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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:

Case No. 5970

12 **BRITTANY JANE LABIAK**
13 5933 Morrill Ave., Apt. B
Whittier, CA 90606

A C C U S A T I O N

14 **Pharmacy Technician Registration No. TCH**
15 **137467**

16 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 April 1, 2014, the Board of Pharmacy ("Board") issued Pharmacy
23 Technician Registration No. TCH 137467 to Brittany Jane Labiak ("Respondent"). The
24 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges
25 brought herein and will expire on July 31, 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. 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 490 of the Code provides, in pertinent part, that a board may suspend or
15 revoke a license on the ground that the licensee has been convicted of a crime substantially
16 related to the qualifications, functions, or duties of the business or profession for which the
17 license was issued.

18 7. Section 4021 of the Code states "'[c]ontrolled substance' means any substance listed
19 in Chapter 2 (commencing with Section 11053) of Division 10 of the health and Safety Code."

20 8. Section 4022 of the Code states, in pertinent part:

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

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

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

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

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.

Nothing in this section authorizes 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. Section 4301 of the Code states, in pertinent part:

The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been 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.

....

(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.

....

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a 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

1 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
2 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
3 dismissing the accusation, information, or indictment.

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5 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
6 abetting the violation of or conspiring to violate any provision or term of this chapter
7 or of the applicable federal and state laws and regulations governing pharmacy,
8 including regulations established by the board or by any other state or federal
9 regulatory agency. . . .”

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

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

15 13. California Health and Safety Code section 11350 states, in pertinent part:

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

25 **REGULATORY PROVISION**

26 14. Title 21 of the United States Code, section 829, subdivision (b), states, in pertinent
27 part:

28 Except when dispensed directly by a practitioner, other than a pharmacist, to an
ultimate user, no controlled substance in schedule III or IV, which is a prescription
drug as determined under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301
et seq.], may be dispensed without a written or oral prescription in conformity with
section 503(b) of that Act [21 U.S.C. 353(b)]. Such prescriptions may not be filled or
refilled more than six months after the date thereof or be refilled more than five times
after the date of the prescription unless renewed by the practitioner.

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1 **COST RECOVERY**

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

6 **CONTROLLED SUBSTANCE / DANGEROUS DRUG**

7 16. Alprazolam is a generic name for brand names: Xanax. It is a Schedule IV controlled
8 substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous
9 drug pursuant to Code section 4022. It is used to treat anxiety and seizures.

10 **FIRST CAUSE FOR DISCIPLINE**

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

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

16 18. On or about April 1, 2016, a Whittier Police Department officer was dispatched to a
17 Walgreens located in Whittier to investigate a pharmacy technician who was detained for theft.
18 Security camera footage from March 23, 2016 displayed Respondent stealing pills. Security
19 camera footage from March 28, 2016 displayed Respondent taking a \$100.00 bill from a
20 customer at the drive thru window and then placing the bill in the \$1.00 slot of the cash register.
21 The cash register was short \$99.99 on this day. Respondent later admitted to taking the \$100.00
22 bill from the cash register on March 28, 2016 and taking Alprazolam 1mg tablets on March 23,
23 2016. Respondent further admitted that she stole approximately 100 Alprazolam 1mg tablets
24 since July of 2015. Respondent stated she had never been prescribed Alprazolam but felt she
25 needed the drug for depression.

26 19. On or about July 1, 2016, Respondent entered a plea of nolo contendere for violating
27 Penal Code sections 504 and 490.2 [embezzlement and grand theft], in the criminal proceeding
28 entitled *The People of the State of California v. Brittany Jane Labiak* (Super. Ct. L.A. County,

1 2016, No. 6BL04269). The court placed Respondent on a 12-month Deferred Entry of Judgment.

2 **SECOND CAUSE FOR DISCIPLINE**

3 **(Unprofessional Conduct - Violation of Statutes of This State and the United States**
4 **Regulating Controlled Substances and Dangerous Drugs)**

5 20. Respondent is subject to disciplinary action under section 4301(j) of the Code, by and
6 through section 4060 of the Code, sections 11170, 11171, and 11350 of the Health and Safety
7 Code, and section 829, subdivision (b), of Title 21 of the United States Code, in that Respondent
8 violated the statutes of this state and the United States regulating controlled substances and
9 dangerous drugs. The facts and circumstances are described with more particularity in paragraph
10 18, above.

11 **THIRD CAUSE FOR DISCIPLINE**

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

15 21. Respondent is subject to disciplinary action under section 4301(o) of the Code, by
16 and through section 4060 of the Code, sections 11170, 11171, and 11350 of the Health and Safety
17 Code, and section 829, subdivision (b), of Title 21 of the United States Code, in that Respondent
18 violated or attempted to violate the provisions of the terms of this chapter and the applicable
19 federal and state laws and regulations governing pharmacy. The facts and circumstances are
20 described with more particularity in paragraph 18, above.

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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 issue a decision:

1. Revoking or suspending Pharmacy Technician Registration No. TCH 137467, issued to Brittany Jane Labiak;
2. Ordering Brittany Jane Labiak to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: _____

1/30/17

Virginia Herold

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

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