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

13 In the Matter of the Accusation Against:

Case No. 4903

14 **EMMANUEL BRITO**  
15 **16450 Beach Blvd.**  
16 **Westminster, CA 92683**

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

17 **Pharmacy Technician Registration**  
18 **No. TCH 75112**

Respondent.

19  
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 April 2, 2007, the Board of Pharmacy issued Pharmacy Technician  
25 Registration Number TCH 75112 to Emmanuel Brito (Respondent). The Pharmacy Technician  
26 Registration was in full force and effect at all times relevant to the charges brought herein and  
27 will expire on July 31, 2014, unless renewed.

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1 **JURISDICTION**

2 3. This Accusation is brought before the Board of Pharmacy (Board), Department of  
3 Consumer Affairs, under the authority of the following laws. All section references are to the  
4 Business and Professions Code (Code) unless otherwise indicated.

5 4. Code section 4300, subdivision (a), states "Every license issued may be suspended or  
6 revoked."

7 5. Code section 4300.1 states:

8 The expiration, cancellation, forfeiture, or suspension of a board-issued license  
9 by operation of law or by order or decision of the board or a court of law, the  
10 placement of a license on a retired status, or the voluntary surrender of a license by  
11 a licensee 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.

12 **STATUTORY PROVISIONS**

13 6. Code section 482 states:

14 Each board under the provisions of this code shall develop criteria to evaluate  
15 the rehabilitation of a person when:

16 ...

17 (b) Considering suspension or revocation of a license under Section 490.

18 Each board shall take into account all competent evidence of rehabilitation  
19 furnished by the applicant or licensee.

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

23 8. Code section 492 states:

24 Notwithstanding any other provision of law, successful completion of a  
25 diversion program under the Penal Code, or successful completion of an alcohol and  
26 drug problem assessment program under Article 5 (commencing with Section  
23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any  
27 agency established under Division 2 (commencing with Section 500) of this code, or  
28 any initiative act referred to in that division, from taking disciplinary action against  
a licensee or from denying a license for professional misconduct, notwithstanding  
that evidence of that misconduct may be recorded in a record pertaining to an arrest.

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

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9. Code section 493 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.

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

10. Code section 4059 provides, in pertinent part, that 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. A person may not furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

11. Code section 4060 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.

12. Code section 4301 states:

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:

(a) Gross immorality.

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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.

...

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

....

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

...

(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.

...

**REGULATORY PROVISIONS**

13. California Code of Regulations, title 16, section 1769, states:

....

(b) When considering the suspension or revocation of a facility or a personal license on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

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- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) Evidence, if any, of rehabilitation submitted by the licensee.

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

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

**COST RECOVERY**

15. 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, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

**DRUGS**

16. Ambien, a brand name for zolpidem tartrate, is a schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(32), and is a dangerous drug pursuant to Business & Professions Code section 4022.

17. Celexa, a brand name for citalopram hydrobromide is a dangerous drug within the meaning of Business and Professions Code section 4022.

18. Norco, a brand name for hydrocodone bitartate/acetaminophen, also known by the brand name Vicodin, is a narcotic Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4), and is a dangerous drug pursuant to Business and Professions Code section 4022.

1 19. Phentermine, a generic for phentermine hydrochloride, is sold under the brand name  
2 Fastin, is a schedule IV controlled substance as designated by Health and Safety Code section  
3 11057(f)(4), and is a dangerous drug pursuant to Business and Professions Code section 4022.

4 20. Soma, a brand name for carisoprodol, is a Schedule III controlled substance as  
5 designated by Health and Safety Code Section 11056(e), and is a dangerous drug pursuant to  
6 Business and Professions Code section 4022.

7 21. Tussionex is a brand name for hydrocodone and chlorpheniramine, a cough syrup, is a  
8 Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (e), and  
9 is a dangerous drug pursuant to Business and Professions Code section 4022.

10 22. Vicoprofen, a generic name for hydrocodone and ibuprofen, is a narcotic Schedule III  
11 controlled substance as designated by Health and Safety Code section 11056(e)(4), and is a  
12 dangerous drug pursuant to Business and Professions Code section 4022.

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(December 14, 2012 Conviction for Burglary on July 31, 2013)**

15  
16 23. Respondent is subject to disciplinary action for unprofessional conduct under Code  
17 sections 490 and 4301, subdivision (I), in that he was convicted of crimes that are substantially  
18 related to the qualifications, duties, and functions of a Pharmacy Technician. The circumstances  
19 are as follows.

20 24. On or about December 14, 2012, in a criminal proceeding entitled *People of the State*  
21 *of California v. Emmanuel Brito*, Orange County Superior Court, West Justice Center, case  
22 number 12WF22260, Respondent was convicted on his plea of guilty to violating Penal Code  
23 (PC) section 459-460 (b) (second degree commercial burglary), reduced from a felony to a  
24 misdemeanor, and Respondent pled guilty to violating Health and Safety (H&S) Code section  
25 11350 (unlawful possession of a controlled substance, to wit, hydrocodone and acetaminophen), a  
26 felony; and H&S Code section 11377 (a) (unlawful possession of a controlled substance, to wit,  
27 carisoprodol and citalopram), a felony.  
28

1           25. As a result of Respondent's guilty plea on charges for unlawful possession of  
2 controlled substances, the Court deferred entry of judgment pursuant to PC section 1000  
3 (PC 1000 program) and ordered Respondent to appear on January 14, 2013, and provide the Court  
4 with proof of his enrollment in an 18 month Diversion Program. On or about January 14, 2013,  
5 Respondent was terminated from the PC 1000 program due to his failure to appear and provide  
6 the Court with proof of his enrollment. A bench warrant was issued for Respondent's arrest.  
7 Respondent has not yet been arrested on the current warrant.

8           26. As a result of Respondent's conviction for burglary, he was sentenced to 3 years  
9 informal probation on standard terms for crimes involving unlawful possession of drugs,  
10 including to submit his person, property, residence and vehicle to searches by law enforcement  
11 with or without cause, and to pay fines, fees, and restitution. On January 14, 2013, Respondent's  
12 probation was revoked due to his failure to appear and provide the Court with proof of his  
13 enrollment in the PC 1000 Diversion Program.

14           27. The circumstances surrounding the conviction are that between approximately  
15 July 31, 2011 through July 31, 2012, while working as a Pharmacy Technician at Vons Pavilion  
16 Pharmacy in Westminster, California, Respondent stole controlled substances from his employer  
17 and self-administered them without a valid prescription. Respondent's unprofessional conduct  
18 was discovered after the Pharmacist-in-Charge (PIC) noticed that the pharmacy was experiencing  
19 shortages of inventory. Two covert cameras were installed in the pharmacy. The surveillance  
20 cameras recorded Respondent as he took a stock bottle of cough syrup from the pharmacy shelf,  
21 drank directly from the bottle, and then replaced the bottle. On July 31, 2012, the cameras  
22 recorded Respondent as he took a stock bottle of Norco 10 from the pharmacy shelf, poured pills  
23 into his hand, placed the pills into his rear pants' pocket, and replaced the Norco 10 bottle. After  
24 observing Respondent take pills from the pharmacy and place them into his pants' pocket, Vons'  
25 loss prevention (LP) investigators promptly went to the pharmacy and escorted Respondent to the  
26 LP manager's office. Upon request, Respondent removed twelve Norco 10 tablets, one Celexa  
27 tablet and two Soma tablets from his rear pants' pocket and gave them to a LP investigator. On  
28 July 31, 2012, Respondent admitted that he began diverting drugs from the pharmacy

1 approximately one year prior. Respondent admitted that he had diverted the following drugs from  
2 the pharmacy for self-use on a regular basis: Ambien, Celexa, Norco 10, Phentermine, Soma,  
3 Tussionex, and Vicoprofen. Respondent also admitted that he self-administered the drugs while  
4 he worked as a Pharmacy Technician and he did not have a valid prescription for any of the drugs  
5 that he diverted. Respondent estimated that he consumed eight hydrocodone/APAP tablets and  
6 one Soma tablet daily. The police were contacted and Respondent was arrested. During the  
7 booking process, police officers found two more Norco 10 tablets and one more Soma tablet on  
8 Respondent's person. A pharmacy drug audit for the time period of May 2, 2011, through  
9 July 31, 2012, revealed that the following drugs were unaccounted for at the Vons Pavilion  
10 Pharmacy where Respondent worked full-time as a Pharmacy Technician: 595 tablets of  
11 carisoprodol 350 mg; 5,446 tablets of hydrocodone/APAP 7.5/325; 1,703 ml of hydrocodone  
12 cough syrup; 738 tablets of phentermine 37.5 mg; 56 tablets of phentermine 30 mg; 316 tablets of  
13 Vicoprofen and 9,110 tablets of zolpidem 10 mg.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Gross Immorality)**

16 28. Respondent is subject to disciplinary action for unprofessional conduct under Code  
17 section 4301(a) in that he committed gross immorality by stealing controlled substances and  
18 dangerous drugs from his employer, self administering the drugs without a valid prescription and  
19 working as a Pharmacy Technician while under the influence of the stolen drugs, as set forth  
20 above in paragraphs 23 through 27, which are incorporated by reference.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Moral Turpitude, Fraud, Deceit, Misrepresentation and Subterfuge)**

23 29. Respondent is subject to disciplinary action for unprofessional conduct under Code  
24 section 4301(f) in that he displayed moral turpitude, and committed fraud, deceit, subterfuge and  
25 misrepresentation, by stealing controlled substances and dangerous drugs from his employer, self  
26 administering the drugs without a valid prescription, and working as a Pharmacy Technician  
27 while under the influence of the stolen drugs, as set forth above in paragraphs 23 through 27,  
28 which are incorporated by reference.



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**FOURTH CAUSE FOR DISCIPLINE**

**(Unlawful Self Administration of Controlled Substances and Dangerous Drugs)**

19. Respondent is subject to disciplinary action for unprofessional conduct under Code section 4301(h) in that he self-administered controlled substances and dangerous drugs without a valid prescription in a manner injurious to himself or others. Further, Respondent worked as a Pharmacy Technician while under the influence of unlawfully obtained and unlawfully self-administered controlled substances and dangerous drugs, as set forth above in paragraphs 23 through 27, which are incorporated by reference.

**FIFTH CAUSE FOR DISCIPLINE**

**(Violated Statutes Governing Controlled Substances and Dangerous Drugs)**

19. Respondent is subject to disciplinary action for unprofessional conduct under Code section 4301(o) in that he violated the Pharmacy Act by possessing and self-administering controlled substances and dangerous drugs without a prescription in violation of Code sections 4059 and 4060, as set forth above in paragraphs 23 through 27, which are incorporated by reference.

**PRAYER**

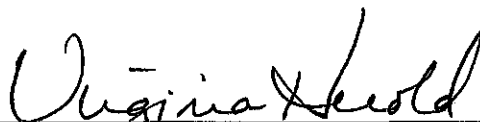
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Pharmacy Technician Registration Number TCH 75112, issued to Emmanuel Brito
  2. Ordering Emmanuel Brito 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;
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3. Taking such other and further action as deemed necessary and proper.

DATED: 5/8/14



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