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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. 4417

13 **OSCAR NAVARRETE**
2649 Duomo Street
Palmdale, CA 93550

ACCUSATION

14 Pharmacy Technician Registration No. TCH
102265

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 June 3, 2010, the Board issued Pharmacy Technician Registration No.
23 TCH 102265 to Oscar Navarrete ("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 November 30, 2013, 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 4. Business and Professions Code section 4300.1 states:

2 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by
3 operation of law or by order or decision of the board or a court of law, the placement of a license
4 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
5 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
6 proceeding against, the licensee or to render a decision suspending or revoking the license."

7 **STATUTORY PROVISIONS**

8 5. Section 490 states:

9 "(a) In addition to any other action that a board is permitted to take against a licensee, a
10 board may suspend or revoke a license on the ground that the licensee has been convicted of a
11 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
12 or profession for which the license was issued.

13 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
14 discipline a licensee for conviction of a crime that is independent of the authority granted under
15 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
16 of the business or profession for which the licensee's license was issued.

17 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
18 conviction following a plea of nolo contendere. Any action that a board is permitted to take
19 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
20 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
21 made suspending the imposition of sentence, irrespective of a subsequent order under the
22 provisions of Section 1203.4 of the Penal Code."

23 6. Section 492 states:

24 "Notwithstanding any other provision of law, successful completion of any diversion
25 program under the Penal Code, or successful completion of an alcohol and drug problem
26 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of
27 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2
28 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that

1 division, from taking disciplinary action against a licensee or from denying a license for
2 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a
3 record pertaining to an arrest.

4 "This section shall not be construed to apply to any drug diversion program operated by any
5 agency established under Division 2 (commencing with Section 500) of this code, or any
6 initiative act referred to in that division."

7 7. Section 4300, subdivision (a), states that "[e]very license issued may be suspended or
8 revoked."

9 8. Section 4301 states, in pertinent part:

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

13

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

17

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

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

25

26 "(l) The conviction of a crime substantially related to the qualifications, functions, and
27 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
28 (commencing with Section 801) of Title 21 of the United States Code regulating controlled

1 substances or of a violation of the statutes of this state regulating controlled substances or
2 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
3 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
4 The board may inquire into the circumstances surrounding the commission of the crime, in order
5 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
6 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
7 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
8 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
9 of this provision. The board may take action when the time for appeal has elapsed, or the
10 judgment of conviction has been affirmed on appeal or when an order granting probation is made
11 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
12 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
13 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
14 indictment. . . .

15
16 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
17 violation of or conspiring to violate any provision or term of this chapter or of the applicable
18 federal and state laws and regulations governing pharmacy, including regulations established by
19 the board or by any other state or federal regulatory agency."

20 **REGULATORY PROVISION**

21 9. California Code of Regulations, title 16, section 1770, states:

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

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1 DRUG STATUTES

2 10. Health and Safety Code section 11170 states that "[n]o person shall prescribe,
3 administer, or furnish a controlled substance for himself."

4 11. Health and Safety Code section 11173, subdivision (a), states that "[n]o person shall
5 obtain or attempt to obtain controlled substances, or procure or attempt to procure the
6 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,
7 or subterfuge; or (2) by the concealment of a material fact."

8 12. Health and Safety Code section 11350, subdivision (a), states:

9 "Except as otherwise provided in this division, every person who possesses (1) any
10 controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of
11 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or
12 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section
13 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic
14 drug, unless 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 prison."

16 13. Health and Safety Code section 11377, subdivision (a), states:

17 "Except as authorized by law and as otherwise provided in subdivision (b) or Section
18 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the
19 Business and Professions Code, every person who possess any controlled substance which is (1)
20 classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision
21 (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified
22 in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of
23 subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055,
24 unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice
25 in this state, shall be punished by imprisonment in a county jail for a period of not more than one
26 year or in the state prison."

27 COST RECOVERY

28 14. Section 125.3 states, in pertinent part, that the Board may request the administrative

1 law judge to direct a licentiate found to have committed a violation or violations of the licensing
2 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
3 case.

4 **CONTROLLED SUBSTANCES/DANGEROUS DRUGS**

5 15. Heroin, a semi synthetic drug derived from morphine, is a Schedule I controlled
6 substance as designated by Health and Safety Code section 11054, subdivision (c)(11).

7 16. Vicodin, is a trade name for the narcotic substance hydrocodone or dihydrocodeinone
8 with the non-narcotic substance acetaminophen (pain reliever and fever reducer). Vicodin is a
9 schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision
10 (e) and is a dangerous drug within the meaning of Business and Professions Code section 4022.

11 17. Xanax, a brand name for alprazolam, is an anti-anxiety benzodiazepine, is a Schedule
12 IV controlled substance as designated by Health and Safety Code section 11057, subdivision
13 (d)(1), and is categorized as a dangerous drug pursuant to section 4022 of the Code.

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Convictions of Substantially-Related Crimes)**

16 18. Respondent is subject to disciplinary action under Code sections 490, 4300, and 4301,
17 subdivision (I), in conjunction with California Code of Regulations, title 16, section 1770, on the
18 grounds of unprofessional conduct in that Respondent was convicted of crimes substantially
19 related to the qualifications, functions, or duties of a registered pharmacy technician which to a
20 substantial degree evidence his present or potential unfitness to perform the functions authorized
21 by his registration in a manner consistent with the public health, safety, or welfare, as follows:

22 a. On or about March 8, 2013, after pleading *nolo contendere*, Respondent was
23 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b)
24 [driving while having a 0.08% or higher blood alcohol] in the criminal proceeding entitled *The*
25 *People of the State of California v. Oscar Alejandro Navarrete* (Super. Ct. Los Angeles County,
26 2012, No. 2AV08560.) The Court placed Respondent on 36 months probation, fined him,
27 ordered him to attend a 6 month Alcohol First Offender Program, and ordered him to attend an
28 SB-768 program. The circumstances surrounding the conviction are that on or about October 21,

1 2012, Respondent drove a vehicle while his blood alcohol content was 0.08 percent or higher.

2 b. On or about May 9, 2012, after pleading *nolo contendere*, Respondent was convicted
3 of one misdemeanor count of violating Penal Code section 484, subdivision (a) [theft] in the
4 criminal proceeding entitled *The People of the State of California v. Oscar Navarrete* (Super. Ct.
5 Los Angeles County, 2011, No. 2AV00623). The court sentenced Respondent to serve 1 day in
6 jail, placed him probation for a period of 36 months, and fined him. The circumstances
7 surrounding the conviction are that on or about December 19, 2011, Respondent took clothing
8 items from a Macy's department store without paying for them.

9 c. On or about February 22, 2011, after pleading guilty, Respondent was convicted of
10 one misdemeanor count of violating Vehicle Code section 14601.5, subdivision (a) [driving while
11 having a suspended license pursuant to Vehicle Code sections 13353 and 13353.2], in the
12 criminal proceeding entitled *The People of the State of California v. Oscar Navarrete* (Super. Ct.
13 Los Angeles County, 2010, No. 0AV09197). The court placed Respondent on 36 months
14 probation and fined him, or alternatively ordered him to perform 158 hours of community service.
15 The circumstances surrounding the conviction are that on or about September 16, 2010,
16 Respondent did unlawfully drive a vehicle while his driving privileges were suspended due to
17 previously driving with an excessive blood alcohol level and refusing to take a blood alcohol test.

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(Unlawful Possession of a Controlled Substance)**

20 19. Respondent is subject to disciplinary action under Code sections 4300 and 4301,
21 subdivision (o), in conjunction with California Code of Regulations, title 16, section 1770, on the
22 grounds of unprofessional conduct in that on September 9, 2011, Respondent was found to be in
23 possession of controlled substances and dangerous drugs without a valid prescription, as follows:

24 a. On or about September 9, 2011, a Los Angeles Sheriff's Department officer, while on
25 duty during a routine traffic stop, stopped Respondent for having a loud modified exhaust in
26 violation of Vehicle Code section 27151. The officer made contact with the Respondent, who
27 was identified as the sole occupant of the vehicle. The officer observed in plain view on the floor
28 of the passenger side of the vehicle several small pieces of foil that had burnt residue. During the

1 search of Respondent's vehicle, the officer recovered a prescription bottle with Respondent's
2 name on it containing several different pills, later identified as Vicodin, mixed with prescription
3 Xanax pills from the center console of the vehicle. The officer also recovered Heroin in a torn
4 bindle inside of the fuse compartment and a plastic pipe from the glove box of Respondent's
5 vehicle. The Respondent admitted to the officer that the Heroin belonged to him and that he has
6 been smoking it for a year and a half. The Respondent also admitted to the officer that the Xanax
7 pills were his and that he sells them for four dollars per pill to support his Heroin addiction. The
8 Respondent also stated to the officer that the Vicodin pills were his and that he takes them
9 without having a prescription.

10 b. On or about January 23, 2012, in the criminal proceeding entitled *The People of the*
11 *State of California vs. Oscar Alejandro Navarrete* (Super. Ct. Los Angeles County, 2012, No.
12 MA054146), the Court placed Respondent on 18 months Deferred Entry of Judgment and
13 ordered him to attend one Narcotics Anonymous meeting per day for violating Health and Safety
14 code section 11350, subdivision (a) [possession of a controlled substance, to wit: heroin].

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(Dangerous Use of Alcohol and Drugs)**

17 20. Respondent is subject to disciplinary action under Code sections 4300 and 4301,
18 subdivision (h), on the grounds of unprofessional conduct in that Respondent used alcohol and
19 drugs in a dangerous manner on September 16, 2010, September 9, 2011, and October 21, 2012.
20 Complainant refers to, and by this reference incorporates, the allegations set forth above in
21 paragraph 18, subparagraphs (a) and (c) and paragraph 19, subparagraph (a) as though fully set
22 forth herein.

23 **FOURTH CAUSE FOR DISCIPLINE**

24 **(Violating Drug Statutes)**

25 21. Respondent is subject to disciplinary action under Code sections 4300 and 4301,
26 subdivision (j), on the grounds of unprofessional conduct for violating the provisions of Health
27 and Safety Code sections 11170, 11350, subdivision (a), and 11377, subdivision (a) by possessing
28 controlled substances without a valid prescription. Complainant refers to, and by this reference

1 incorporates, the allegations set forth above in paragraph 19, subparagraph (a) as though fully set
2 forth herein.

3 **FIFTH CAUSE FOR DISCIPLINE**

4 **(Dishonest Acts)**

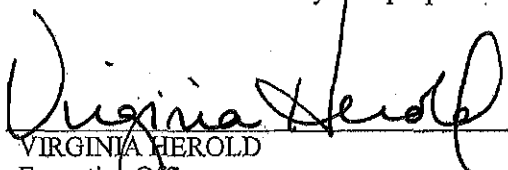
5 22. Respondent is subject to disciplinary action under sections 4300 and 4301,
6 subdivision (f), on the grounds of unprofessional conduct in that Respondent committed an act
7 involving deceit. Complainant refers to, and by this reference incorporates, the allegations set
8 forth above in paragraph 18, subparagraph (b) as though fully set forth herein.

9 **PRAYER**

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

- 12 1. Revoking or suspending Pharmacy Technician Registration No. TCH 102265, issued
13 to Oscar Navarrete;
- 14 2. Ordering Oscar Navarrete to pay the Board the reasonable costs of the investigation
15 and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
- 16 3. Taking such other and further action as deemed necessary and proper.

17
18 DATED: 10/21/13


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

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