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

10 In the Matter of the Accusation Against:
11 **ROBERTO BARAJAS CONTRERAS**
12 1194 Meadow Lane
13 Concord, CA 94520
14 **Pharmacy Technician Registration No. TCH**
103413
15 Respondent.

Case No. 6124

A C C U S A T I O N

16
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about June 21, 2010, the Board issued Pharmacy Technician Registration
22 Number TCH 103413 to Roberto Barajas Contreras (Respondent). The Pharmacy Technician
23 Registration was in full force and effect at all times relevant to the charges brought herein and
24 will expire on April 30, 2018, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board under the authority of the following
27 laws. All section references are to the Business and Professions Code (Code) unless otherwise
28 indicated.

1 4. Section 4300 of the Code states, in pertinent part:
2 "(a) Every license issued may be suspended or revoked.
3 "(b) The board shall discipline the holder of any license issued by the board, whose default
4 has been entered or whose case has been heard by the board and found guilty, by any of the
5 following methods:
6 "(1) Suspending judgment.
7 "(2) Placing him or her upon probation.
8 "(3) Suspending his or her right to practice for a period not exceeding one year.
9 "(4) Revoking his or her license.
10 "(5) Taking any other action in relation to disciplining him or her as the board in its
11 discretion may deem proper.
12 ". . . .
13 "(e) The proceedings under this article shall be conducted in accordance with Chapter 5
14 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board
15 shall have all the powers granted therein. The action shall be final, except that the propriety of
16 the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of
17 Civil Procedure."
18 5. Section 4300.1 of the Code states:
19 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by
20 operation of law or by order or decision of the board or a court of law, the placement of a license
21 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
22 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
23 proceeding against, the licensee or to render a decision suspending or revoking the license."

24 **STATUTORY PROVISIONS**

25 6. Section 4021 of the Code states:
26 "'Controlled substance' means any substance listed in Chapter 2 (commencing with Section
27 11053) of Division 10 of the Health and Safety Code."
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1 7. Section 4022 of the Code states:

2 "Dangerous drug' or 'dangerous device' means any drug or device unsafe for self-use in
3 humans or animals, and includes the following:

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

6 ". . . .

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

9 8. Section 4301 of the Code states:

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

13 ". . . .

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

17 ". . . .

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

20 ". . . .

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

1 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
2 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
3 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
4 of this provision. The board may take action when the time for appeal has elapsed, or the
5 judgment of conviction has been affirmed on appeal or when an order granting probation is made
6 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
7 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
8 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
9 indictment.

10 "....

11 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
12 violation of or conspiring to violate any provision or term of this chapter or of the applicable
13 federal and state laws and regulations governing pharmacy, including regulations established by
14 the board or by any other state or federal regulatory agency.

15 "....

16 "(q) Engaging in any conduct that subverts or attempts to subvert an investigation of the
17 board.

18 "...."

19 9. Section 4059(a) of the Code states:

20 "A person may not furnish any dangerous drug, except upon the prescription of a physician,
21 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A
22 person may not furnish any dangerous device, except upon the prescription of a physician, dentist,
23 podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7."

24 10. Section 4060 of the Code states:

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

1 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
2 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
3 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
4 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
5 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
6 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
7 labeled with the name and address of the supplier or producer."

8 11. Health and Safety Code section 11350(a) provides:

9 "Except as otherwise provided in this division, every person who possesses (1) any
10 controlled substance specified in subdivision (b), (c), (e), or paragraph (1) of subdivision (f) of
11 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or
12 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section
13 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic
14 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian
15 licensed to practice in this state, shall be punished by imprisonment in a county jail for not more
16 than one year, except that such person shall instead be punished pursuant to subdivision (h) of
17 Section 1170 of the Penal Code if that person has one or more prior convictions for an offense
18 specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of
19 the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290
20 of the Penal Code."

21 12. Health and Safety Code section 11352(a) provides that selling, furnishing, or giving
22 away of any narcotic drug, unless upon the prescription of a physician, shall constitute a felony.

23 13. Health and Safety Code section 11352.1(b) provides that furnishing a dangerous drug
24 without a license is a misdemeanor.

25 14. Health and Safety Code section 11377(a) provides:

26 "Except as authorized by law and as otherwise provided in subdivision (b) or Section
27 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the
28 Business and Professions Code, every person who possesses any controlled substance which is

1 (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in
2 subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d),
3 (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2)
4 or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section
5 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to
6 practice in this state, shall be punished by imprisonment in a county jail for a period of not more
7 than one year, except that such person may instead be punished pursuant to subdivision (h) of
8 Section 1170 of the Penal Code if that person has one or more prior convictions for an offense
9 specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of
10 the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290
11 of the Penal Code."

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

15 COSTS

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

20 DRUGS

21 17. Promethazine with codeine syrup is a Schedule V controlled substance as designated
22 by Health and Safety Code section 11058(c)(1) and a dangerous drug as designated by Code
23 section 4022.

24 18. Alprazolam is a Schedule IV controlled substance as designated by Health and
25 Safety Code section 11057(d)(1) and is a dangerous drug per Code section 4022.

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1 **DIVERSION BACKGROUND**

2 19. In September 2014, while working as a pharmacy technician for Costco, Respondent
3 was caught diverting a bottle of promethazine with codeine syrup and 50 tablets of
4 alprazolam 2mg. After further investigation, Respondent admitted to having diverted, while
5 working at Costco, roughly 10-12 bottles of promethazine with codeine syrup and roughly 100
6 tablets of alprazolam 2mg. Costco employees calculated the loss to be far greater, approaching
7 25 bottles of promethazine with codeine syrup.

8 20. Respondent used most of the medication himself but did sell some of the
9 promethazine with codeine to other individual(s).

10 21. Respondent failed and/or refused to respond to the Board's attempts to discuss these
11 events with him.

12 **FIRST CAUSE FOR DISCIPLINE**

13 **(Possess Controlled Substance)**

14 22. Respondent is subject to disciplinary action under Code section 4301(j) and/or
15 4301(o), in conjunction with Code section 4060, Health and Safety Code section 11350(a), and/or
16 Health and Safety Code section 11377(a), in that Respondent possessed a controlled substance
17 and/or narcotic drug without a valid prescription. The circumstances are described above in
18 "Diversion Background."

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Furnish Dangerous Drug and/or Narcotic)**

21 23. Respondent is subject to disciplinary action under Code section 4301(j) and/or
22 4301(o), in conjunction with Code section 4059(a) and/or Health and Safety Code sections
23 11352(a) and/or 11352.1(b), in that Respondent illegally furnished, sold, or gave away a
24 dangerous drug and/or narcotic to another person. The circumstances are described above in
25 "Diversion Background."

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Act Involving Dishonesty)**

3 24. Respondent is subject to disciplinary action under Code section 4301(f) in that
4 Respondent did an act involving moral turpitude, dishonesty, fraud, deceit, or corruption. The
5 circumstances are described above in "Diversion Background."

6 **FOURTH CAUSE FOR DISCIPLINE**

7 **(Subversion of Investigation)**

8 25. Respondent is subject to disciplinary action under Code section 4301(q) in that
9 Respondent engaged in conduct that subverted or attempted to subvert an investigation of the
10 board. The circumstances are described above in "Diversion Background."

11 **CONVICTION BACKGROUND**

12 26. On or about May 29, 2015, in the Superior Court of California for the County of
13 Contra Costa, in the case entitled *The People of the State of California v. Roberto Contreras*,
14 Case No. 171467-4, Respondent pled no contest to and was convicted of violating California
15 Penal Code section 508 (embezzlement by servant), a misdemeanor. The circumstances of the
16 conviction were that Respondent stole controlled substances while working for Costco between
17 August and September 2014.

18 **FIFTH CAUSE FOR DISCIPLINE**

19 **(Criminal Conviction)**

20 27. Respondent is subject to disciplinary action under Code sections 490(a) and/or
21 4301(l) in that Respondent was convicted of an offense substantially related to the duties,
22 functions, or qualifications of a licensee. The circumstances are described above in "Conviction
23 Background."

24 **PRAAYER**

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

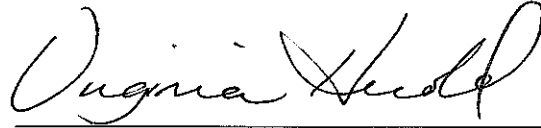
27 1. Revoking or suspending Pharmacy Technician Registration Number TCH 103413,
28 issued to Roberto Barajas Contreras;

1 2. Ordering Roberto Barajas Contreras to pay the Board of Pharmacy the reasonable
2 costs of the investigation and enforcement of this case, pursuant to Business and Professions
3 Code section 125.3; and,

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

5
6 DATED: _____

4/9/18



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

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