  
25 for three years and ordered to pay various fines and restitution.

26 **SIXTH CAUSE FOR DISCIPLINE**

27 **(Unprofessional Conduct-Possession for Sale of A Controlled Substance on April 9, 2008 )**

28 25. Respondent is subject to disciplinary action under Code sections 4301(j) in

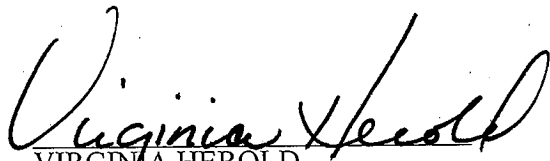
1 conjunction with H&S Code section 11375(b)(1) for possession for sale of a controlled  
2 substance, in that on or about July 10, 2008, Respondent pled guilty to possession for sale of a  
3 controlled substance, 82 pills of alprazolam, as more particularly alleged in paragraphs 20 and 24  
4 above and incorporated herein by reference.

5 PRAYER

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

- 8 1. Revoking or suspending Pharmacy Technician Registration Number TCH 31717,  
9 issued to Christopher D. Vargas;
- 10 2. Ordering Christopher D. Vargas to pay the Board of Pharmacy the reasonable  
11 costs of the investigation and enforcement of this case, pursuant to Business and Professions  
12 Code section 125.3; and
- 13 3. Taking such other and further action as deemed necessary and proper.

14 DATED: 10/10/09

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16   
17 VIRGINIA HEROLD  
18 Executive Officer  
19 Board of Pharmacy  
20 Department of Consumer Affairs  
21 State of California  
22 Complainant

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