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

11 In the Matter of the First Amended Accusation
Against:

Case No. 4469

12 **GERARDO CASTILLO**
13 **A.K.A. GERARDO CASTILLO RICO**
14 **904 Elm Avenue**
Modesto, California 95351

FIRST AMENDED
ACCUSATION

15 **Intern Pharmacist License No. INT 22538**
16 **Original Pharmacist License No. RPH 68819**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

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

24 2. On or about August 22, 2008, the Board of Pharmacy (Board), Department of
25 Consumer Affairs issued Intern Pharmacist Registration Number INT 22538 to Gerardo Castillo
26 also known as Gerardo Castillo Rico (Respondent). The Intern Pharmacist Registration was in
27 full force and effect at all times relevant to the charges brought herein and was cancelled on June
28 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 engage 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:

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(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.

• • •

1 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
2 abetting the violation of or conspiring to violate any provision or term of this chapter
3 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.

4 ...

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

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

8 9. Section 480 states in part that:

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

11 ...

12 (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.

13 10. Code section 4022 states:

14 "Dangerous drug" or "dangerous device" means any drug or device unsafe for
15 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,"
16 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
17 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
18 or state law can be lawfully dispensed only on prescription or furnished pursuant to
Section 4006.

19 11. Health and Safety Code section 11173, subdivision (a) states, in part:

20 No person shall obtain or attempt to obtain controlled substances, or procure or
21 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
22 material fact. ...

23 DRUG

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

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1 **COST RECOVERY**

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

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Dishonest Acts)**

8 14. Respondent has subjected his license(s) to disciplinary action under Code section
9 4301, subdivision (f), on the grounds of unprofessional conduct, in that Respondent committed
10 acts involving moral turpitude, dishonesty, fraud, deceit, or corruption, as follows:

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

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(Violation of Statute Regulating Dangerous Drug/Controlled Substance)**

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

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Violation of Pharmacy Laws)**

3 17. Respondent has subjected his license(s) to disciplinary action under Code section
4 4301 subdivision (o), on the grounds of unprofessional conduct for violations of pharmacy laws
5 as set forth in paragraphs 14-16, above.

6 **FOURTH CAUSE FOR DISCIPLINE**

7 **(Prior Acts Subjecting License to Discipline)**

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

12 **OTHER MATTERS**

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

23 **PRAYER**

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

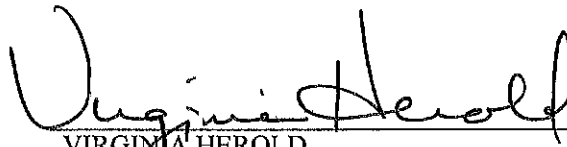
26 1. Revoking or suspending Intern Pharmacist Registration Number INT 22538, issued to
27 Gerardo Castillo also known as Gerardo Castillo Rico;
28

1 2. Revoking or suspending Original Pharmacist License Number RPH 68819, issued to
2 Gerardo Castillo;

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

6 4. Taking such other and further action as deemed necessary and proper.
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10 DATED: 3/8/14



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

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15 **904 Elm Avenue**
16 **Modesto, California 95351**

A C C U S A T I O N

17 **Intern Pharmacist Registration No. INT**
18 **22538**

19 Respondent.

20 Complainant alleges:

21 **PARTIES**

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

24 2. On or about August 22, 2008, the Board of Pharmacy (Board), Department of
25 Consumer Affairs issued Intern Pharmacist Registration Number INT 22538 to Gerardo Castillo
26 also known as Gerardo Castillo Rico (Respondent). The Intern Pharmacist Registration was in
27 full force and effect at all times relevant to the charges brought herein and will expire on August
28 31, 2013, unless renewed.

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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 licensee 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.

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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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1 PRAYER

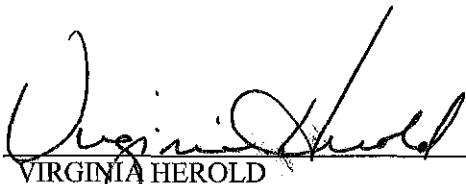
2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Board of Pharmacy issue a decision:

4 1. Revoking or suspending Intern Pharmacist Registration Number INT 22538, issued to
5 Gerardo Castillo also known as Gerardo Castillo Rico;

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

9 3. Taking such other and further action as deemed necessary and proper.

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13 DATED: 5/9/13


14 VIRGINIA HEROLD
15 Executive Officer
16 Board of Pharmacy
17 Department of Consumer Affairs
18 State of California
19 Complainant

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