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8 9	BEFORE THE BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA				
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1 2	In the Matter of the Accusation Against:	Case No. 6003			
13	ALEXIS ZUNIGA 2070 Lucretia Ave. # 101 San Jose, CA 95122	DEFAULT DECISION AND ORDER			
l5 l6	Pharmacy Technician Registration No. TCH 130272	[Gov. Code, §11520]			
l7 l8	Respondent.				
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20	<u>FINDINGS</u>	OF FACT			
21	1. On or about March 2, 2017, Complainant Virginia Herold, in her official capacity as				
22	the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed				
23	Accusation No. 6003 against Alexis Zuniga (Respondent) before the Board of Pharmacy.				
24	(Accusation attached as Exhibit A.)				
25	2. On or about February 11, 2013, the Board of Pharmacy (Board) issued Pharmacy				
26	Technician Registration No. TCH 130272 to Respondent. The Pharmacy Technician Registration				
27	expired on September 30, 2016, and has not been renewed.				
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(ALEXIS ZUNIGA) DEFAULT DECISION & ORDER Case No. 6003

3. On or about March 20, 2017, Respondent was served by Certified Mail copies of the Accusation No. 6003, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code section 4100, is required to be reported and maintained with the Board. Respondent's address of record was and is:

2070 Lucretia Ave. # 101 San Jose, CA 95122.

- 4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c) and/or Business & Professions Code section 124.
 - 5. Government Code section 11506(c) states, in pertinent part:
 - (c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense . . . and the notice shall be deemed a specific denial of all parts of the accusation . . . not expressly admitted. Failure to file a notice of defense . . . shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.
- 6. The Board takes official notice of its records and the fact that Respondent failed to file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 6003.
 - 7. California Government Code section 11520(a) states, in pertinent part:
 - (a) If the respondent either fails to file a notice of defense . . . or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.
- 8. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the Board's offices regarding the allegations contained in Accusation No. 6003, finds that the charges and allegations in Accusation No. 6003, are separately and severally, found to be true and correct by clear and convincing evidence.

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1	seven (7) days after service of the Decision on Respondent. The agency in its discretion may		
2	vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.		
3	This Decision shall become effective at 5:00 p.m. on September 21, 2017.		
4	It is so ORDERED on August 22, 2017.		
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6	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
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9	Agheloty		
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11	By		
12	Amy Gutierrez, Pharm.D.		
13	Board President 20994515.DOC		
14	DOJ Matter ID:SF2016202235		
15	Attachment: Exhibit A: Accusation		
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Exhibit A

Accusation

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7	BEFORE THE BOARD OF PHARMACY		
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9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
10	SIATE OF C		
11	In the Matter of the Accounting Accions	 C N (002	
12	In the Matter of the Accusation Against:	Case No. 6003	
13	ALEXIS ZUNIGA	DEFAULT DECISION AND ORDER	
14	2070 Lucretia Ave. # 101	DEFAULT DECISION AND ORDER	
15	San Jose, CA 95122 Pharmacy Technician Registration No. TCH 130272	[Gov. Code, §11520]	
16	10. 101 1302/2		
17	Respondent.		
18	Respondent.		
19		the state of the s	
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- 8. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the Board's offices regarding the allegations contained in Accusation No. 6003, finds that the charges and allegations in Accusation No. 6003, are separately and severally, found to be true and correct by clear and convincing evidence.

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6	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS		
7	STATE OF CALIFORNIA		
8	a A a donto		
9	Afreforting		
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11	ByAmy Gutierrez, Pharm.D.		
12	20994515,DOC DOJ Matter ID:SF2016202235		
13	Attachment:		
14	Exhibit A: Accusation		
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Exhibit A

Accusation

1	XAVIER BECERRA				
2	Attorney General of California				
	Senior Assistant Attorney General JOSHUA A. ROOM Supervising Deputy Attorney General State Bar No. 214663 455 Golden Gate Avenue, Suite 11000				
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6	Facsimile: (415) 703-5480 Attorneys for Complainant	1			
7	BEFORE THE				
8	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS				
9	STATE OF CALIFORNIA				
10	In the Matter of the Accusation Ag	painet	Case No. 6003		
11	ALEXIS ZUNIGA	sumot,	Case 110. 0003		
12	2070 Lucretia Ave. # 101 San Jose, CA 95122		ACCUSATION		
13	Pharmacy Technician License No	o TCH 130272	ACCUSATION		
14	The state of the s				
15		Respondent.			
16	Complainant alleges:				
17	<u>PARTIES</u>				
18	1. Virginia Herold (Comp	plainant) brings th	is Accusation solely in her official capacity		
19	as the Executive Officer of the Boa	rd of Pharmacy, I	Department of Consumer Affairs.		
20	2. On or about February 11, 2013, the Board of Pharmacy issued Pharmacy Technician				
21	License Number TCH 130272 to Alexis Zuniga (Respondent). The Pharmacy Technician Licens				
22	expired on September 30, 2016, and has not been renewed.				
23	JURISDICTION				
24	3. This Accusation is brou	ight before the Bo	eard of Pharmacy (Board), Department of		
25	Consumer Affairs, under the authority of the following laws. All section references are to the				
26	Business and Professions Code (Code) unless otherwise indicated.				
27	4. Section 4300(a) of the Code provides that every license issued by the Board may be				
28	suspended or revoked.				
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- 5. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].
- 6. Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or suspension of a Board-issued license, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee, shall not deprive the Board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.

STATUTORY AND REGULATORY PROVISIONS

- 7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action against any holder of a license who is guilty of "unprofessional conduct," defined to include, but not be 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.
- (h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.
- (j) The violation of any of the statutes of this state, of 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. . . .
- (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.

- "(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."
- 17. Norco, Vicodin, Vicodin ES, Lortab, and Lorcet are among the brand names for compounds of varying dosages of acetaminophen (aka APAP) and hydrocodone, a Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4) and dangerous drug as designated by Business and Professions Code section 4022. The varying compounds are also known generically as Hydrocodone with APAP. These are all narcotic drugs. Products like these that combine hydrocodone with non-controlled substances are also called hydrocodone combination products. Effective October 6, 2014, hydrocodone combination productions were switched at the federal level from Schedule III (21 C.F.R. § 1308.13(e)(1)(iii) and (iv)) to Schedule II (21 C.F.R. § 1308.12(b)(1)). This includes Hydrocodone with APAP drugs.
- 18. **Klonopin** is a brand name for **clonazepam**, a Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(7) and a dangerous drug as designated by Business and Professions Code section 4022. It is a depressant drug.

<u>FACTUAL SUMMARY</u>

- 19. Between in or about April 2013 and March 2016, Respondent was employed by Walgreens Corporation. Between on or about November 7, 2015 and March 15, 2016, he was employed as a pharmacy technician at a Walgreens Pharmacy store (#02961) in Lodi, California.
- 20. During the tenure of his employment, Respondent took advantage of his access as a pharmacy technician to divert/steal and self-use controlled substances and dangerous drugs, including but not limited to narcotic controlled substances.
- 21. The exact number of instances of diversion/theft by Respondent., and the full quantity of controlled substances or dangerous drugs diverted/stolen by Respondent, are not known, but in the course of investigations conducted by the pharmacy, by police, and by Board Inspector(s), the following were among the observations, admissions, and revelations reported:
- a. In or about 2015, Respondent had received one or more prescriptions for the controlled substance / dangerous drug clonazepam (Klonopin) from an authorized prescriber. His last authorized prescription for this drug was filled on or about September 3, 2015.

(ALEXIS ZUNIGA) ACCUSATION

THIRD CAUSE FOR DISCIPLINE

(Possession of Controlled Substance(s))

24. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section 4060 of the Code, and/or Health and Safety Code section 11350 and/or 11377, in that Respondent, as described in paragraphs 19-21 above, possessed, conspired to possess, and/or assisted in or abetted possession of, a controlled substance, without a valid prescription.

FOURTH CAUSE FOR DISCIPLINE

(Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

25. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code, and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs 19-21 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

FIFTH CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime(s))

- 26. Respondent is subject to disciplinary action under Code section 4301, subsection (I), in that on or about March 16, 2016, he was convicted of violating Health and Safety Code section 11173, subdivision (a) (Obtaining Controlled Substance by Fraud), a misdemeanor, a substantially related crime. The circumstances are as follows:
- 27. On or about March 16, 2016, based on the conduct described above in paragraphs 19-21, Respondent was charged in a criminal case titled *People v. Alexis Zuniga*, Case No. LOD-CR-MI-2016-0003989 in Sonoma County Superior Court, with violating (1) Penal Code section 484, subdivision (a) (Petty Theft), a misdemeanor; and (2) Health and Safety Code section 11173, subdivision (a) (Obtaining Controlled Substance by Fraud), a misdemeanor. Respondent pleaded *nolo contendere* and was convicted of count (2); count (1) was dismissed. Imposition of sentence was suspended and Respondent was placed on conditional probation for three (3) years, on terms and conditions including an order to stay away from the Walgreens in Lodi, and fines and fees.

SIXTH CAUSE FOR DISCIPLINE 1 2 (Unprofessional Conduct) Respondent is subject to discipline under section 4301 of the Code in that 3 Respondent, as described in paragraphs 19-27 above, engaged in unprofessional conduct. 4 5 6 **PRAYER** WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, 7 and that following the hearing, the Board of Pharmacy issue a decision: 8 Revoking or suspending Pharmacy Technician License Number TCH 130272, issued 9 1. 10 to Alexis Zuniga (Respondent); Ordering Respondent to pay the Board the reasonable costs of the investigation and 2. 11 enforcement of this case, pursuant to Business and Professions Code section 125.3; and, 12 Taking such other and further action as is deemed necessary and proper. 13 3. 14 15 16 Executive Officer Board of Pharmacy Department of Consumer Affairs State of California Complainant SF2016202235 41708273.doc

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