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

11 In the Matter of the Accusation Against:
12 **DANEALE M. SANTANA**
13 **3624 Springridge Way**
Palmdale, CA 93551
14 **Pharmacy Technician Registration No. TCH**
9896
15
16 Respondent.

Case No. 5617
ACCUSATION

17
18 Complainant alleges:

19 **PARTIES**

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

23 2. On September 27, 1993, the Board issued Pharmacy Technician Registration
24 Number TCH 9896 to Daneale M. Santana (Respondent). The Pharmacy Technician Registration
25 was in full force and effect at all times relevant to the charges brought herein, and will expire on
26 September 30, 2017, 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 (Code) unless otherwise indicated.

4. Code section 118, subdivision (b) provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued, or reinstated.

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

6. Code section 4300.1 states:

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, the placement of a license on a retired status, or the voluntary surrender of a license 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.

STATUTORY PROVISIONS

7. Code section 480 states, in pertinent part:

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

...

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

....

8. Code section 482 states:

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

- (a) Considering the denial of a license by the board under Section 480; or
- (b) Considering suspension or revocation of a license under Section 490.

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

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9. Code section 492 states:

Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and 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 agency established under Division 2 (commencing with Section 500) of this code, or 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.

10. Code section 4022 states:

“Dangerous drug” or “dangerous device” means any drug or device unsafe for 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,” 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 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 or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

11. Code section 4060 states:

A person shall not 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, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to Section 4052.1, 4052.2, or 4052.6. This section does not apply to the possession of any controlled substance by a manufacturer, wholesaler, third-party logistics provider, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, if in stock in containers correctly labeled with the name and address of the supplier or producer.

This section does not authorize 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.

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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:

...

(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.

...

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

...

(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.

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

....

13. Code section 4327 states:

Any person who, while on duty, sells, dispenses or compounds any drug while under the influence of any dangerous drug or alcoholic beverages shall be guilty of a misdemeanor.

14. Health & Safety Code section 11055 states, in pertinent part:

(a) The controlled substances listed in this section are included in Schedule II.

(b) Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

///

1 (1) Opium, opiate, and any salt, compound, derivative, or
2 preparation of opium or opiate, with the exception of naloxone hydrochloride (N-
3 allyl-14-hydroxy-nordihydromorphinone hydrochloride), but including the
4 following:

5 ...

6 (I) Hydrocodone.

7

8 15. Health & Safety Code section 11057 states, in pertinent part:

9 (a) The controlled substances listed in this section are included in
10 Schedule IV.

11 (b) Schedule IV shall consist of the drugs and other substances, by
12 whatever official name, common or usual name, chemical name, or brand name
13 designated, listed in this section.

14 (c) Narcotic drugs. Unless specifically excepted or unless listed in
15 another schedule, any material, compound, mixture, or preparation containing any
16 of the following narcotic drugs, or their salts calculated as the free anhydrous base
17 or alkaloid, in limited quantities as set forth below:

18 ...

19 (d) Depressants. Unless specifically excepted or unless listed in
20 another schedule, any material, compound, mixture, or preparation which contains
21 any quantity of the following substances, including its salts, isomers, and salts of
22 isomers whenever the existence of those salts, isomers, and salts of isomers is
23 possible within the specific chemical designation:

24 (1) Alprazolam.

25 ...

26 (9) Diazepam.

27 ...

28 (32) Zolpidem.

....

16. Health & Safety Code section 11058 states, in pertinent part:

(a) The controlled substances listed in this section are included in
Schedule V.

(b) Schedule V shall consist of the drugs and other substances, by
whatever official name, common or usual name, chemical name, or brand name
designated, listed in this section.

(c) Narcotic drugs containing nonnarcotic active medicinal
ingredients. Any compound, mixture, or preparation containing any of the

1 following narcotic drugs, or their salts calculated as the free anhydrous base or
2 alkaloid, in limited quantities as set forth below, which shall include one or more
3 nonnarcotic active medicinal ingredients in sufficient proportion to confer upon
the compound, mixture, or preparation valuable medicinal qualities other than
those possessed by narcotic drugs alone:

4 (1) Not more than 200 milligrams of codeine per 100 milliliters or
5 per 100 grams.

6

7 17. Health & Safety Code section 11170 states:

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

10 18. Health & Safety Code section 11350 states, in pertinent part:

11 a) Except as otherwise provided in this division, every person who
12 possesses (1) any controlled substance specified in subdivision (b) or (c), or
13 paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14),
14 (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or
15 (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any
16 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.

17

18 19. Health & Safety Code section 11375 states, in pertinent part:

19 . . .

20 (b) (2) Every person who possesses any controlled substance specified
21 in subdivision (c), unless upon the prescription of a physician, dentist, podiatrist,
or veterinarian, licensed to practice in this state, shall be guilty of an infraction or
22 a misdemeanor.

23 (c) This section shall apply to any material, compound, mixture, or
preparation containing any of the following substances:

24 . . .

25 (4) Diazepam.

26 . . .

27 (12) Alprazolam.

28

///

1 **REGULATORY PROVISIONS**

2 20. California Code of Regulations, title 16, section 1769, states, in pertinent part:

3 ...

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

8 (1) Nature and severity of the act(s) or offense(s).

9 (2) Total criminal record.

10 (3) The time that has elapsed since commission of the act(s) or
11 offense(s).

12 (4) Whether the licensee has complied with all terms of parole,
13 probation, restitution or any other sanctions lawfully imposed against the licensee.

14 (5) Evidence, if any, of rehabilitation submitted by the licensee.

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

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

23 **COST RECOVERY**

24 22. Code section 125.3 provides, in pertinent part, that the Board may request the
25 administrative law judge to direct a licentiate found to have committed a violation or violations
26 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
27 enforcement of the case, with failure of the licentiate to comply subjecting the license to not
28 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs
may be included in a stipulated settlement.

DRUGS

26 23. Alprazolam is a Schedule IV controlled substance as designated by Health and
27 Safety Code section 11057, subdivision (d)(1), and is categorized as a dangerous drug under
28 Code section 4022.

1 been hiding or taking pills from the store. About a week later, the RLPM installed cameras in
2 areas where they believed Respondent was stealing the pills. On October 12, 2014, the RLPM
3 reviewed video footage from the cameras installed and observed five instances from October 7 to
4 9, 2014, when Respondent removed single pills from medication bottles and placed them either
5 in her pocket or in her mouth.

6 b. On October 16, 2014, the PDM and the RLPM interviewed Respondent
7 about the theft. Respondent admitted to taking medication pills for approximately a year prior
8 until the morning before the interview, when she took two Tylenol with codeine and one
9 alprazolam. When interviewed, the Tylenol with codeine pill was still in her pocket. Respondent
10 further admitted to taking without payment a total of 341 alprazolam pills, 470 hydrocodone
11 pills, 72 diazepam pills, 45 tramadol pills, 52 Tylenol-3¹ pills, and 120 Ambien² pills. The
12 approximate value of the stolen prescription medication was \$732.16. After the interview, the
13 PDM reported the theft to the County of Los Angeles Sheriff's Department. A responding deputy
14 arrested Respondent for embezzlement and possession of a controlled substance. Records show
15 that during the period that Respondent was stealing prescription medication from her employer,
16 she had a prescription at various times for acetaminophen and codeine phosphate, temazepam,
17 and tramadol hydrochloride.

18 c. As a result of the theft of drugs from the pharmacy, a criminal action was
19 filed against Respondent. On January 27, 2015, in a criminal proceeding entitled *The People of*
20 *the State of California vs. Daneale Marie Santana, aka Daneale Marie Withrow*, in Los Angeles
21 County Superior Court, Michael Antonovich Antelope Valley Courthouse, Case Number
22 4AV07007, Respondent pled guilty of violating Penal Code (PC) section 490.2, petty theft, a
23 misdemeanor.

24 d. As a result of Respondent's guilty plea, on January 27, 2015, she was
25 placed on deferred entry of judgment for a period of 18 months under PC section 1000.

26 _____
27 ¹ Tylenol is a brand name for acetaminophen, a pain reliever and a fever reducer. Tylenol-
28 3 is acetaminophen combined with codeine, an opioid pain medication.

² Ambien is a brand name for zolpidem, a sedative, also called a hypnotic.

1 Respondent was ordered to pay a court operations assessment, a criminal convictions assessment,
2 a citation processing fee, restitution to CVS pharmacy, and a contribution to the domestic
3 violence fund. Respondent was also ordered to perform ten days of community labor, and
4 provide progress report on November 19, 2015.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Unprofessional Conduct – Self-Administration of Drugs Without Prescription)**

7 30. Respondent has subjected her Pharmacy Technician Registration to disciplinary
8 action under Code section 4301, subdivision (h) in that without a prescription, she ingested
9 medication pills containing either alprazolam, diazepam, hydrocodone, and zolpidem, controlled
10 substances that require a prescription, as detailed in paragraph 29, above, and incorporated herein
11 by this reference.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Unprofessional Conduct – Violation of Drug Laws)**

14 31. Respondent has subjected her Pharmacy Technician Registration to discipline
15 under Code section 4301, subdivision (j) in that she committed acts that violated statutes of the
16 State of California regulating controlled substances and dangerous drugs, as detailed in
17 paragraph 29, above, and incorporated herein by this reference. The circumstances are as
18 follows:

19 a. While on duty as a lead pharmacy technician at a CVS pharmacy for about
20 a year prior to October 16, 2015, Respondent sold or dispensed drugs while under the influence
21 of either alprazolam, codeine, diazepam, hydrocodone, tramadol, and zolpidem, in violation of
22 Code section 4327.

23 b. While practicing as a pharmacy technician at a CVS pharmacy for about a
24 year prior to October 16, 2015, Respondent possessed either alprazolam, diazepam,
25 hydrocodone, and zolpidem, without a prescription, in violation of Code section 4060.

26 c. While practicing as a pharmacy technician at a CVS pharmacy for about a
27 year prior to October 16, 2015, Respondent unlawfully possessed codeine and hydrocodone, in
28 violation of Health and Safety Code section 11350.

1 d. While practicing as a pharmacy technician at a CVS pharmacy for about a
2 year prior to October 16, 2015, Respondent self-administered either alprazolam, diazepam,
3 hydrocodone, and zolpidem, without a prescription, in violation of Health and Safety Code
4 section 11170.

5 e. While practicing as a pharmacy technician at a CVS pharmacy for about a
6 year prior to October 16, 2015, Respondent unlawfully possessed alprazolam and diazepam, in
7 violation of Health and Safety Code section 11375.

8 **FOURTH CAUSE FOR DISCIPLINE**

9 **(Unprofessional Conduct – Violation of Pharmacy Laws)**

10 32. Respondent has subjected her Pharmacy Technician Registration to discipline
11 under Code section 4301, subdivision (o), in that she committed acts that violated pharmacy laws
12 of the State of California regulating controlled substances and dangerous drugs, as detailed in
13 paragraph 29, above, and incorporated herein by this reference. The circumstances are as
14 follows:

15 a. While on duty as a lead pharmacy technician at a CVS pharmacy for about
16 a year prior to October 16, 2015, Respondent sold or dispensed drugs while under the influence
17 of either alprazolam, codeine, diazepam, hydrocodone, tramadol, and zolpidem, in violation of
18 Code section 4327.

19 b. While practicing as a pharmacy technician at a CVS pharmacy for about a
20 year prior to October 16, 2015, Respondent possessed either alprazolam, diazepam,
21 hydrocodone, and zolpidem, without a prescription, in violation of Code section 4060.

22 c. While practicing as a pharmacy technician at a CVS pharmacy for about a
23 year prior to October 16, 2015, Respondent self-administered either alprazolam, diazepam,
24 hydrocodone, and zolpidem, without a prescription, in violation of Health and Safety Code
25 section 11170.

26 d. While practicing as a pharmacy technician at a CVS pharmacy for about a
27 year prior to October 16, 2015, Respondent unlawfully possessed codeine and hydrocodone, in
28 violation of Health and Safety Code section 11350.

1 e. While practicing as a pharmacy technician at a CVS pharmacy for about a
2 year prior to October 16, 2015, Respondent unlawfully possessed alprazolam and diazepam, in
3 violation of Health and Safety Code section 11375.

4 **FIFTH CAUSE FOR DISCIPLINE**

5 **(Unprofessional Conduct – Conduct That Would Have Warranted Denial of a License)**

6 33. Respondent subjected her Pharmacy Technician Registration to discipline under
7 Code section 4301, subdivision (p), in that Respondent stole hundreds of controlled substances
8 from her employer, conduct that would have warranted the denial of a pharmacy technician
9 registration under Code section 480, subdivision (a)(1), as detailed in paragraph 29, above, and
10 incorporated herein by this reference.

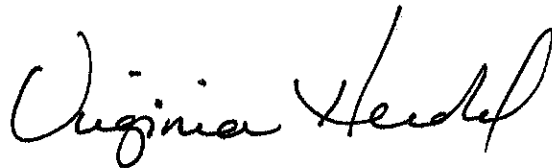
11 **PRAYER**

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

- 14 1. Revoking or suspending Pharmacy Technician Registration Number TCH 9896,
15 issued to Daneale M. Santana;
- 16 2. Ordering Daneale M. Santana to pay the Board of Pharmacy the reasonable costs
17 of the investigation and enforcement of this case, pursuant to Business and Professions Code
18 section 125.3; and
- 19 3. Taking such other and further action as deemed necessary and proper.
- 20

21
22
23 DATED: _____

7/11/16



24 VIRGINIA HEROLD
25 Executive Officer
26 Board of Pharmacy
27 Department of Consumer Affairs
28 State of California
Complainant

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