

1 KAMALA D. HARRIS  
Attorney General of California  
2 ARMANDO ZAMBRANO  
Supervising Deputy Attorney General  
3 MATTHEW A. KING  
Deputy Attorney General  
4 State Bar No. 265691  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
matthew.king@doj.ca.gov  
6 (213) 897-7446

7 *Attorneys for Complainant*

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

11 In the Matter of the Statement of Issues  
Against:

Case No. 4444

12 **PAUL GOLDBERG**

**STATEMENT OF ISSUES**

13 **Applicant for Pharmacy Technician**  
14 **Registration**

[Gov. Code, § 11504.]

15 Respondent.

16  
17  
18 Complainant alleges:

19 **PARTIES**

20 1. Complainant Virginia Herold brings this Statement of Issues solely in her official  
21 capacity as the Executive Officer of the Board of Pharmacy, an agency within the Department of  
22 Consumer Affairs.

23 2. On August 16, 2011, the Board received an application for registration as a Pharmacy  
24 Technician from Respondent Paul Goldberg. On July 8, 2011, Respondent certified under  
25 penalty of perjury to the truthfulness of all statements, answers and representations in the  
26 application. The Board denied the application on August 30, 2012.

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1 **JURISDICTION**

2 3. This Statement of Issues is brought before the Board under the authority of the  
3 following laws. All section references are to the Business and Professions Code unless otherwise  
4 indicated.

5 4. Section 4300 states, in pertinent part, that "every license issued by the Boards is  
6 subject to discipline, including suspension or revocation."

7 **STATUTORY PROVISIONS**

8 5. Section 480 of the Code states, in pertinent part:

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

11 ...

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

15 (3)(B) The board may deny a license pursuant to this subdivision  
16 only if the crime or act is substantially related to the qualifications,  
17 functions, or duties of the business or profession for which  
18 application is made.

19 (b) Notwithstanding any other provision of this code, no person shall  
20 be denied a license solely on the basis that he or she has been convicted of a felony  
21 if he or she has obtained a certificate of rehabilitation under Chapter 3.5  
22 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he  
23 or she has been convicted of a misdemeanor if he or she has met all applicable  
24 requirements of the criteria of rehabilitation developed by the board to evaluate the  
25 rehabilitation of a person when considering the denial of a license under subdivision  
26 (a) of Section 482...

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

28 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...

1 7. Section 4301 states, in pertinent part:

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

6 ...

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

13 ...

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

16 ...

17 (o) Violating or attempting to violate, directly or indirectly, or  
18 assisting in or abetting the violation of or conspiring to violate any provision or  
19 term of this chapter or of the applicable federal and state laws and regulations  
20 governing pharmacy, including regulations established by the board or by any  
21 other state or federal regulatory agency.

22 8. Section 4307 states, in pertinent part:

23 (a) Any person who has been denied a license or whose license has been  
24 revoked or is under suspension, or who has failed to renew his or her license while  
25 it was under suspension...shall be prohibited from serving as a manager,  
26 administrator, owner, member, officer, director, associate, or partner of a licensee  
27 as follows:

28 (1) Where a probationary license is issued..., this prohibition shall remain in  
effect for a period not to exceed five years.

(2) Where the license is denied..., the prohibition shall continue until the  
license is issued....

### REGULATORY PROVISIONS

9. 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, 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.

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1 **DRUG STATUTES**

2 10. Health and Safety Code section 11350 states, in pertinent part:

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

8 11. Health and Safety Code section 11351 states:

9 Except as otherwise provided in this division, every person who possesses  
10 for sale or purchases for purposes of sale (1) any controlled substance specified in  
11 subdivision (b), (c), or (e) of Section 11054, specified in paragraph (14), (15), or  
12 (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of  
13 Section 11055, or specified in subdivision (h) of Section 11056, or (2) any  
14 controlled substance classified in Schedule III, IV, or V which is a narcotic drug,  
15 shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of  
16 the Penal Code for two, three, or four years.

13 12. Health and Safety Code section 11352 states, in pertinent part:

14 (a) Except as otherwise provided in this division, every person who  
15 transports, imports into this state, sells, furnishes, administers, or gives away, or  
16 offers to transport, import into this state, sell, furnish, administer, or give away, or  
17 attempts to import into this state or transport (1) any controlled substance specified  
18 in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054,  
19 specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or  
20 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h)  
21 of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or  
22 V which is a narcotic drug, unless upon the written prescription of a physician,  
23 dentist, podiatrist, or veterinarian licensed to practice in this state, shall be  
24 punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal  
25 Code for three, four, or five years.

20 ...

21 (c) For purposes of this section, "transports" means to transport for sale...

22 **DRUG CLASSIFICATIONS**

23 13. Marijuana is a Schedule I controlled substance and a dangerous drug. (Health & Saf.  
24 Code, §11054, subd. (d)(13); Bus. & Prof. Code, § 4022.)

25 14. Norco is a brand name for acetaminophen and hydrocodone bitartrate. It is a narcotic  
26 analgesic indicated for the treatment of mild to moderate pain. Norco is a Schedule III controlled  
27 substance and a dangerous drug. Norco is manufactured as a yellow, oval pill bearing the imprint  
28 "3601V." (Health & Saf. Code, §§ 11055, subd. (b)(1)(I), 11056; Bus. & Prof. Code, § 4022.)

1 15. Xanax is a brand name for Alprazolam. It is a benzodiazepine indicated for anxiety.  
2 Xanax is a Schedule IV controlled substance and a dangerous drug. Xanax is manufactured as a  
3 yellow, rectangular pill imprinted with "R039." (Health & Saf. Code, § 11057, subd. (d)(1); Bus.  
4 & Prof. Code, § 4022.)

5 **STATEMENT OF FACTS**

6 16. On February 8, 2012, two plain-clothes officers in an unmarked car observed  
7 Respondent driving in an unsafe manner. Respondent was weaving and twice drove across the  
8 painted line separating traffic traveling in the same direction. As the police car neared  
9 Respondent's, the officers noticed that Respondent was holding a phone to his ear and  
10 Respondent's passenger was not wearing a seatbelt.

11 17. Uniformed officers of the Los Angeles Police Department stopped Respondent for  
12 suspected violations of Vehicle Code sections 21658, subdivision (a) (unsafe lane movement);  
13 23123, subdivision (a) (use of wireless telephone without hands-free configuration); and 27315  
14 (passenger not wearing seatbelt).

15 18. One of the plain-clothes officers smelled a heavy odor of marijuana on Respondent  
16 and asked Respondent if he used drugs or consumed alcohol before driving. Respondent replied  
17 that he smoked medical marijuana approximately one hour before driving. Respondent told the  
18 officer that he did not have any marijuana with him and consented to a search of his clothing.

19 19. The officer uncovered a yellow, oval pill with the inscription "3601V" from the  
20 sweatband of Respondent's baseball cap. The shape, color and imprint of the drug identify the  
21 pill as hydrocodone bitartrate 10mg/acetaminophen 325mg, which is generic for Norco.  
22 Respondent did not have a valid prescription for Norco.

23 20. A second officer searched the car and found a plastic bag near the steering wheel  
24 containing four yellow, rectangular pills bearing the imprint "R039." The shape, color and  
25 imprint of the pills correspond to Alprazolam 2mg. Upon seeing the Alprazolam pills being  
26 removed from the car, Respondent protested, "officer, those are old! Please don't arrest me! I  
27 just use them for headaches." Respondent did not have a prescription for the Alprazolam but  
28 denied that he was planning to sell them. Respondent unlocked his phone and gave permission to

1 the officer to read his text messages.

2 21. On February 6, 2012, Respondent communicated through text messages with an  
3 individual whose telephone number was saved in Respondent's phone under the name of  
4 "Joseph." The conversation between Respondent and "Joseph" was as follows:

5 *Joseph* "Got yellows"?

6 *Respondent* "Ya"

7 *Joseph* "Lemme get 3"

8 *Respondent* "I'm off at 7"

9 22. On February 8, 2012, the day of the enforcement stop, "Joseph" sent Respondent a  
10 text message, saying "[g]ot yellows"?

11 23. Also on February 8, 2012, Respondent communicated via text messages with an  
12 individual identifying herself as "Mariah." Their conversation was as follows:

13 *Mariah* "It[']s Mariah need 1 or 22 ZZs later"

14 *Respondent* "Got u"

15 *Mariah* "Can u front me those an I[']ll get you on Fri?"

16 24. "Yellows" and "ZZs" are slang for Xanax.

17 **FIRST CAUSE FOR DENIAL OF APPLICATION**

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

19 25. Respondent's application is subject to denial under Code section 4301, subdivision  
20 (h), in conjunction with California Code of Regulations, title 16, section 1770, for unprofessional  
21 conduct in that Respondent used marijuana to an extent and in a manner as to be dangerous or  
22 injurious to himself and to the public. Complainant realleges paragraphs 16-24.

23 **SECOND CAUSE FOR DENIAL OF APPLICATION**

24 **(Violate Laws Regulating Controlled Substances and Dangerous Drugs)**

25 26. Respondent's application is subject to denial under Code section 4301, subdivision  
26 (j), in conjunction with California Code of Regulations, title 16, section 1770, for unprofessional  
27 conduct in that Respondent violated state statutes regulating controlled substances and dangerous  
28 drugs, as follows:

1           a.           **Health & Saf. Code, § 11350:** Health and Safety Code section 11350  
2 proscribes the possession of any controlled substance unless upon a valid prescription.  
3 On February 8, 2012, Respondent possessed one pill of the controlled substance Norco 10mg and  
4 four pills of the controlled substance Xanax 2mg. Respondent did not have a prescription for  
5 either substance. Complainant realleges paragraphs 16–24.

6           b.           **Health & Saf. Code, § 11351:** Health and Safety Code section 11351  
7 makes it illegal to possess a controlled substance with the intent to sell it. On or between  
8 February 6 and February 8, 2012, Respondent possessed Norco and Xanax for purpose of sale.  
9 Complainant realleges paragraphs 16–24.

10          c.           **Health & Saf. Code, § 11352:** Health and Safety Code section 11352  
11 prohibits the transportation for sale of a controlled substance unless upon a valid prescription.  
12 On February 8, 2012, Respondent transported Norco and Xanax by motor vehicle and did so with  
13 the purpose of selling the drugs. Complainant realleges paragraphs 16–24.

14          d.           **Bus. & Prof. Code, § 4060:** Code section 4060 prohibits the possession of  
15 a controlled substance except upon a valid prescription. On February 8, 2012, Respondent  
16 illegally possessed Norco and Xanax. Complainant realleges paragraphs 16–24.

17   **THIRD CAUSE FOR DENIAL OF APPLICATION**

18   **(Violate Pharmacy Law)**

19          27. Respondent’s application is subject to denial under Code section 4301, subdivision  
20 (o), in conjunction with California Code of Regulations, title 16, section 1770, for unprofessional  
21 conduct in that Respondent violated the Pharmacy Law. Complainant realleges paragraphs  
22 16–26.

23   **FOURTH CAUSE FOR DENIAL OF APPLICATION**

24   **(Conduct Warranting Discipline)**

25          28. Respondent’s application is subject to denial under Code section 480, subdivisions  
26 (a)(3)(A)–(a)(3)(B), in conjunction with California code of Regulations, title 16, section 1770, in  
27 that Respondent committed acts that if done by a Pharmacy Technician would be grounds for  
28 suspension or revocation of his license. Complainant realleges paragraphs 16–27.

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**OTHER MATTERS**

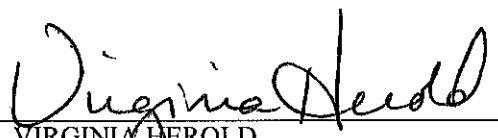
29. Pursuant to section 4307 of the Code, if a probationary license is issued to Respondent, then he shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate or partner of a licensee for a period not to exceed five years. Where the license is denied, the prohibition shall continue until a license is issued.

**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. Denying the application of Paul Goldberg for registration as a Pharmacy Technician;
2. Prohibiting Respondent Paul Goldberg from serving as a manger, administrator, owner, member, officer, director, associate or partner of a licensee for a period not to exceed five years in the case of a probationary license, or, in the case of denial, until a license is issued; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 8/8/14

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

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