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

12 In the Matter of the Accusation Against:

Case No. 5910

13 **MARIO CARMELO GALLARDO**
14 **339 Marcos Street, Apartment 104**
San Marcos, CA 92069

A C C U S A T I O N

15 **Pharmacy Technician Registration No. TCH**
16 **138664**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

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

24 2. On February 4, 2014, the Board issued Pharmacy Technician Registration
25 Number TCH 138664 to Mario Carmelo Gallardo (Respondent). The Pharmacy Technician
26 Registration was in full force and effect at all times relevant to the charges brought herein, and
27 will expire on April 30, 2017, unless renewed.

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1 **JURISDICTION**

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 (Code) unless otherwise
4 indicated.

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

7 5. Code section 4300.1 states:

8 The expiration, cancellation, forfeiture, or suspension of a board-issued
9 license by operation of law or by order or decision of the board or a court of law,
10 the placement of a license on a retired status, or the voluntary surrender of a
11 license by a licensee shall not deprive the board of jurisdiction to commence or
12 proceed with any investigation of, or action or disciplinary proceeding against, the
13 licensee or to render a decision suspending or revoking the license.

12 **STATUTORY PROVISIONS**

13 6. Code section 480 states, in pertinent part:

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

16 ...

17 (3) (A) Done any act that if done by a licentiate of the business or
18 profession in question, would be grounds for suspension or revocation of license.

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19 7. Code section 492 states:

20 Notwithstanding any other provision of law, successful completion of any
21 diversion program under the Penal Code, or successful completion of an alcohol
22 and drug problem assessment program under Article 5 (commencing with Section
23 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit
24 any agency established under Division 2 (commencing with Section 500) of this
25 code, or any initiative act referred to in that division, from taking disciplinary
26 action against a licensee or from denying a license for professional misconduct,
27 notwithstanding that evidence of that misconduct may be recorded in a record
28 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.

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8. 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.

9. 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.

10. 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:
- ...
 - (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.

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

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

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

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

...

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

(1) Alprazolam.

...

(9) Diazepam.

....

12. Health and Safety Code section 11375 states, in pertinent part:

...

(b) (2) Every person who possesses any controlled substance specified 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 a misdemeanor.

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

...

(4) Diazepam.

...

(12) Alprazolam.

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1 **REGULATORY PROVISIONS**

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

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

8 **COST RECOVERY**

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

15 **DRUGS**

16 15. Alprazolam is a Schedule IV controlled substance as designated by Health and
17 Safety Code section 11057, subdivision (d)(1), and is categorized as a dangerous drug under
18 Code section 4022.

19 16. Diazepam is a Schedule IV controlled substance as designated by Health and
20 Safety Code, section 11057, subdivision (d)(9) and is categorized as a dangerous drug under
21 Code section 4022.

22 **FIRST CAUSE FOR DISCIPLINE**

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

24 17. Respondent has subjected his Pharmacy Technician Registration to discipline
25 under Code section 4301, subdivision (j) in that he committed acts that violated statutes of the
26 State of California regulating controlled substances and dangerous drugs. The circumstances are
27 as follows:

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1 a. On January 10, 2016, teenagers in several vehicles were reported driving
2 up and down Flying Cloud Way in Carlsbad, California. Responding officers from the Carlsbad
3 Police Department subsequently initiated an enforcement stop. During contact, an officer
4 immediately smelled marijuana coming from within the vehicle. The driver had no driver's
5 license. The four passengers included Respondent, who admitted to possession of some
6 medication. An officer searched Respondent and located a pill bottle inside his jacket pocket
7 containing 78 pills of antihistamine, eight whole and three half Xanax pills, and 17 Valium pills.
8 Respondent was arrested for possession of Xanax and Valium without a prescription and
9 transported to the Vista Detention Facility.

10 b. On March 16, 2016, in a criminal proceeding entitled *The People of the*
11 *State of California vs. Mario Carmelo Gallardo*, in San Diego County Superior Court (SDCSC),
12 North County Division, Case Number CN355248, Respondent pled guilty to violating Health
13 and Safety Code (HSC) section 11375, subdivision (b)(2), possession of designated controlled
14 substance alprazolam, a misdemeanor. Another misdemeanor charge for violation of HSC
15 section 11375, subdivision (b)(2), possession of designated controlled substance diazepam, was
16 dismissed under a plea bargain.

17 c. As a result of Respondent's guilty plea, on March 16, 2016, he was placed
18 on deferred entry of judgment for a period of 18 months under Penal Code (PC) section 1000.
19 Respondent was ordered to pay a deferred entry of judgment (DEOJ) administration fee, attend
20 self-help meetings, attend and successfully complete a County of San Diego PC 1000 program,
21 submit to a drug test at any time during the DEOJ period, and show proof of DEOJ enrollment,
22 and completion or progress report when ordered to do so by the SDCSC or the Substance Abuse
23 Assessment Unit.

24 **SECOND CAUSE FOR DISCIPLINE**

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

26 18. Respondent has subjected his Pharmacy Technician Registration to discipline
27 under Code section 4301, subdivision (o), in that he committed acts that violated pharmacy laws

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1 of the State of California regulating controlled substances and dangerous drugs, as detailed in
2 paragraph 16, above, and incorporated herein by this reference.

3 **THIRD CAUSE FOR DISCIPLINE**

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

5 19. Respondent subjected his Pharmacy Technician Registration to discipline under
6 Code section 4301, subdivision (p), in that Respondent possessed controlled substances without a
7 prescription in violation of Code section 4060, conduct that would have warranted the denial of a
8 pharmacy technician registration under Code section 480, subdivision (a)(3)(A), as detailed in
9 paragraph 16, above, and incorporated herein by this reference.

10 **PRAYER**

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

13 1. Revoking or suspending Pharmacy Technician Registration Number TCH
14 138664, issued to Mario Carmelo Gallardo;

15 2. Ordering Mario Carmelo Gallardo to pay the Board of Pharmacy the reasonable
16 costs of the investigation and enforcement of this case, under Code section 125.3; and,

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

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19
20 DATED: _____

9/23/16



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

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