Complainant alleges:

PARTIES

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

2. On or about August 22, 2008, the Board of Pharmacy (Board), Department of Consumer Affairs issued Intern Pharmacist Registration Number INT 22538 to Gerardo Castillo also known as Gerardo Castillo Rico (Respondent). The Intern Pharmacist Registration was in full force and effect at all times relevant to the charges brought herein and was cancelled on June 25, 2013.
3. On or about June 25, 2013, the Board of Pharmacy (Board), Department of Consumer Affairs issued Original Pharmacist License Number RPH 68819 to Gerardo Castillo (Respondent). The Original Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2015 unless renewed.

JURISDICTION

4. This First Amended Accusation is brought before the Board under the authority of the following laws. All sections references are to the Business and Professions Code unless otherwise indicated.

5. Section 4300.1 states that

The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, . . . 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.

6. Section 477 of the Code states:

As used in this division:

(a) “Board” includes “bureau,” “commission,” “committee,” “department,” “division,” “examining committee,” “program,” and “agency.”

(b) “License” includes certificate, registration or other means of engaging in a business or profession regulated by this code.

STATUTORY PROVISIONS

7. Section 4301 states in relevant part, that:

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

... (f) The commission of any act involving moral turpitude, dishonesty, fraud, 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, of any another, or of the United States regulating controlled substances or dangerous drugs.

...
5. 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.

8. Section 4300, subsection (c) states that the Board may refuse a license to any
individual guilty of unprofessional conduct.

9. Section 480 states in part that:

(a) A board may deny a license regulated by this code on the grounds
that the applicant has one of the following:

(3) (A) Done any act that if done by a licentiate of the business or
profession in question, would be grounds for suspension or revocation of license.

10. Code section 4022 states:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for
self-use in humans or animals, and includes the following: (a) Any drug that bears the
legend: "Caution: federal law prohibits dispensing without prescription," "Rx only,"
or words of similar import. (b) Any device that bears the statement: "Caution: federal
law restricts this device to sale by or on the order of a____", "Rx only," or words of
similar import, the blank to be filled in with the designation of the practitioner
licensed to use or order use of the device. (c) Any other drug or device that by federal
or state law can be lawfully dispensed only on prescription or furnished pursuant to
Section 4006.

11. Health and Safety Code section 1173, subdivision (a) states, in part:

No person shall obtain or attempt to obtain controlled substances, or procure 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. . . .

12. "Alprazolam" (also known as Xanax) is a Schedule IV controlled substance pursuant
to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to
Business and Professions Code section 4022.
COST RECOVERY

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

FIRST CAUSE FOR DISCIPLINE

(Dishonest Acts)

14. Respondent has subjected his license(s) to disciplinary action under Code section 4301, subdivision (f), on the grounds of unprofessional conduct, in that Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption, as follows:

15. On or about May 23, 2012, the Board received a CVS/Pharmacy Notification of Suspected Controlled Substance Theft or Significant Lost report. The report stated that on or about May 19, 2012, while working at a CVS Pharmacy, Respondent was apprehended with a bottle of alprazolam 2 mg. Respondent admitted to opening the seal of the bottle and attempting to remove the medication from the pharmacy without a valid prescription, without intention of paying for it and to use the medication to possibly harm himself. Respondent was terminated from his job at CVS Pharmacy on or about May 29, 2012, for the theft of alprazolam.

SECOND CAUSE FOR DISCIPLINE

(Violation of Statute Regulating Dangerous Drug/Controlled Substance)

16. Respondent has subjected his license(s) to disciplinary action under section 4301, subdivision (j) on the grounds of unprofessional conduct, in that Respondent unlawfully obtained or attempted to obtain a dangerous drug and controlled substance by deceit or concealment of a material fact, in violation of Health and Safety Code section 11173, subdivision (a), and Business and Professions Code section 4022, as more fully set forth in paragraphs 14-15, above.

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THIRD CAUSE FOR DISCIPLINE
(Violation of Pharmacy Laws)

17. Respondent has subjected his license(s) to disciplinary action under Code section 4301 subdivision (o), on the grounds of unprofessional conduct for violations of pharmacy laws as set forth in paragraphs 14-16, above.

FOURTH CAUSE FOR DISCIPLINE
(Prior Acts Subjecting License to Discipline)

18. Respondent has subjected his license(s) to disciplinary action under section 4301, subsection (p) as defined in section 4300, subsection (c) and section 480, subsection (3)(A), in that Respondent committed acts that would have warranted a denial of his Original Pharmacist License, as more fully set forth in paragraphs 14-17, above.

OTHER MATTERS

19. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about February 23, 2011, Respondent was issued a Letter of Admonishment on his Intern Pharmacist License pursuant to Code section 4005 and section 4315 for failure to comply with the laws and regulations that govern the practice of pharmacy. The circumstances were that Respondent was in violation of Code section 4301, subsection (h) when on or about October 8, 2010, Respondent was arrested and charged with driving under the influence of alcohol in violation of Vehicle Code section 23152(a) and (b). Respondent was also in violation of Code section 4301, subsection (l) in that on or about November 8, 2010, Respondent pled guilty to a violation of Vehicle Code section 23103 (driving recklessly involving alcohol), a misdemeanor.

PRAYER

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

1. Revoking or suspending Intern Pharmacist Registration Number INT 22538, issued to Gerardo Castillo also known as Gerardo Castillo Rico;
2. Revoking or suspending Original Pharmacist License Number RPH 68819, issued to Gerardo Castillo;

3. Ordering Gerardo Castillo also known as Gerardo Castillo Rico to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

4. Taking such other and further action as deemed necessary and proper.

DATED: 3/8/14

VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant
In the Matter of the Accusation Against:

GERARDO CASTILLO
A.K.A. GERARDO CASTILLO RICO
904 Elm Avenue
Modesto, California 95351

Intern Pharmacist Registration No. INT 22538

Respondent.

Complainant alleges:

PARTIES

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

2. On or about August 22, 2008, the Board of Pharmacy (Board), Department of Consumer Affairs issued Intern Pharmacist Registration Number INT 22538 to Gerardo Castillo also known as Gerardo Castillo Rico (Respondent). The Intern Pharmacist Registration was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2013, unless renewed.

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

4. **STATUTORY PROVISIONS**

   As used in this division:

   (a) "Board'' includes "bureau,” “commission,” “committee,” “department,” “division,” “examining committee,” “program,” and “agency.”

   (b) "License'' includes certificate, registration or other means of engage in a business or profession regulated by this code.

5. Section 4301 states in relevant part, that:

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

   (f) The commission of any act involving moral turpitude, dishonesty, fraud, 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, of any another, or of the United States regulating controlled substances or dangerous drugs.

   (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.

6. **Code section 4022 states:**

   "Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following: (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription,” "Rx only,” or words of similar import. (b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a ___,” "Rx only,” or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device. (c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.
7. Health and Safety Code section 11173, subdivision (a) states, in part:

No person shall obtain or attempt to obtain controlled substances, or procure 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 . . .

DRUG

8. "Alprazolam" (also know as Xanax) is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022.

COST RECOVERY

9. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Dishonest Acts)

10. Respondent has subjected his license to disciplinary action under Code section 4301, subdivision (f), on the grounds of unprofessional conduct, in that Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption, as follows:

11. On or about May 23, 2012, the Board received a CVS/Pharmacy Notification of Suspected Controlled Substance Theft or Significant Lost report. The report stated that on or about May 19, 2012, while working at a CVS Pharmacy, Respondent was apprehended with a bottle of alprazolam 2 mg. Respondent admitted to opening the seal of the bottle and attempting to remove the medication from the pharmacy without a valid prescription, without intention of paying for it and to use the medication to possibly harm himself. The alprazolam bottle was a 100 count bottle. According to the pharmacist-in-charge, only twenty-one (21) pills were confiscated from Respondent and the remaining seventy-nine (79) pills were not accounted for. Respondent was terminated from his job at CVS Pharmacy on or about May 29, 2012, for the theft of alprazolam.
SECOND CAUSE FOR DISCIPLINE
(Unlawful Possession of Dangerous Drug/Controlled Substance)

12. Respondent is subject to disciplinary action under section 4301, subdivision (j) on the grounds of unprofessional conduct, in that Respondent unlawfully possessed a dangerous drug and controlled substance, in violation of Health and Safety Code section 11173, subdivision (a), and Business and Professions Code section 4022, as more fully set forth in paragraph 11, above.

THIRD CAUSE FOR DISCIPLINE
(Violation of Statute Regulating Controlled Substance)

13. Respondent has subjected his license to disciplinary action under Code section 4301 subdivision (j), on the grounds of unprofessional conduct, in that Respondent violated Health and Safety Code section 11173, subdivision (a), (obtaining or attempt to obtain controlled substances without a prescription), as set forth in paragraph 11, above.

FOURTH CAUSE FOR DISCIPLINE
(Violation of Pharmacy Laws)

14. Respondent is subject to disciplinary action under section 4301, subsection (o) in that Respondent violated the laws and regulations regulating pharmacists, as more fully set forth in paragraphs 10-12, above.

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PRAYER

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

1. Revoking or suspending Intern Pharmacist Registration Number INT 22538, issued to Gerardo Castillo also known as Gerardo Castillo Rico;
2. Ordering Gerardo Castillo also known as Gerardo Castillo Rico to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: 5/9/13

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