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

11 In the Matter of the Accusation Against:

Case No. 5171

12 **JOHNNY A. CHAGOLLA**  
13 **4595 High Street**  
14 **Riverside, CA 92507**

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

15 **Pharmacy Technician Registration No. TCH**  
**62803**

16 Respondent.

17  
18  
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about June 14, 2005, the Board of Pharmacy issued Pharmacy Technician  
24 Registration Number TCH 62803 to Johnny A. Chagolla (Respondent). The Pharmacy Technician  
25 Registration was in full force and effect at all times relevant to the charges brought herein and will  
26 expire on May 31, 2015, unless renewed.

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. Section 4011 of the Code provides that the Board shall administer and enforce both  
6 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances  
7 Act [Health & Safety Code, § 11000 et seq.].

8 5. Section 4300, subdivision (a), of the Code provides that every license issued by the  
9 Board may be suspended or revoked.

10 6. Section 4300.1 of the Code states:

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

15 **STATUTORY PROVISIONS**

16 7. Section 4060 of the Code states

17 No person shall possess any controlled substance, except that furnished to  
18 a person upon the prescription of a physician, dentist, podiatrist, optometrist,  
19 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished  
20 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section  
21 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant  
22 pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a  
23 pharmacist pursuant to either Section 4052.1 or 4052.2. This section shall not  
24 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.

25 Nothing in this section authorizes a certified nurse-midwife, a nurse  
26 practitioner, a physician assistant, or a naturopathic doctor, to order his or her own  
27 stock of dangerous drugs and devices.  
28

1 8. Section 4301 of the Code states in pertinent part:

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

6 ...

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

13 ...

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

16 .....

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

22 9. Health & Safety Code section 11350 states:

23 Except as otherwise provided in this division, every person who possesses  
24 (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of  
25 subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of  
26 subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section  
27 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled  
28 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.

.....

10. Health & Safety Code section 11170 states:

No person shall prescribe, administer, or furnish a controlled substance for himself.

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

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

### 9 **COST RECOVERY**

10 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
11 administrative law judge to direct a licentiate found to have committed a violation or violations of  
12 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
13 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being  
14 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
15 included in a stipulated settlement.

### 16 **DRUG**

17 13. Benzodiazepine is a Schedule IV controlled substance pursuant to Health and Safety  
18 Code section 11057(d) and dangerous drug pursuant to Business and Professions Code section  
19 4022.

### 20 **FACTUAL ALLEGATIONS**

21 14. At all times mentioned herein, Respondent was employed as a pharmacy technician at  
22 the Loma Linda University Medical Center Outpatient Pharmacy located in Loma Linda,  
23 California.

24 15. On or about July 5, 2013 at approximately 1:45 p.m., Respondent was on duty as a  
25 pharmacy technician at the outpatient pharmacy. Respondent was observed to have slow physical  
26 actions and speech, his eyes were glassy and he required a high level of concentration to complete  
27 basic and repetitive tasks. Respondent was then screened for the presence of drugs and alcohol.

28 16. Respondent tested positive for the presence of alcohol and benzodiazepine in his  
system. Respondent did not possess a prescription for the benzodiazepine.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Administration of Controlled Substance or Use of Alcohol to Extent or in Manner as to be**  
3 **Dangerous or Injurious or to Extent Use Impaired Ability to Conduct Practice Safely)**

4 17. Respondent is subject to disciplinary action under Code section 4301(h), in that he  
5 administered a controlled substance to himself, and used alcohol to the extent or in a manner as to  
6 be dangerous or injurious to himself or others or to the extent that his use impaired his ability to  
7 conduct with safety the practice authorized by his license, as set forth in paragraphs 14 through 16,  
8 which are incorporated herein by reference.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Violations of Drug Laws)**

11 18. Respondent is subject to disciplinary action under Code section 4301(j), for  
12 violating statutes regulating controlled substances and dangerous drugs, including Health &  
13 Safety Code section 11350(a) and 11170, in that he possessed and administered a controlled  
14 substance to himself, without a prescription, as set forth in paragraphs 14 through 16, which are  
15 incorporated herein by reference.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Violations of Pharmacy Law)**

18 19. Respondent is subject to disciplinary action under Code section 4301(o) for  
19 violating Pharmacy Law, in that Respondent possessed a controlled substance without a  
20 prescription in violation of Code section 4060, as set forth in paragraphs 14 through 16, which are  
21 incorporated herein by reference.

22 **FOURTH CAUSE FOR DISCIPLINE**

23 **(Unprofessional Conduct)**

24 20. Respondent is subject to disciplinary action under Code section 4301 for  
25 unprofessional conduct in that he engaged in the activities described in paragraphs 14 through 16  
26 above, which are incorporated herein by reference.

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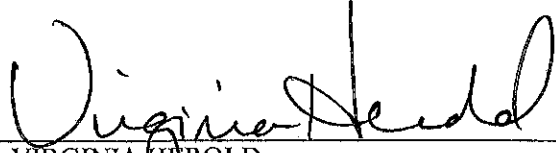
**PRAYER**

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 Pharmacy Technician Registration Number TCH 62803, issued to Johnny A. Chagolla;
2. Ordering Johnny A. Chagolla 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:

12/3/14



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

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