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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. 5154

13 **SABY DANIELA PINEDA**
9626 Parmelee Ave.
14 Los Angeles, CA 90002
15 Pharmacy Technician Registration
No. TCH 112321
16
17 Respondent.

A C C U S A T I O N

18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about April 14, 2011, the Board of Pharmacy (Board) issued Pharmacy
23 Technician Registration No. TCH 112321 to Saby Daniela Pineda (Respondent). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought
25 herein and will expire on August 31, 2014, unless renewed.

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JURISDICTION

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

STATUTORY PROVISIONS

4. Section 490 states, in pertinent part:

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

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

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken 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 the provisions of Section 1203.4 of the Penal Code.

5. 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."

6. Section 4060 provides in pertinent part, that no person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or other authorized prescriber. This section does not apply to the possession of any controlled substance by a pharmacy or pharmacist ". . . if in stock in containers correctly labeled with the name and address of the supplier or producer."

1 7. Section 4300 provides, in pertinent part, that every license issued by the Board is
2 subject to discipline, including suspension or revocation.

3 8. Section 4300.1 states:

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

10 9. Section 4301 states:

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

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

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

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

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 (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

1 conviction has been affirmed on appeal or when an order granting probation is made
2 suspending the imposition of sentence, irrespective of a subsequent order under
3 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
4 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
5 dismissing the accusation, information, or indictment.

6

7 (o) Violating or attempting to violate, directly or indirectly, or assisting
8 in or abetting the violation of or conspiring to violate any provision or term of this
9 chapter or of the applicable federal and state laws and regulations governing
10 pharmacy, including regulations established by the board or by any other state or
11 federal regulatory agency.

12 REGULATORY PROVISIONS

13 10. California Code of Regulations, title 16, Section 1770, states:

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

21 11. Health and Safety Code section 11170 provides that "No person shall prescribe,
22 administer, or furnish a controlled substance for himself."

23 12. Health and Safety Code section 11350, subdivision (a) states as follows:

24 (a) Except as otherwise provided in this division, every person who
25 possesses (1) any controlled substance specified in subdivision (b) or (c), or paragraph
26 (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of
27 subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section
28 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled
substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the
written prescription of a physician, dentist, podiatrist, or veterinarian licensed to
practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of
Section 1170 of the Penal Code.

13 13. Health and Safety Code Section 11377, in pertinent part, makes it unlawful to possess
14 any controlled substance without a prescription.

15 14. Health and Safety Code section 11550, in pertinent part, makes it unlawful for any
16 person to use or be under the influence of any controlled substance in Schedule II (Health and
17 Safety Code Section 11055), except when administered by or under the direction of an authorized
18 licensee.

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1 **COST RECOVERY**

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

6 16. **CONTROLLED SUBSTANCES**

7 a. "Norco," is the brand name for Hydrocodone/APAP. It is a Schedule III controlled
8 substance as designated by Health and Safety Code section 11056, subdivision (e)(7) and is
9 categorized as a dangerous drug pursuant to Section 4022.

10 b. "Adipex," is the brand name for Phentermine. It is a Schedule IV controlled substance
11 as designated by Health and Safety Code section 11057, subdivision (d) and is categorized as a
12 dangerous drug pursuant to Section 4022.

13 c. "Xanax", is the brand name for Alprazolam. It is a Schedule IV controlled substance
14 as designated by Health and Safety Code section 11056, subdivision (d)(1) and is categorized as a
15 dangerous drug pursuant to Section 4022.

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(Obtained or Possessed a Controlled Substance)**

18 17. Respondent is subject to disciplinary action under Section 4301, subdivisions (j) and
19 (o), as defined in Section 4060, in that on or about January 29, 2013, while working as a pharmacy
20 technician at Rite Aid Pharmacy, located at 1331 Wilshire Blvd., Santa Monica, CA (Rite Aid),
21 Respondent admitted verbally to an employee of Rite Aid and in a written statement, that from on
22 or about July 29, 2011 to January 25, 2013, she diverted controlled substances (Alprazolam,
23 Phentermine, and Hydrocodone/APAP 10/325mg) from her employer, for self-use to relieve her
24 back pain and anxiety, and to help her lose weight. On or about January 25, 2013, the staff
25 pharmacist, while preparing the monthly controlled substance audit for Rite Aid, discovered that
26 Norco (generic) and Alprazolam pills were missing. On or about January 25, 2013, while
27 discussing this subject with the Pharmacist In Charge, L.S., Respondent approached L.S., and
28 asked her if they could talk privately. During their conversation, Respondent admitted that she

1 had stolen Norco sometime last week, due to her back problem, but she did not know the amount
2 she had taken. In a written statement, Respondent admitted taking Phentarmine seven months
3 before and Norco around one month ago, for her back problems, as well as Zanax.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Conviction of a Substantially Related Crime)**

6 18. Respondent is subject to disciplinary action under Sections 4301, subdivision (l) and
7 490, in conjunction with California Code of Regulations, title 16, Section 1770, in that,
8 Respondent was convicted of a crime which is substantially related to the qualifications, functions
9 or duties of a pharmacy technician, as follows:

10 a. On or about February 24, 2014, after pleading nolo contendere, Respondent was
11 convicted of one misdemeanor count of violating Penal Code section 484(a) [theft of personal
12 property] in the criminal proceeding entitled *The People of the State of California v. Saby Daniela*
13 *Pineda* (Super. Ct. Los Angeles County, 2014, No. 4WA21147.) The Court placed Respondent
14 on summary probation for 24 months, ordered her to pay a restitution fine to the victim, to stay
15 100 yards away from Rite Aid in Santa Monica, and to perform 200 hours of community service,
16 among other terms and conditions.

17 b. The circumstances surrounding the February 24, 2014 criminal conviction are that, on
18 or about between July 29, 2011 to January 25, 2013, Respondent stole and/or diverted drugs from
19 her employer, Rite Aid, without a lawful prescription, as alleged in Paragraph 17, which
20 allegations are incorporated herein by reference as though set forth in full.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Use/Under the Influence of Alcohol and/or a Controlled Substance)**

23 19. Respondent is subject to disciplinary action under Section 4301, subdivision (h), in
24 that on or about January 29, 2013, while working as a pharmacy technician at Rite Aid,
25 Respondent admitted that from on or about July 29, 2011 to January 25, 2013, she diverted
26 controlled substances (Alprazolam, Phentermine, and Hydrocodone/APAP 10/325mg) from her
27 employer, for self-use to relieve her back pain and anxiety, and to help her lose weight.

28

1 Complainant refers to, and by this reference incorporates, the allegations set forth above in
2 Paragraph 17, as though set forth fully.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Dishonest Acts)**

5 20. Respondent is subject to disciplinary action under Section 4301, subdivision (f), in
6 that, while working as a pharmacy technician at Rite Aid, between on or about July 29, 2011 to
7 January 25, 2013, Respondent stole and/or diverted controlled substances (Alprazolam,
8 Phentermine, and Hydrocodone/APAP 10/325mg) from her employer, for self-use to relieve her
9 back pain and anxiety, and to help her lose weight. Complainant refers to, and by this reference
10 incorporates, the allegations set forth above in Paragraph 17, as though set forth fully.

11 **PRAYER**

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

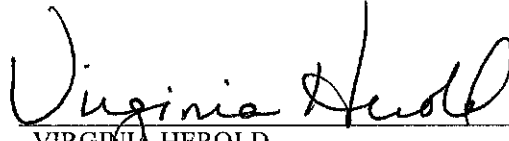
14 1. Revoking or suspending Pharmacy Technician Registration No. TCH 112321, issued
15 to Saby Daniela Pineda;

16 2. Ordering Saby Daniela Pineda to pay the Board of Pharmacy the reasonable costs of
17 the investigation and enforcement of this case, pursuant to Business and Professions Code section
18 125.3; and

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

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21 DATED: _____

8/12/14



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

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