

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Senior Assistant Attorney General
3 JAMES M. LEDAKIS
Supervising Deputy Attorney General
4 State Bar No. 132645
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 738-9409
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

12 In the Matter of the Accusation Against:
13 **MARCUS LYNN BRIGGS**
16851 Eagle Peak Road
14 **Riverside, CA 92504**
15 **Pharmacist License No. RPH 45400**
16 Respondent.

Case No. 5771
FIRST AMENDED
ACCUSATION

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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 (Board), Department of Consumer Affairs.
22 2. On or about August 10, 1992, the Board issued Pharmacist License Number RPH
23 45400 to Marcus Lynn Briggs (Respondent). The Pharmacist License was in full force and effect
24 at all times relevant to the charges brought herein and will expire on May 31, 2018, unless
25 renewed.

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1 discipline or to determine if the conviction is substantially related to the qualifications,
2 functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority," and
4 "registration."

5 9. Section 4301 of the Code states:

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

10 ...

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

16 ...

17 (i) The conviction of a crime substantially related to the qualifications, functions,
18 and duties of a licensee under this chapter. The record of conviction of a violation of
19 Chapter 13 (commencing with Section 801) of Title 21 of the United States Code
20 regulating controlled substances or of a violation of the statutes of this state regulating
21 controlled substances or dangerous drugs shall be conclusive evidence of unprofessional
22 conduct. In all other cases, the record of conviction shall be conclusive evidence only of
23 the fact that the conviction occurred. The board may inquire into the circumstances
24 surrounding the commission of the crime, in order to fix the degree of discipline or, in
25 the case of a conviction not involving controlled substances or dangerous drugs, to
26 determine if the conviction is of an offense substantially related to the qualifications,
27 functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a
28 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 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 Section 1203.4 of the Penal Code allowing the person to
withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the
verdict of guilty, or dismissing the accusation, information, or indictment. . . .

REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1769, subdivision (b) states:

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

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

(2) Total criminal record.

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

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

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

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

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

10 **COSTS**

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

17 **DRUG**

18 13. Ambien, a brand name for zolpidem tartrate, is a Schedule IV controlled substance as
19 designated by Health and Safety Code section 11057(d)(32), and is a dangerous drug pursuant to
20 Business & Professions Code section 4022.

21 **FIRST CAUSE FOR DISCIPLINE**

22 **(October 24, 2016 Criminal Conviction for Reckless Driving on May 22, 2015)**

23 14. Respondent has subjected his license to discipline under sections 490 and 4301(1) of
24 the Code in that he was convicted of a crime that is substantially related to the qualifications,
25 duties, and functions of a pharmacist. The circumstances are as follows:

26 a. On October 24, 2016, in a criminal proceeding entitled *People of the State of*
27 *California v. Marcus Briggs*, in San Bernardino County Superior Court, case number 16CR-
28 004823, Respondent was convicted on his plea of nolo contendere to violating Vehicle Code

1 section 23103, reckless driving. The original charge of driving under the influence of a drug
2 (Veh. Code, § 23152(e)), was dismissed.

3 b. As a result of the conviction, Respondent was granted probation for 36 months,
4 and ordered to pay fees and fines.

5 c. The facts that led to the conviction are that on the afternoon of May 22, 2015, a
6 motorcycle patrol officer with the San Bernardino Police Department responded to a report of a
7 male parked in the middle of an intersection, and possibly under the influence. Upon contact, the
8 officer observed that Respondent was wearing a robe, he had red, watery eyes, his speech was
9 slurred, and he appeared confused. He stated he was on his way to McDonald's, but his car broke
10 down. Respondent agreed to perform field sobriety tests which he was unable to complete as
11 explained and demonstrated by the officer. Respondent was arrested for driving under the
12 influence. During a Drug Recognition Evaluation, Respondent had difficulty maintaining focus
13 and appeared to be in a sedated state. Respondent admitted consuming medications earlier in the
14 day, including Ambien (zolpidem tartrate) for sleep. A blood sample provided by Respondent
15 tested positive for zolpidem.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Dangerous Use of a Controlled Substance)**

18 15. Respondent has subjected his license to disciplinary action under section 4301(h) of
19 the Code for unprofessional conduct in that on or about May 22, 2015, as described in paragraph
20 14, above, Respondent operated a motor vehicle while impaired by a controlled substance.

21 **PRAYER**

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

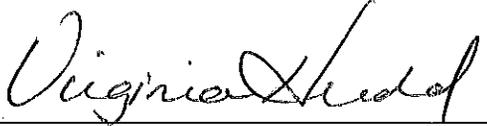
24 1. Revoking or suspending Pharmacist License Number RPH 45400, issued to Marcus
25 Lynn Briggs;

26 2. Ordering Marcus Lynn Briggs to pay the Board of Pharmacy the reasonable costs of
27 the investigation and enforcement of this case, pursuant to Business and Professions Code section
28 125.3; and,

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

DATED: 10/31/16



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

SD2016700401

1 KAMALA D. HARRIS
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14 **16851 Eagle Peak Road**
Riverside, CA 92504
15 **Pharmacist License No. RPH 45400**
16 Respondent.

Case No. 5771
A C C U S A T I O N

17
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 (Board), Department of Consumer Affairs.
22 2. On or about August 10, 1992, the Board of Pharmacy issued Pharmacist License
23 Number RPH 45400 to Marcus Lynn Briggs (Respondent). The Pharmacist License was in full
24 force and effect at all times relevant to the charges brought herein and will expire on May 31,
25 2016, 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. Section 4300, subdivision (a) of the Code states “Every license issued may be suspended or revoked.”

5. Section 4300.1 of the Code 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.

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STATUTORY PROVISIONS

6. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

7. Section 493 of the Code 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.'

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:

1 ...
2 (h) The administering to oneself, of any controlled substance, or the use of any
3 dangerous drug or of alcoholic beverages to the extent or in a manner as to be
4 dangerous or injurious to oneself, to a person holding a license under this chapter, or
5 to any other person or to the public, or to the extent that the use impairs the ability of
6 the person to conduct with safety to the public the practice authorized by the license.

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

REGULATORY PROVISIONS

27 9. California Code of Regulations, title 16, section 1769, subdivision (b) states:

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

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with all terms of parole, probation,
restitution or any other sanctions lawfully imposed against the licensee.
- (5) Evidence, if any, of rehabilitation submitted by the licensee.

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

For the purpose of denial, suspension, or revocation of a personal or facility license
pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions
Code, a crime or act shall be considered substantially related to the qualifications,

1 functions or duties of a licensee or registrant if to a substantial degree it evidences present
2 or potential unfitness of a licensee or registrant to perform the functions authorized by his
license or registration in a manner consistent with the public health, safety, or welfare.

3 **COSTS**

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

10 **DRUG**

11 12. Ambien is a brand name for zolpidem, a Schedule IV controlled substance pursuant
12 to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to
13 Business and Professions Code section 4022. It is a sedative used for the short-term treatment of
14 insomnia.

15 **FIRST CAUSE FOR DISCIPLINE**

16 **(General Unprofessional Conduct/**

17 **Dangerous Use of a Controlled Substance on May 22, 2015)**

18 13. Respondent's registration is subject to disciplinary action under section 4301(h) of the
19 Code in that he used an illegal controlled substance to the extent or in a manner as to be dangerous
20 or injurious to himself. The circumstances are as follows:

21 a. On or about the afternoon of May 22, 2015, a patrol officer with the San
22 Bernardino Police Department responded to assist another officer with a stranded motorist parked
23 in the middle of an intersection. Upon arrival the officer observed, Respondent was sitting in the
24 driver's seat and appeared to be impaired. The officer made contact with Respondent to determine
25 why Respondent was parked in the middle of the intersection. Respondent eyes were red and
26 watery, appeared to be confused and his speech was slow and slurred. Respondent admitted
27 consuming a fourth of a beer and taking numerous medications prior to driving. Respondent
28 provided two breath samples which came back with a 0.00 BAC. Respondent was arrested for

1 being under the influence of a controlled substance. During booking, Respondent provided a
2 blood sample that tested positive for zolpidem.

3 b. On March 17, 2016, charges were filed in the San Bernardino Superior Court,
4 Case No. 16CR-004823, in a proceeding entitled *The People of the State of California v. Marcus*
5 *Lynn Briggs*, Respondent is being charges with Vehicle Code section 23152(e), (driving under the
6 influence of drugs), a misdemeanor. Respondent has entered a not guilty plea and a Pretrial is set
7 for July 13, 2016.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(February 16, 2016 Criminal Conviction for Driving with a**
10 **Suspended License on July 28, 2015)**

11 14. Respondent has subjected his registration to discipline under sections 490 and 4301,
12 subdivision (l) of the Code in that he was convicted of a crime that is substantially related to the
13 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

14 a. On or about February 16, 2016, in a criminal proceeding entitled *The People of*
15 *the State of California v. Marcus Lynn Briggs*, in Los Angeles County Superior Court, case
16 number CIT5JB07965-01, Respondent was convicted on his plea of guilty to violating Vehicle
17 Code section 14601.19(a), driving while license was suspended, a misdemeanor. Pursuant to
18 Respondent's plea agreement, the court dismissed additional count of violating Vehicle Code
19 section 21655.5, (disobeyed a traffic signal).

20 b. As a result of the conviction, Respondent was granted summary probation for
21 three years, pay fees, fines and restitution, and comply with the terms of probation.

22 c. The facts that led to the convictions are that on or about July 28, 2015, officers
23 with the California Highway Patrol stopped Respondent for a traffic violation. Respondent was
24 issued a citation for driving with a suspended license.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct)**

3 15. Respondent has subjected her registration to disciplinary action under Code section
4 4301 for unprofessional conduct in that he engaged in activities described in paragraphs 13 and 14,
5 above, which is incorporated herein by reference.

6 **PRAYER**

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

9 1. Revoking or suspending Pharmacist License Number RPH 45400, issued to Marcus
10 Lynn Briggs;

11 2. Ordering Marcus Lynn Briggs to pay the Board of Pharmacy the reasonable costs of
12 the investigation and enforcement of this case, pursuant to Business and Professions Code section
13 125.3;

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

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17 DATED: _____

6/10/16



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

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