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Attorneys for Complainant

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

In the Matter of the Accusation Against: DAVID TORRES 8341 Acacia Avenue Garden Grove, CA 92841 Pharmacy Technician Registration No. TCH 66714 Respondent.	Case No. 3160 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about January 1, 2008, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 3160 against David Torres (Respondent) before the Board of Pharmacy.

2. On or about December 21, 2005, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 66714 to Respondent. The Pharmacy Technician Registration expired on May 31, 2007, and has not been renewed.

3. On or about September 2, 2008, Denise Hosman, an employee of the Department of Justice, served by Certified and First Class Mail a copy of Accusation No. 3160, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which

was and is 8341 Acacia Avenue, Garden Grove, CA 92841. A copy of the Accusation is attached as Exhibit A, and is incorporated herein by reference.

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

5. Business and Professions Code section 118 states, in pertinent part:

> (b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the license on any such ground.

6. Government Code section 11506 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.

7. 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. 3160.

8. California Government Code section 11520 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.

9. 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 evidence on file herein, finds that the allegations in Accusation No. 3160 are true.

10. The total cost for investigation and enforcement in connection with the Accusation are $3,588.50 as of November 4, 2008.

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DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent David Torres has subjected his Pharmacy Technician Registration No. TCH 66714 to discipline.

2. A copy of the Accusation is attached.

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

4. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician Registration based upon the following violations alleged in the Accusation:

a. Respondent is subject to disciplinary action under Code section 4301(f) for acts of dishonesty, fraud or deceit in that from approximately May 1, 2005 through March 9, 2007, while Respondent was working at Sav-On Drugs No. 9540, he stole the controlled substances, Valium, Darvocet and Vicodin, from his employer.

b. Respondent is subject to disciplinary action under Code section 4301(j), in conjunction with Code section 4060, for possession of controlled substances without a legitimate prescription, in that on February 16, 2007, Respondent was in possession of 1.2 grams of Marijuana, 17 tablets of generic Darvocet, 37 tablets of generic Diazepam and 20 tablets of generic Vicodin without a prescription.

c. Respondent is subject to disciplinary action under Code section 4301(j), in conjunction with H&S Code section 11170, for illegally furnishing controlled substances to himself, as alleged in paragraphs 4(a) and (b).

d. Respondent is subject to disciplinary action under section 4301(j), in conjunction with H&S Code section 11173, for obtaining controlled substances by fraud, deceit, subterfuge or concealment of a material fact, as more particularly alleged in paragraphs 4(a) and (b) above.

e. Respondent is subject to disciplinary action under Code section 4301(h), in conjunction with H&S Code section 11170, for administering controlled substances to himself. On February 16, 2007, Respondent was arrested for being in possession of 1.2 grams of Marijuana, and three bottles of prescription drugs consisting of 17 tablets of generic Darvocet, 37 tablets of generic Diazepam and 20 tablets of

generic Vicodin. Each pill bottle was for a prescription in the name of someone other than Respondent. The Darvocet pill bottle was missing 3 tablets from the original prescribed amount, the Diazepam pill bottle was missing 13 tablets from the original prescribed amount and the Vicodin pill bottle was missing 10 tablets from the original prescribed amount. Respondent admitted to the arresting officer that he took the pills from his employer with the specific intent to use the pills for himself.

ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 66714, heretofore issued to Respondent David Torres, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on January 22, 2009.

It is so ORDERED December 23, 2008

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By
KENNETH H. SCHELL
Board President

80296210.wpd
DOJ docket number:SD2008800688

Attachment:

Exhibit A: Accusation No. 3160

Exhibit A

Accusation No. 3160

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

In the Matter of the Accusation Against: DAVID TORRES 8341 Acacia Avenue Garden Grove, CA 92841 Pharmacy Technician Registration No. TCH 66714 Respondent.	Case No. 3160 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about December 21, 2005, the Board of Pharmacy issued Pharmacy Technician Registration Number TCH 66714 to David Torres (Respondent). The Pharmacy Technician Registration was canceled on May 31, 2007.

JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 4300, subdivision (a) of the Code states in pertinent part:

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

5. 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 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.

. . . .

(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, or any other state, or of the United States regulating controlled substances and dangerous drugs.

. . . .

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

7. Section 4022 of the Code states

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

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

(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

(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.

8. Section 4060 of the Code states:

> 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.

9. Section 118, subdivision (b), of the Code provides that the cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

10. Section 4402 of the Code states:

> (a) Any pharmacy license that is not renewed within three years following its expiration may not be renewed, restored, or reinstated and shall be canceled by operation of law at the end of the three-year period.

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

12. Health & Safety Code (H&S Code) section 11170 states that "[n]o person shall prescribe, administer, or furnish a controlled substance for himself."

13. H&S Code section 11173 states in pertinent part that no person shall obtain a controlled substance by fraud, deceit, subterfuge or concealment of a material fact.

DRUGS

14. Hydrocodone is a narcotic Schedule III controlled substance, pursuant to H&S Code section 11056, and is a dangerous drug pursuant to Business and Professions Code section 4022. Hydrocodone is used as a narcotic analgesic in the relief of pain.

15. Vicodin is a trade name for the generic drug hydrocodone with acetaminophen which is designated by Health and Safety Code section 11056(e)(4) as a narcotic

drug and a Schedule III controlled substance, and by Business and Professions Code section 4022 as a dangerous drug. Vicodin is used as a narcotic analgesic in the relief of pain.

16. Darvocet is a brand name for propoxyphene napsylate, a narcotic analgesic agent and a Schedule IV controlled substance, pursuant to Health & Safety Code section 11057. Darvocet is used to treat pain.

17. Diazepam is the generic name for the trade name Valium, which is designated by Health and Safety Code section 11057(d)(3) as a non-narcotic drug and a Schedule IV controlled substance, and by Business and Professions Code section 4022 as a dangerous drug. Diazepam is used in the management of anxiety.

18. Marijuana, a brand of Cannabis, is a Schedule I controlled substance as designated by Health and Safety Code section 11054(d)(13) and is a hallucinogenic.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Stealing Controlled Substances)

19. Respondent is subject to disciplinary action under Code section 4301(f) for acts of dishonesty, fraud or deceit, as more particularly alleged below:

a. From approximately October 5, 2002 to March 9, 2007, Respondent was employed as a pharmacy technician at Sav- On Drugs No. 9540, a.k.a. CVS Pharmacy No. 9540, in Newport Beach, California.

b. From approximately May 1, 2005 through March 9, 2007, while Respondent was working at Sav-On Drugs No. 9540, he stole the following quantities of brand and generic controlled substances from his employer:

Valium – 595 tablets

Darvocet – 1,172 tablets

Vicodin – 875 tablets

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Possession of Controlled Substances Without a Prescription)

20. Respondent is subject to disciplinary action under Code section 4301(j), in conjunction with Code section 4060, for possession of controlled substances without a legitimate

prescription, in that on February 16, 2007, Respondent was in possession of 1.2 grams of Marijuana, 17 tablets of generic Darvocet, 37 tablets of generic Diazepam and 20 tablets of generic Vicodin without a prescription.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Illegal Furnishing of Controlled Substances to Oneself)

21. Respondent is subject to disciplinary action under Code section 4301(j), in conjunction with H&S Code section 11170, for illegally furnishing controlled substances to himself, as more particularly alleged in paragraph 19(a) and (b) above and incorporated herein by reference.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Obtaining Controlled Substances by Fraud, Subterfuge)

22. Respondent is subject to disciplinary action under section 4301(j), in conjunction with H&S Code section 11173, for obtaining controlled substances by fraud, deceit, subterfuge or concealment of a material fact, as more particularly alleged in paragraph 19(a) and (b) above, and incorporated herein by reference.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Administering Controlled Substance to Oneself)

23. Respondent is subject to disciplinary action under Code section 4301(h), in conjunction with H&S Code section 11170, for administering controlled substances to himself as more particularly alleged below:

a. On February 16, 2007, Respondent was arrested for being in possession of 1.2 grams of Marijuana, and three bottles of prescription drugs consisting of 17 tablets of generic Darvocet, 37 tablets of generic Diazepam and 20 tablets of generic Vicodin. Each pill bottle was for a prescription in the name of someone other than Respondent. The Darvocet pill bottle was missing 3 tablets from the original prescribed amount, the Diazepam pill bottle was missing 13 tablets from the original prescribed amount and the Vicodin pill bottle was missing 10 tablets from the original prescribed amount. Respondent admitted to the arresting officer that he took the pills from his employer with the specific intent to use the pills for himself.

PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 66714, issued to David Torres;

2. Ordering David Torres to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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

DATED: 8/28/08

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

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80250369.wpd

DECLARATION OF SERVICE
(Certified & First Class Mail (separate mailing))

Case Name: Accusation Against: David Torres, TCH

Board of Pharmacy Case No. 3160

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 110 West "A" Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266

I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On September 2, 2008, I served the attached **Statement to Respondent; Accusation; Notice of Defense (2 copies); Request for Discovery; Copy of Government Code sections 11507.5, 11507.6, 11507.7** by placing a true copy thereof enclosed in a sealed envelope as certified mail with postage thereon fully prepaid and return receipt requested, and another true copy of the **Statement to Respondent; Accusation; Notice of Defense (2 copies); Request for Discovery; Copy of Government Code sections 11507.5, 11507.6, 11507.7** was enclosed in a second sealed envelope as first class mail with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General, addressed as follows:

David Torres
8341 Acacia Avenue
Garden Grove, CA 92841

Certified Article No.
7007 2680 0000 0527 8899

Courtesy copies via 1st class mail only to:

Board of Pharmacy
Virginia K. Herold
1625 North Market Blvd., Suite N219
Sacramento, CA 95834

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on September 2, 2008, at San Diego, California.

D. Hosman
Typed Name

D. Hosman
Signature

POS.wpd

7007 2680 0000 0527 8899

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David Torres
8341 Acacia Avenue
Garden Grove, CA 92841

PS Form 3800, August 2006 See Reverse for Instructions

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- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

David Torres
8341 Acacia Avenue
Garden Grove, CA 92841

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery 9-4-08

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

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☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7007 2680 0000 0527 8899

PS Form 3811, February 2004 Domestic Return Receipt ACC Pick pkt 102595-02-M-1540