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

In the Matter of the Accusation Against:

**BENITO PLASCENCIA, AKA BENITO
MARTINEZ PLASCENCIA, AKA BENNY
PLASCENCIA
6308 Citrus Avenue
Whittier, CA 90601
Pharmacy Technician License No. TCH
13530**

Respondent.

Case No. 3229

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about August 4, 2009, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 3229 against Benito Plascencia aka Benito Martinez, aka Benny Plascencia (Respondent) before the Board of Pharmacy.

2. On or about July 28, 1994, the Board of Pharmacy (Board) issued Pharmacy Technician License No. TCH 13530 to Respondent. The Pharmacy Technician license was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2010, unless renewed.

3. On or about August 12, 2009, Maria L. Camacho, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation No. 3229, Statement to

1 Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5,
2 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is: 6308
3 Citrus Avenue Whittier, CA 90601. A copy of the Accusation is attached as exhibit A, and is
4 incorporated herein by reference.

5 4. Service of the Accusation was effective as a matter of law under the provisions of
6 Government Code section 11505, subdivision (c).

7 5. Government Code section 11506 states, in pertinent part:

8 (c) The respondent shall be entitled to a hearing on the merits if the respondent
9 files a notice of defense, and the notice shall be deemed a specific denial of all parts
10 of the accusation not expressly admitted. Failure to file a notice of defense shall
11 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
12 may nevertheless grant a hearing.

13 6. Respondent failed to file a Notice of Defense within 15 days after service upon him
14 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
15 3229.

16 7. California Government Code section 11520 states, in pertinent part:

17 (a) If the respondent either fails to file a notice of defense or to appear at the
18 hearing, the agency may take action based upon the respondent's express admissions
19 or upon other evidence and affidavits may be used as evidence without any notice to
20 respondent.

21 8. Pursuant to its authority under Government Code section 11520, the Board finds
22 Respondent is in default. The Board will take action without further hearing and, based on the
23 evidence on file herein, finds that the allegations in Accusation No. 3229 are true.

24 9. The total cost for investigation and enforcement in connection with the Accusation
25 are \$6,536.00 as of October 2, 2009.

26 DETERMINATION OF ISSUES

27 1. Based on the foregoing findings of fact, Respondent Benito Plascencia aka Benito
28 Martinez, Benny Plascencia has subjected his Pharmacy Technician No. TCH 13530 to discipline.

2. A copy of the Accusation is attached.

3. The agency has jurisdiction to adjudicate this case by default.

Exhibit A
Accusation No. 3229

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 THOMAS L. RINALDI, State Bar No. 206911
Supervising Deputy Attorney General
4 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
5 Telephone: (213) 897-2541
Facsimile: (213) 897-2804

6 Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 3229

13 BENITO PLASCENCIA,
a.k.a. BENITO MARTINEZ PLASCENCIA,
14 a.k.a. BENNY PLASCENCIA
6308 Citrus Avenue
15 Whittier, CA 90601-3213

A C C U S A T I O N

16 Pharmacy Technician License No. TCH 13530

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

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

24 2. On or about July 28, 1994, the Board issued Pharmacy Technician License
25 Number TCH 13530 to Benito Plascencia, also known as Benito Martinez Plascencia and Benny
26 Plascencia ("Respondent"). Respondent's pharmacy technician license was in full force and
27 effect at all times relevant to the charges brought herein and will expire on March 31, 2010,
28 unless renewed.

STATUTORY PROVISIONS

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3. Business and Professions Code ("Bus. & Prof. Code") section 4202, subdivision (d), states that the Board may suspend or revoke a license issued pursuant to this section on any ground specified in Section 4301.

4. Bus. & Prof. Code section 4300 states, in pertinent part:

(a) Every license issued may be suspended or revoked.

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

(1) Suspending judgment.

(2) Placing him or her upon probation.

(3) Suspending his or her right to practice for a period not exceeding one year.

(4) Revoking his or her license.

(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper . . .

5. Bus. & Prof. Code section 4301 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 procured by fraud or misrepresentation or 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

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

14

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

20 6. Bus. & Prof. Code section 4051, subdivision (a), states:

21 Except as otherwise provided in this chapter, it is unlawful for any person
22 to manufacture, compound, furnish, sell, or dispense any dangerous drug or
23 dangerous device, or to dispense or compound any prescription pursuant to
24 Section 4040 of a prescriber unless he or she is a pharmacist under this chapter.

25 7. Bus. & Prof. Code section 4141 states that "[n]o person shall furnish
26 hypodermic needles or syringes, by sale or otherwise, without a license issued by the board,
27 except as otherwise provided by this article."

28 8. Bus. & Prof. Code section 4322 states:

Any person who attempts to secure or secures licensure for himself or
herself or any other person under this chapter by making or causing to be made
any false representations, or who fraudulently represents himself or herself to be
registered, is guilty of a misdemeanor, and upon conviction thereof shall be
punished by a fine not exceeding five thousand dollars (\$5,000), or by
imprisonment not exceeding 50 days, or by both that fine and imprisonment.

9. Bus. & Prof. Code section 4329 states:

Any nonpharmacist who takes charge of or acts as manager of any
pharmacy or who compounds or dispenses a prescription or furnishes dangerous
drugs except as otherwise provided in this chapter is guilty of a misdemeanor.

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1 10. Health and Safety Code ("Health & Saf. Code") section 11207,
2 subdivision (a), states:

3 No person other than a pharmacist as defined in Section 4036 of the
4 Business and Professions Code or an intern pharmacist, as defined in Section
5 4030 of the Business and Professions Code, who is under the personal supervision
of a pharmacist, shall compound, prepare, fill or dispense a prescription for a
controlled substance.

6 11. Health & Saf. Code section 11352.1, subdivision (b), states:

7 Notwithstanding Section 4321 of the Business and Professions Code, and
8 in addition to any other penalties provided by law, any person who knowingly and
9 unlawfully dispenses or furnishes a dangerous drug or dangerous device, or any
10 material represented as, or presented in lieu of, any dangerous drug or dangerous
11 device, as defined in Section 4022 of the Business and Professions Code, or who
12 knowingly owns, manages, or operates a business that dispenses or furnishes a
13 dangerous drug or dangerous device or any material represented as, or presented
14 in lieu of, any dangerous drug or dangerous device, as defined in Section 4022 of
15 the Business and Professions Code without a license to dispense or furnish these
products, shall be guilty of a misdemeanor. Upon the first conviction, each
violation shall be punishable by imprisonment in a county jail not to exceed one
year, or by a fine not to exceed five thousand dollars (\$5,000), or by both that fine
and imprisonment. Upon a second or subsequent conviction, each violation shall
be punishable by imprisonment in a county jail not to exceed one year, or by a fine
not to exceed ten thousand dollars (\$10,000), or by both that fine and
imprisonment.

16 12. Penal Code section 530.5, subdivision (a), states:

17 Every person who willfully obtains personal identifying information, as
18 defined in subdivision (b) of Section 530.55, of another person, and uses that
19 information for any unlawful purpose, including to obtain, or attempt to obtain,
20 credit, goods, services, real property, or medical information without the consent
of that person, is guilty of a public offense, and upon conviction therefor, shall be
punished by a fine, by imprisonment in a county jail not to exceed one year, or by
both a fine and imprisonment, or by imprisonment in the state prison.

21 13. Penal Code section 530.55, subdivision (b), states:

22 For purposes of this chapter, "personal identifying information" means
23 any name, address, telephone number, health insurance number, taxpayer
24 identification number, school identification number, state or federal driver's
25 license, or identification number, social security number, place of employment,
26 employee identification number, professional or occupational number, mother's
maiden name, demand deposit account number, savings account number,
checking account number, PIN (personal identification number) or password,
alien registration number, government passport number, date of birth, unique
biometric data including fingerprint, facial scan identifiers, voiceprint, retina or
iris image, or other unique physical representation, unique electronic data

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1 including information identification number assigned to the person, address or
2 routing code, telecommunication identifying information or access device,
3 information contained in a birth or death certificate, or credit card number of an
4 individual person, or an equivalent form of identification.

5 **COST RECOVERY**

6 14. Bus. & Prof. Code section 125.3 states, in pertinent part, that the Board
7 may request the administrative law judge to direct a licentiate found to have committed a
8 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
9 investigation and enforcement of the case.

10 **RESPONDENT'S CRIMINAL CONVICTIONS**

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(Criminal Convictions Substantially Related to the
13 Qualifications, Functions, and Duties of a Pharmacy Technician)**

14 15. Respondent is subject to disciplinary action pursuant to Code section
15 4301, subdivision (1), on the grounds of unprofessional conduct, in that Respondent was
16 convicted of crimes which are substantially related to the qualifications, functions, and duties of
17 a pharmacy technician, as follows:

18 a. On or about August 28, 2001, in the criminal proceeding titled *People v.*
19 *Benito Plascencia* (Super. Ct. Los Angeles County, 2001, Case No. 1WH02886), Respondent
20 was convicted by the court on his plea of nolo contendere to violating Health & Saf. Code
21 section 11352.1, subdivision (b) (dispensing or furnishing dangerous drugs without a license, a
22 misdemeanor), and Bus. & Prof. Code section 4141 (furnishing hypodermic needles or syringes
23 by sale without a license, a misdemeanor). The incidents upon which Respondent's conviction is
24 based occurred on or about June 23, 2001.

25 b. On or about May 18, 2007, in the criminal proceeding titled *People v.*
26 *Benito Plascencia* (Super. Ct. Los Angeles County, 2007, Case No. VA099167), Respondent was
27 convicted by the court on his plea of nolo contendere to violating Penal Code section 530.5,
28 subdivision (a) (identity theft, a felony). The circumstances of the crime are as follows: On or
about October 27, 2006, Respondent willfully and unlawfully obtained personal identifying

1 information on S. S. and used that information for an unlawful purpose and to obtain, and
2 attempt to obtain, credit, goods, services, and information in S. S.' name without consent. The
3 imposition of sentence was suspended and Respondent was placed on formal probation for a
4 period of three (3) years under terms and conditions, including the following: Respondent was
5 ordered to serve 180 days in the Los Angeles County Jail, to make restitution in the amount of
6 \$598.05 to Anda Pharmaceutical, and not to be involved in any manner with the selling of
7 prescribed medicines in a pharmaceutical like business or other business involving prescribed
8 medicines.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

11 16. Respondent is subject to disciplinary action pursuant to Code section
12 4301, subdivision (f), on the grounds of unprofessional conduct, in that on or about October 27,
13 2006, Respondent committed an act or acts involving moral turpitude, dishonesty, fraud, deceit,
14 or corruption, as set forth in subparagraph 15 (b) above.

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(Violations of State Laws Regulating Dangerous Drugs)**

17 17. Respondent is subject to disciplinary action pursuant to Code section
18 4301, subdivision (j), on the grounds of unprofessional conduct, in that on or about October 27,
19 2007, Respondent violated a state law regulating dangerous drugs, specifically, Health & Saf.
20 Code section 11352.1, subdivision (b), as set forth in subparagraph 15 (a) above.

21 **FOURTH CAUSE FOR DISCIPLINE**

22 **(Violations of State Laws Governing Pharmacy)**

23 18. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code
24 section 4301, subdivision (o), on the grounds of unprofessional conduct, in that on or about
25 October 27, 2007, Respondent violated a state law governing pharmacy, specifically, Bus. &
26 Prof. Code section 4141, as set forth in subparagraph 15 (a) above.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

3 22. Respondent is subject to disciplinary action pursuant to Code section
4 4301, subdivision (f), on the grounds of unprofessional conduct, in that in and between April
5 2006, and August 2007, Respondent committed acts involving moral turpitude, dishonesty, fraud,
6 deceit, or corruption, as follows:

7 a. Respondent transcribed orally transmitted prescriptions, and furnished,
8 filled, or dispensed dangerous drugs and controlled substances without a pharmacist's license, in
9 violation of Bus. & Prof. Code sections 4051, subdivision (a), and 4329, and Health & Saf. Code
10 section 11207, subdivision (a).

11 b. Respondent acted in the capacity of pharmacist-in-charge at Beyond the
12 Pharmacy without a pharmacist's license, in violation of Bus. & Prof. Code section 4329.

13 c. Respondent fraudulently represented himself to be licensed pharmacist
14 R. R. V. in order to work as pharmacist-in-charge at Beyond the Pharmacy, in violation of
15 Bus. & Prof. Code section 4322.

16 d. Respondent willfully obtained personal identifying information of
17 R. R. V., including, but not limited to, R. R. V.'s name and pharmacist license number, and used
18 the information for an unlawful purpose, as set forth in subparagraph (c) above, in violation of
19 Penal Code section 530.5, subdivision (a).

20 **SIXTH CAUSE FOR DISCIPLINE**

21 **(Violations of State Laws Regulating**
22 **Controlled Substances and Dangerous Drugs)**

23 23. Respondent is subject to disciplinary action pursuant to Code section
24 4301, subdivision (j), on the grounds of unprofessional conduct, in that in and between April
25 2006, and August 2007, Respondent violated state laws regulating controlled substances and
26 dangerous drugs, specifically, Bus. & Prof. Code sections 4051, subdivision (a), and 4329, and
27 Health & Saf. Code section 11207, subdivision (a), as set forth in subparagraph 22 (a) above.

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1 SEVENTH CAUSE FOR DISCIPLINE

2 (Violations of State Laws Governing Pharmacy)

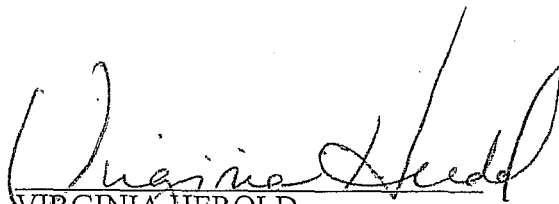
3 24. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code
4 section 4301, subdivision (o), on the grounds of unprofessional conduct, in that in and between
5 April 2006, and August 2007, Respondent violated state laws governing pharmacy, specifically,
6 Bus. & Prof. Code sections 4051, subdivision (a), 4329, and 4322, as set forth in paragraph 22
7 above.

8 PRAYER

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

- 11 1. Revoking or suspending Pharmacy Technician License Number
12 TCH 13530, issued to Benito Plascencia, also known as Benito Martinez Plascencia and Benny
13 Plascencia;
- 14 2. Ordering Benito Plascencia, also known as Benito Martinez Plascencia
15 and Benny Plascencia, to pay the Board of Pharmacy the reasonable costs of the investigation and
16 enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 17 3. Taking such other and further action as deemed necessary and proper.

18
19 DATED: 8/4/09

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21 
22 VIRGINIA HEROLD
23 Executive Officer
24 Board of Pharmacy
25 Department of Consumer Affairs
26 State of California
27 Complainant
28