

1 EDMUND G. BROWN JR.
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 MICHELLE MCCARRON
Deputy Attorney General
4 State Bar No. 237031
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2544
6 Facsimile: (213) 897-2804
Attorneys for Complainant
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8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 3437

13 **VICTOR VILLAFANA**
14 **8939 Gallatin Rd., #117**
15 **Pico Rivera, CA 90660**
16 **Pharmacy Technician License No. TCH**
17 **48083**

A C C U S A T I O N

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 7, 2003, the Board of Pharmacy issued Pharmacy Technician
23 License Number TCH 48083 to Victor Villafana (Respondent). The Pharmacy Technician
24 License was in full force and effect at all times relevant to the charges brought herein and will
25 expire on December 31, 2010, unless renewed.

26 **JURISDICTION**

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

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4. Section 4300 of the Code states in 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.

....

“(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure.”

5. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, or 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.

STATUTORY PROVISIONS

6. Section 4021 of the Code states:

“‘Controlled 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 in part:

“‘Dangerous drug’ ... means any drug ... unsafe for self-use in humans or animals, and includes the following:

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

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4 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
5 prescription or furnished pursuant to Section 4006.”

6 8. Section 4038 of the Code states:

7 “‘Pharmacy technician’ means an individual who assists a pharmacist in a pharmacy in the
8 performance of his or her pharmacy related duties, as specified in section 4115.”

9 9. Section 4059(a) of the Code states in part:

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

12 10. Section 4063 of the Code states in part:

13 “No prescription for any dangerous drug ... may be refilled except upon authorization of
14 the prescriber. The authorization may be given orally or at the time of giving the original
15 prescription. No prescription for any dangerous drug that is a controlled substance may be
16 designated refillable as needed.”

17 11. Section 4115 of the Code states in part:

18 “(a) A pharmacy technician may perform packaging, manipulative, repetitive, or other
19 nondiscretionary tasks, only while assisting, and while under the direct supervision and control of
20 a pharmacist.

21

22 “(c) This section does not authorize a pharmacy technician to perform any act requiring the
23 exercise of professional judgment by a pharmacist.”

24 12. Section 4301 of the Code states in part:

25 “The board shall take action against any holder of a license who is guilty of unprofessional
26 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

27 Unprofessional conduct shall include, but is not limited to, any of the following:

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1 “(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
2 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
3 whether the act is a felony or misdemeanor or not.

4 “(g) Knowingly making or signing any certificate or other document that falsely represents
5 the existence or nonexistence of a state of facts.”

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7 “(j) The violation of any of the statutes of this state, or of the United States regulating
8 controlled substances and dangerous drugs.”

9 13. Section 4324 of the Code states in part:

10 “(a) Every person who signs the name of another, or of a fictitious person, or falsely makes,
11 alters, forges, utters, publishes, passes, or attempts to pass, as genuine, any prescription for any
12 drugs is guilty of forgery and upon conviction thereof shall be punished by imprisonment in the
13 state prison, or by imprisonment in the county jail for not more than one year.”

14 14. Health and Safety Code section 11158 subdivision (a) states:

15 “(a) Except as provided in Section 11159 or in subdivision (b) of this section, no controlled
16 substance classified in Schedule II shall be dispensed without a prescription meeting the
17 requirements of this chapter. Except as provided in Section 11159 or when dispensed directly to
18 an ultimate user by a practitioner, other than a pharmacist or pharmacy, no controlled substance
19 classified in Schedule III, IV, or V may be dispensed without a prescription meeting the
20 requirements of this chapter.”

21 15. Health and Safety Code section 11171 states:

22 “‘No person shall prescribe, administer, or furnish a controlled substance except under the
23 conditions and in the manner provided by this division.”

24 16. Health and Safety Code section 11173 states in part:

25 “(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt
26 to procure the administration of or prescription for controlled substances, (1) by fraud, deceit,
27 misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

28

1 refill authorization from a physician. Furthermore, prescriptions filled under patient name CS¹,
2 revealed CS was not under the care of a physician. The prescriptions filled under patient name
3 VZ, revealed VZ was not a patient of the physician that the prescriptions were fraudulently issued
4 under. The circumstances are as follows:

5 a. On or about May 11, 2006, Respondent fraudulently created new prescription
6 number 2337070, for twenty tablets of 5/500 mg Hydrocodone with Acetaminophen, under
7 patient name CS.

8 b. On or about December 27, 2006, Respondent fraudulently created new prescription
9 number 2407453, for one hundred tablets of 7.5/750 mg Hydrocodone with Acetaminophen,
10 under patient name VZ.

11 c. On or about January 24, 2007, Respondent fraudulently created a refill for
12 prescription number 2407453, for one hundred tablets of 7.5/750 mg of Hydrocodone with
13 Acetaminophen, under patient name VZ.

14 d. On or about March 15, 2007, Respondent fraudulently created a refill for prescription
15 number 2407453, for one hundred tablets of 7.5/750 mg of Hydrocodone with Acetaminophen,
16 under patient name VZ.

17 e. On or about April 13, 2007, Respondent fraudulently created a refill for prescription
18 number 2407453, for one hundred tablets of 7.5/750 mg of Hydrocodone with Acetaminophen,
19 under patient name VZ.

20 f. On or about May 24, 2007, Respondent fraudulently created a refill for prescription
21 number 2407453, for one hundred tablets of 7.5/750 mg of Hydrocodone with Acetaminophen,
22 under patient name VZ.

23 g. On or about July 10, 2007, Respondent fraudulently created new prescription number
24 2468329, for one hundred tablets of 7.5/750 mg of Hydrocodone with Acetaminophen, under
25 patient name VZ.

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27 ¹ Patient names CS and VZ have been omitted for privacy purpose. Patient names will be
28 disclosed pursuant to a request for discovery.

1 h. On or about August 22, 2007, Respondent fraudulently created a refill for prescription
2 number 2468329, for one hundred tablets of 7.5/750 mg of Hydrocodone with Acetaminophen,
3 under patient name VZ.

4 i. On or about September 14, 2007, Respondent fraudulently created a refill for
5 prescription number 2468329, for one hundred tablets of 7.5/750 mg of Hydrocodone with
6 Acetaminophen, under patient name VZ.

7 j. On or about October 16, 2007, Respondent fraudulently created new prescription
8 number 2495241, for one hundred tablets of 7.5/750 mg of Hydrocodone with Acetaminophen,
9 under patient name VZ.

10 k. On or about November 1, 2007, Respondent fraudulently created new prescription
11 number 2500217, for one hundred tablets of 7.5/750 mg of Hydrocodone with Acetaminophen,
12 under patient name CS.

13 l. On or about November 12, 2007, Respondent fraudulently created a refill for
14 prescription number 2495241, for one hundred tablets of 7.5/750 mg of Hydrocodone with
15 Acetaminophen, under patient name VZ.

16 m. On or about November 26, 2007, Respondent fraudulently created new prescription
17 number 2506087, for one hundred tablets of 7.5/750 mg of Hydrocodone with Acetaminophen,
18 under patient name CS.

19 n. On or about December 11, 2007, Respondent fraudulently created a refill for
20 prescription number 2495241, for one hundred tablets of 7.5/750 mg of Hydrocodone with
21 Acetaminophen, under patient name VZ.

22 o. On or about January 8, 2008, Respondent fraudulently created new prescription
23 number 2517675, for one hundred tablets of 7.5/750 mg of Hydrocodone with Acetaminophen,
24 under patient name VZ.

25 p. On or about February 18, 2008, Respondent fraudulently created new prescription
26 number 2531171, for one hundred tablets of 7.5/750 mg of Hydrocodone with Acetaminophen,
27 under patient name VZ.

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1 q. On or about March 12, 2008, Respondent fraudulently created new prescription
2 number 2538851, for one hundred tablets of 5/500 mg of Hydrocodone with Acetaminophen,
3 under patient name CS.

4 r. On or about March 19, 2008, Respondent resigned from his position as a pharmacy
5 technician at White Memorial Medical Plaza Pharmacy in Los Angeles, California.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Fraudulent Prescriptions)**

8 21. Respondent is subject to disciplinary action under Code 4301 subdivision (g), in
9 conjunction with Code section 4324 subdivision (a), and Health and Safety Code sections
10 11158(a) and 11173(b), on the grounds of unprofessional conduct in that Respondent knowingly
11 created nine (9) fraudulent new prescriptions and eight (8) fraudulent refill prescriptions for
12 Hydrocodone without a prescription or refill authorization from a physician. Complainant's
13 allegations, as set forth in paragraph 20 subparagraphs (a) through (q), are incorporated by
14 reference, as though fully set forth.

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(Furnishing Dangerous Drugs Without a Prescription)**

17 22. Respondent is subject to disciplinary action under Code sections 4059 subdivision (a),
18 and 4301 subdivision (j), in conjunction with Health and Safety Code section 11158 subdivision
19 (a), in that Respondent furnished dangerous drugs, as classified in Code section 4022, without a
20 prescription from a physician. Complainant's allegations, as set forth in paragraph 20
21 subparagraphs (a), (b), (g), (j), (k), (m), (o), (p) and (q), are incorporated by reference, as though
22 fully set forth.

23 **FOURTH CAUSE FOR DISCIPLINE**

24 **(Unauthorized Refills)**

25 23. Respondent is subject to disciplinary action under Code sections 4063 and 4301
26 subdivision (j), in conjunction with Health and Safety Code section 11158 subdivision (a), in that
27 Respondent refilled prescriptions for dangerous drugs, as classified in Code section 4022, without
28 a refill authorization from a physician. Complainant's allegations, as set forth in paragraph 20

1 subparagraphs (c) through (f), (h), (i), (l) and (n), are incorporated by reference, as though fully
2 set forth.

3 **DISCIPLINE CONSIDERATIONS**

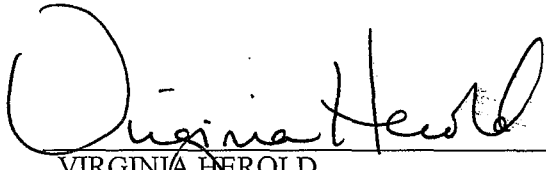
4 24. To determine the degree of discipline, if any, to be imposed on Respondent,
5 Complainant alleges that on or about March 17, 2008, in a proceeding entitled, (*People v. Victor*
6 *Villafana*, California Municipal Court Inglewood, 1998, Case No. 8IW01077), Respondent was
7 convicted of violating Penal Code section 12031 subdivision (A)(1) [Carrying a Loaded Firearm
8 in a Public Place] a misdemeanor. Respondent was ordered to pay a fine and placed on (36)
9 months of probation.

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11 **PRAYER**

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

- 14 1. Revoking or suspending Pharmacy Technician License Number TCH 48083, issued
15 to Victor Villafana;
- 16 2. Ordering Victor Villafana to pay the Board of Pharmacy the reasonable costs of the
17 investigation and enforcement of this case, pursuant to Code section 125.3; and
- 18 3. Taking such other and further action as deemed necessary and proper.

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20
21 DATED: 7/20/10


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

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