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

11 In the Matter of the Accusation Against:

Case No. 3310

12 **MARC JOSEPH PENA**  
13 **13184 Pageant Ave.**  
14 **San Diego, CA 92129**

**ACCUSATION**

15 **Pharmacy Technician Registration No.**  
16 **77759**

17 Respondent.

18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.  
22 2. On or about August 3, 2007, the Board of Pharmacy issued Original Pharmacy  
23 Technician Registration Number TCH 77759 to Marc Joseph Pena (Respondent). Said  
24 registration will expire on September 30, 2010, unless renewed.

25 **JURISDICTION**

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



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(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.

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9. Section 4059 of the Code states:

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

...

10. 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, a physician assistant pursuant to Section 3502.1, a 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. Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices.

11. Section 4022 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.

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12. Health and Safety Code section 11170 states:  
No person shall prescribe, administer, or furnish a controlled substance for himself.

13. Health and Safety Code section 11350 states:

(a) Except as otherwise provided in this division, every person who possesses:

(1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or

(2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in the state prison.

(b) Except as otherwise provided in this division, every person who possesses any controlled substance specified in subdivision (e) of Section 11054 shall be punished by imprisonment in the county jail for not more than one year or in the state prison.

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14. 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.

DRUGS

15. Cannabinoids, also known as Marijuana, is a Schedule I controlled substance under Health and Safety Code section 11054, subdivision (d)(13), and is classified as a dangerous drug pursuant to Business and Professions Code section 4022.

16. Oxycodone, also known by the brand name OxyContin, is a Schedule II controlled substance under Health and Safety Code section 11055, subdivision (b)(1)(N), and is classified as a dangerous drug pursuant to Business and Professions Code section 4022.

17. Alprazolam, also known by the brand names Xanax and Nivaram, is a Schedule IV controlled substance under Health and Safety Code section 11057, subdivision (d)(1), and is classified as a dangerous drug pursuant to Business and Professions Code section 4022.

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1 18. Buprenorphine/Naloxone, also known by the brand name Suboxone, is a Schedule V  
2 controlled substance under Health and Safety Code section 11058, subdivision (d), and is  
3 classified as a dangerous drug pursuant to Business and Professions Code section 4022

4 19. Escitalopram, also known by the brand name Lexapro, is not a scheduled drug, but is  
5 classified as a dangerous drug pursuant to Business and Professions Code section 4022.

6 FACTS

7 20. On January 6, 2008, at approximately 12:50 a.m., two men were seen sitting in a  
8 parked car in a parking lot at San Diego State University by an officer of the San Diego State  
9 University Police Department. The car was parked in an unusual manner with the engine running  
10 and the headlights turned off. Respondent was sitting in the passenger's seat.

11 21. The officer approached the car and identified the driver. A second officer arrived and  
12 observed respondent stuff a white pill bottle into his shoe.

13 22. Respondent was asked to step out of the vehicle and consented to a search of his  
14 person. The officer retrieved the pill bottle. The bottle listed the patient name as E.P., which is  
15 not respondent's name. The contents of the pill bottle contained two tablets of OxyContin, two  
16 tablets of Xanax and three tablets of Lexapro.

17 23. The officer also found a white plastic pen housing converted into a smoking pipe  
18 containing OxyContin residue on respondent's person. Respondent was arrested. Respondent  
19 informed the officer that his car was parked a few stalls away. The officer conducted a search of  
20 respondent's car subsequent to the arrest.

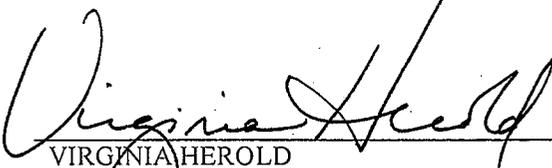
21 24. A search of respondent's car revealed one orange Suboxone tablet in a zip lock bag.  
22 The car also contained one sheet of aluminum foil with burned OxyContin residue inside the  
23 vehicle's center console and another sheet of aluminum foil with burned OxyContin residue under  
24 the vehicle's front seat. The officer also found a small black digital scale behind the front  
25 passenger seat that he determined might have been used to weigh Marijuana.

26 25. Respondent told the officer that he was about to smoke the OxyContin when the first  
27 officer pulled up. Respondent told the officer he paid a friend \$7.00 for the OxyContin and that  
28 he smoked it through a pen or on foil.



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1. Revoking or suspending Pharmacy Technician's Registration Number 77759, issued to Marc Joseph Pena;
2. Ordering Marc Joseph Pena 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: 8/17/09 

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

SD2009803856  
accusation.rtf