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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. 5733

12 **MICHAEL BAUTISTA AGBAYANI**
602 S. Beach Blvd., #36
13 Anaheim, CA 92804

ACCUSATION

14 **Pharmacy Technician Registration No.**
TCH 133472

15 Respondent.
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18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about December 12, 2013, the Board of Pharmacy issued Pharmacy Technician
23 Registration No. TCH 133472 to Michael Bautista Agbayani (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 January 31, 2017, 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. Section 4300, provision (a), of the Code states, in pertinent part, “[e]very license
6 issued may be suspended or revoked. . . .”

7 5. Section 4300.1 of the Code states “[t]he expiration, cancellation, forfeiture, or
8 suspension of a board-issued license by operation of law or by order or decision of the board or a
9 court of law, the placement of a license on a retired status, or the voluntary surrender of a license
10 by a licensee shall not deprive the board of jurisdiction to commence or proceed with any
11 investigation of, or action or disciplinary proceeding against, the licensee or to render a decision
12 suspending or revoking the license.”

13 **STATUTORY PROVISIONS**

14 6. Section 4022 of the Code states, in pertinent part:

15 "Dangerous drug" or "dangerous device" means any drug or device unsafe
16 for self use in humans or animals, and includes the following:

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

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

21 7. Section 4060 of the Code states, in pertinent part:

22 No person shall possess any controlled substance, except that furnished to a
23 person upon the prescription of a physician, dentist, podiatrist, optometrist,
24 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
25 pursuant to a drug order issued by a certified nurse midwife pursuant to Section
26 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant

26 pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a
27 pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv)
28 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

1 practitioner, or physician assistant, when in stock in containers correctly labeled
2 with the name and address of the supplier or producer.

3 Nothing in this section authorizes a certified nurse midwife, a nurse
4 practitioner, a physician assistant, or a naturopathic doctor, to order his or her own
5 stock of dangerous drugs and devices.

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

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

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

15

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

22

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

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26 (o) Violating or attempting to violate, directly or indirectly, or assisting in
27 or abetting the violation of or conspiring to violate any provision or term of this
28 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. . . .”

9. Health and Safety Code section 11170 states, “[n]o person shall prescribe, administer,
or furnish a controlled substance for himself.”

10. Health and Safety Code section 11171 states, “[n]o person shall prescribe, administer,
or furnish a controlled substance except under the conditions and in the manner provided by this
division.”

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1 11. Health and Safety Code section 11173, subdivision (a), states, in pertinent part, “[n]o
2 person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the
3 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,
4 or subterfuge; or (2) by the concealment of a material fact. . . .”

5 12. Health and Safety Code section 11350 states, in pertinent part:

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

11 REGULATORY PROVISION

12 13. Title 21 of the United States Code, section 829, subdivision (b), states, in pertinent part,
13 “Schedule III and IV substances. Except when dispensed directly by a practitioner, other than a
14 pharmacist, to an ultimate user, no controlled substance in schedule III or IV, which is a
15 prescription drug as determined under the Federal Food, Drug, and Cosmetic Act [21 USCS §§
16 301 et seq.], may be dispensed without a written or oral prescription in conformity with section
17 503(b) of that Act [21 USCS § 353(b)]. Such prescriptions may not be filled or refilled more than
18 six months after the date thereof or be refilled more than five times after the date of the
19 prescription unless renewed by the practitioner. . . .”

20 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

21 14. “Soma Tablets,” a trade name for Carisoprodol (350mg), a muscle-relaxant and
22 sedative, is a dangerous drug as defined in section 4022 of the Code, and a Schedule IV
23 controlled substance as defined in Health and Safety Code section 11057, subdivision (g).

24 15. “Xanax,” a trade name for Alprazolam (0.5mg & 1mg tab), is a depressant. It is a
25 dangerous drug as defined in section 4022 of the Code, and a controlled substance as defined in
26 Health and Safety Code section 11057 subdivision (d)(1).

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1 16. "Ambien," a trade name for Zolpidem Tartate (6.25 ER & 10mg), is a nonbarbiturate
2 hypnotic. It is a dangerous drug as defined in section 4022 of the Code, and a controlled
3 substance as defined in Health and Safety Code section 11057 subdivision (d)(32).

4 **COST RECOVERY**

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

9 **FIRST CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct – Commission of Acts Involving Moral Turpitude, Dishonesty,
11 Fraud, Deceit, or Corruption)**

12 18. Respondent is subject to disciplinary action under section 4301, subdivision (f) of the
13 Code, by and through section 4060 of the Code, in that Respondent committed acts involving
14 moral turpitude, dishonesty, fraud, deceit, or corruption. The facts and circumstances are as
15 follows:

16 19. On or about November 5, 2015, Respondent Michael Agbayani, while employed as a
17 pharmacy technician at Target #T200, located at 3433 Sepulveda Blvd., Torrance, California
18 90505, was observed, and admitted to, stealing store merchandise (liquor, clothes, shoes, and
19 toiletries).

20 20. On or about December 9, 2015, as part of the investigation into the November 5, 2015
21 theft, Respondent gave a statement admitting the theft of the store merchandise and also admitted
22 to additionally diverting 5-6 tablets each of generic Xanax, Ambien, and Soma for both self use
23 and to give to his friends. When asked how he took those items from the pharmacy, Respondent
24 stated that, "As [He] would fill the bottles, he would catch some with his index finger, then put
25 them in his pocket."

26 21. On or about April 26, 2016, as part of the Board's investigation into Respondent's
27 theft at Target #T200, a Board investigator interviewed Respondent. Respondent stated that he
28 worked at Target about one (1) year before he was fired and that he began shoplifting front-end

1 merchandise about 2-3 months before he was caught. In a signed statement of the same date,
2 Respondent admitted diverting 5-6 tablets of generic Xanax 2mg, Ambien 10mg, and Soma
3 350mg for both self use and to give to a friend.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Unprofessional Conduct — Administering to Oneself Any Controlled Substance, or the Use**
6 **of Any Dangerous Drug to the Extent or in a Manner as to be Dangerous or Injurious to**
7 **Oneself, to a Person Holding a License Under This Chapter, or to Any Person or to the**
8 **Public, or to the Extent That the Use Impairs the Ability of the Person to Conduct With**
9 **Safety to the Public the Practice Authorized by the License)**

10 22. Respondent is subject to disciplinary action under section 4301, subdivision (h) of the
11 Code in that Respondent administered to himself controlled substances or dangerous drugs to the
12 extent or in a manner as to be dangerous or injuries to himself, any person of the public, or to the
13 extent that the use impaired his ability to conduct with safety to the public the practice authorized
14 by his license. Complainant refers to, and by this reference incorporates, the allegations set forth
15 above in paragraphs 19 through 21, inclusive, as though set forth fully herein.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Unprofessional Conduct — Violation of Statutes of This State and the United States**
18 **Regulating Controlled Substances and Dangerous Drugs)**

19 23. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the
20 Code, by and through section 4060 of the Code, sections 11170, 11171, 11173, and 11350 of the
21 Health and Safety Code, and section 829(b) of Title 21 of the United States Code, in that
22 Respondent violated the statutes of this state and the United States regulating controlled
23 substances and dangerous drugs. Complainant refers to, and by this reference incorporates, the
24 allegations set forth above in paragraphs 19 through 21, inclusive, as though set forth fully herein.

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FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct — Violating or Attempting to Violate Any Provision or Term of This Chapter or of the Applicable Federal and State Laws and Regulations Governing Pharmacy)

24. Respondent is subject to disciplinary action under section 4301, subdivision (o) of the Code, by and through section 4060 of the Code, sections 11170, 11171, 11173, and 11350 of the Health and Safety Code, and section 829(b) of Title 21 of the United States Code, in that Respondent violated or attempted to violate the provisions of the terms of this chapter and the applicable federal and state laws and regulations governing pharmacy. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 19 through 21, inclusive, as though set forth fully herein.

MATTERS IN AGGRAVATION

25. To determine the degree of discipline to be assessed against Respondent, Complainant alleges as follows: On or about September 9, 2015, the Board issued Citation and Fine No. CI 2014 64054 against Respondent for violating section 4301, subdivisions (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 . . .), (k) (Conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, (l) (Conviction of a crime substantially related to the practice of pharmacy). The Board ordered Respondent to pay a fine of \$600 by October 9, 2015. The citation is final and has been paid in full. The circumstances surrounding the citation are as follows:

a). On or about December 28, 2014, Respondent was arrested for driving under the influence of alcohol and for possession of cocaine. Respondent's chemical blood test revealed a BAC of 009%.

b). On or about October 15, 2013, Respondent was convicted of violating Vehicle Code section 23103 pursuant to Vehicle Code section 23103.5 (wet/reckless driving), a misdemeanor.

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1 c). On or about April 14, 2015, Respondent was convicted of violating Vehicle Code
2 section 23152, subdivision (a) (DUI Alcohol) and Vehicle Code section 23152, subdivision (b)
3 (DUI Alcohol/BAC 0.08% with prior conviction), both misdemeanors.

4 PRAYER

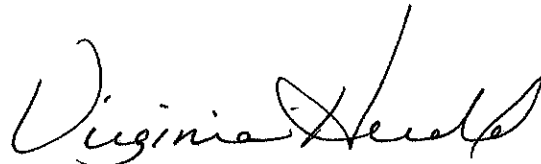
5 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
6 and that following the hearing, the Board issue a decision:

7 1. Revoking or suspending Pharmacy Technician Registration No. TCH 133472, issued
8 to Michael Bautista Agbayani;

9 2. Ordering Michael Bautista Agbayani to pay the Board of Pharmacy the reasonable
10 costs of investigation and enforcement of this case, pursuant to Business and Professions Code
11 section 125.3; and,

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

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15 DATED: 2/13/17



16 VIRGINIA HEROLD
17 Executive Officer
18 Board of Pharmacy
19 Department of Consumer Affairs
20 State of California
21 *Complainant*

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28 DOJ Matter ID: LA2016500178
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