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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 Accusation Against:

Case No. 5543

12 **GABRIEL ALONSO HERNANDEZ**
10242 Karmont Avenue
13 South Gate, CA 90280

A C C U S A T I O N

14 **Pharmacy Technician Registration No. TCH**
15 **126133**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Virginia K. Herold ("Complainant") brings this Accusation solely in her official
21 capacity as the Executive Officer of the California State Board of Pharmacy.

22 2. On or about September 6, 2012, the Board of Pharmacy ("Board") issued Pharmacy
23 Technician Registration Number TCH 126133 to Gabriel Alonso Hernandez ("Respondent").
24 The Pharmacy Technician Registration was in full force and effect at all times relevant to the
25 charges brought herein and will expire on January 31, 2016, unless renewed.

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JURISDICTION

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

4 4. Section 490 of the Code states:

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

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

13 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
14 conviction following a plea of nolo contendere. Any action that a board is permitted to take
15 following the establishment of a conviction may be taken when the time for appeal has elapsed,
16 or the judgment of conviction has been affirmed on appeal, or when an order granting probation
17 is made suspending the imposition of sentence, irrespective of a subsequent order under the
18 provisions of Section 1203.4 of the Penal Code. ..."

19 5. Section 4300 of the Code provides in pertinent part, that every license issued by the
20 Board is subject to discipline, including suspension or revocation.

21 6. Section 4300.1 states:

22 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by
23 operation of law or by order or decision of the board or a court of law, the placement of a license
24 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
25 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
26 proceeding against, the licensee or to render a decision suspending or revoking the license.

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STATUTORY PROVISIONS

7. Section 4060 of the Code 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. ..."

8. Section 4301 of the Code 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:

...

"(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.

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1 "(i) Except as otherwise authorized by law, knowingly selling, furnishing, giving away, or
2 administering or offering to sell, furnish, give away, or administer any controlled substance to an
3 addict.

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

6 ...

7 "(l) The conviction of a crime substantially related to the qualifications, functions, and
8 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
9 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
10 substances or of a violation of the statutes of this state regulating controlled substances or
11 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
12 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
13 The board may inquire into the circumstances surrounding the commission of the crime, in order
14 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
15 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
16 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
17 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
18 of this provision. The board may take action when the time for appeal has elapsed, or the
19 judgment of conviction has been affirmed on appeal or when an order granting probation is made
20 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
21 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
22 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
23 indictment.

24 ...

25 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
26 violation of or conspiring to violate any provision or term of this chapter or of the applicable
27 federal and state laws and regulations governing pharmacy, including regulations established by
28 the board or by any other state or federal regulatory agency. ..."

1 9. Health and Safety Code section 11375, subdivision (b)(1), states, in pertinent part:
2 "Every person who possesses for sale, or who sells, any substance specified in subdivision
3 (c) shall be punished by imprisonment in the county jail for a period of not more than one year or
4 state prison."

5 **REGULATORY PROVISIONS**

6 10. California Code of Regulations, title 16, section 1770, states:
7 "For the purpose of denial, suspension, or revocation of a personal or facility license
8 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
9 crime or act shall be considered substantially related to the qualifications, functions or duties of a
10 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
11 licensee or registrant to perform the functions authorized by his license or registration in a
12 manner consistent with the public health, safety, or welfare."

13 **COST RECOVERY**

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

18 **CONTROLLED SUBSTANCES / DANGEROUS DRUGS**

19 12. Section 4021 of the Code states, in pertinent part:
20 "Controlled substances: means any substance listed in Chapter 2 (commencing with Section
21 11053) of Division 10 of the Health and Safety Code."

22 13. Section 4022 of the Code states:
23 "Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in
24 humans or animals, and includes the following:

25 "(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without
26 prescription," "Rx only," or words of similar import.

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1 "(b) Any device that bears the statement: "Caution: federal law restricts this device to sale
2 by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled
3 in with the designation of the practitioner licensed to use or order use of the device.

4 "(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
5 prescription or furnished pursuant to Section 4006."

6 14. **"Alprazolam"** is a generic name for brand names: Xanax, Invirase, Crixivan, Serzon,
7 and Alprazolam Intensol. It is a Schedule IV controlled substance pursuant to Health and Safety
8 Code section 11057(d)(1) and is categorized as a dangerous drug pursuant to Code section 4022.

9 15. **"Phenergan with Codeine"** is the brand name for Promethazine with Codeine. It is
10 a Schedule V controlled substance pursuant to Health and Safety Code section 11058(c)(1) and is
11 a dangerous drug pursuant to Business and Professions Code section 4022.

12 **FACTUAL BACKGROUND**

13 16. On and between November 9, 2014 and April 9, 2015 Respondent was employed as a
14 pharmacy technician at CVS/Pharmacy ("Pharmacy"). Respondent first worked at the Pharmacy
15 in Santa Monica and was transferred to the Pharmacy in Bell in January 2015.

16 17. On or about March 9, 2015, the Pharmacy began an investigation into a potential loss
17 of Alprazolam 2 mg based on a reconciliation report completed by their Corporate Loss
18 Prevention Department.

19 18. On or about March 29, 2015, a covert CCTV system was installed in the Pharmacy to
20 cover the area where the Alprazolam 2 mg stock bottles are shelved. On or about April 8, 2015,
21 the CCTV system was removed and viewed. The video showed Respondent on two different
22 occasions removing a stock bottle from the shelf and walking out of the camera's view towards
23 the back aisle in the Pharmacy. Respondent on both occasions returned the stock bottle to the
24 shelf. Respondent did not have a prescription selection tray or a prescription label in his hand at
25 either time.

26 19. On or about April 9, 2015, the CCTV system was reinstalled and a live surveillance
27 was conducted at the Pharmacy by the Pharmacy's Diversion Manager and the Pharmacy's
28 Regional Diversion Manager. During the live surveillance, Respondent was observed to remove

1 one stock bottle of 100 tablets of Alprazolam 2 mg from the shelf and proceeded to walk to the
2 back aisle in the Pharmacy. Respondent was observed concealing the stock bottle in his right
3 sock. Respondent was then approached and questioned about the concealed stock bottle and
4 asked to proceed to the Store Manager's office for an interview.

5 20. During the interview, Respondent admitted to theft of approximately 650 tablets of
6 Alprazolam 2 mg and 1,413 ml of Promethazine with Codeine while employed at the Pharmacy
7 in Santa Monica. Respondent further admitted to theft of approximately 5,000 tablets of
8 Alprazolam 2 mg and 4,730 ml of Promethazine with Codeine while employed at the Pharmacy
9 in Bell.

10 21. Respondent admitted to that he began stealing the controlled substances from the
11 Pharmacy in Bell at the end of February to the beginning of March 2015 and that he began
12 stealing from the Pharmacy in Santa Monica at the end of November 2014.

13 22. Respondent also admitted that after he stole the controlled substances, he would sell
14 them for cash and would use some of the Alprazolam 2 mg for personal consumption.

15 23. At the conclusion of the interview with the Pharmacy Regional Diversion Manager,
16 the Bell Police Department was called to respond to the scene.

17 24. Respondent admitted to the police officer that he stole bottles of Alprazolam 2 mg
18 from the Pharmacy and that he sold each bottle to various people for approximately \$100-\$150.
19 He further admitted to the police officer that he stole bottles of Promethazine Codeine and sold
20 them for \$100 per bottle.

21 **FIRST CAUSE FOR DISCIPLINE**

22 **(Conviction of Substantially Related Crime)**

23 25. Respondent is subject to disciplinary action under sections 490, and 4301,
24 subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, on the
25 grounds of unprofessional conduct, in that Respondent was convicted of crimes substantially
26 related to the qualifications, functions, and duties of a pharmacy technician, as follows:

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1 a. On or about May 27, 2015, after pleading nolo contendere, Respondent was convicted
2 of one misdemeanor county of violating Health and Safety Code section 11375(b)(1) [possesses
3 for sell of controlled substance], in the criminal proceeding entitled *The People of the State of*
4 *California v. Gabriel Alonso Hernandez* (Super. Ct. Los Angeles County, 2015, No. 5DY03198).

5 b. The circumstances surrounding the conviction are that on or about April 9, 2015, and
6 from approximately November 2014 through April 2015, Respondent admittedly stole controlled
7 substances from his employer with the intent to sell and did sell them for cash.

8 c. Complainant refers to, and by reference incorporates, the allegations set forth above
9 in paragraphs 16 through 24, inclusive, as though set forth fully.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

12 26. Respondent is subject to disciplinary action under section 4301, subdivision (f), in
13 that Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, or
14 corruption with the intent to substantially benefit himself, or substantially injure another in that
15 on or about and between November 2014 through April 2015, Respondent admitted to theft of
16 controlled substances from his employer, the Pharmacy with the intent to sell.

17 a. Complainant refers to, and by reference incorporates, the allegations set forth above
18 in paragraphs 16 through 25, inclusive, as though set forth fully.

19 **THIRD CAUSE FOR DISCIPLINE**

20 **(Dangerous Use of Controlled Substance: Alprazolam)**

21 27. Respondent is subject to disciplinary action under section 4301, subdivision (h), on the
22 grounds of unprofessional conduct in that Respondent admittedly used alprazolam, a controlled
23 substance, to the extent or in a manner as to be dangerous or injurious to oneself in that on or
24 about and between November 2014 through April 2015, Respondent admitted to personal
25 consumption of Alprazolam 2 mg for which Respondent did not have a valid prescription.

26 a. Complainant refers to, and by reference incorporates, the allegations set forth above
27 in paragraphs 16 through 25, inclusive, as though set forth fully.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Unlawful Possession of Controlled Substance: Alprazolam)**

3 28. Respondent is subject to disciplinary action under section 4301, subdivision (j), on
4 the grounds of unprofessional conduct, for violating Code section 4060 and Health and Safety
5 Code section 11375, subdivision (b)(1), in that on or about and between November 2014 through
6 April 2015, Respondent admittedly removed from the Pharmacy, and possessed more than 5,650
7 tablets of Alprazolam 2 mg without a valid prescription.

8 a. Complainant refers to, and by reference incorporates, the allegations set forth above
9 in paragraphs 16 through 25, inclusive, as though set forth fully.

10 **FIFTH CAUSE FOR DISCIPLINE**

11 **(Unlawful Possession of Controlled Substance: Promethazine-Codeine Syrup)**

12 29. Respondent is subject to disciplinary action under section 4301, subdivision (j), on
13 the grounds of unprofessional conduct, for violating Code section 4060 and Health and Safety
14 Code section 11375, subdivision (b)(1), on or about and between November 2014 through April
15 2015, Respondent admittedly removed from the Pharmacy, and possessed and more than 6,143
16 ml of Promethazine-Codeine Syrup without a valid prescription.

17 a. Complainant refers to, and by reference incorporates, the allegations set forth above
18 in paragraphs 16 through 25, inclusive, as though set forth fully.

19 **SIXTH CAUSE FOR DISCIPLINE**

20 **(Unprofessional Conduct / Violation of Licensing Chapter)**

21 Respondent is subject to disciplinary action under section 4301, subdivision (o), in that
22 Respondent committed acts of unprofessional conduct and / or violated provisions of the
23 licensing chapter. Complainant refers to, and by this reference incorporates, the allegations set
24 forth above in paragraphs 16 through 25, inclusive, as though set forth fully.

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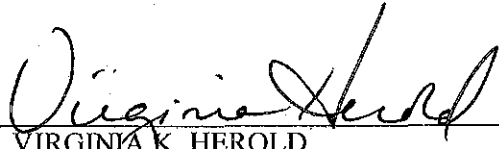
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PRAYER

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 126133, issued to Gabriel Alonso Hernandez;
2. Ordering Gabriel Alonso Hernandez to pay the Board 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: 8/27/15 
VIRGINIA K. HEROLD
Executive Officer
California State Board of Pharmacy
State of California
Complainant

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