

1 EDMUND G. BROWN JR.
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JOSHUA A. ROOM
Deputy Attorney General
4 State Bar No. 214663
.455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-1299
6 Facsimile: (415) 703-5480
Attorneys for Complainant

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

10 In the Matter of the Accusation Against:

Case No. 3500

11 **AMADA A. MENENDEZ**
12 **2013 Hawthorne Terrace**
13 **Novato, CA 94949**

A C C U S A T I O N

14 **Pharmacy Technician License No. TCH 43329**

15 Respondent.

16 Complainant alleges:

17 PARTIES

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

20 2. On or about July 15, 2002, the Board of Pharmacy issued Pharmacy Technician
21 License Number TCH 43329 to Amada A. Menendez (Respondent). The Pharmacy Technician
22 License was in full force and effect at all times relevant to the charges brought herein and will
23 expire on February 28, 2010, unless renewed.

24 JURISDICTION

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

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1 4. Section 4011 of the Code provides that the Board shall administer and enforce both
2 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
3 Act [Health & Safety Code, § 11000 et seq.].

4 5. Section 4300(a) of the Code provides that every license issued by the Board may be
5 suspended or revoked.

6 6. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration,
7 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
8 disciplinary action during the period within which the license may be renewed, restored, reissued
9 or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not
10 renewed within three years following its expiration may not be renewed, restored, or reinstated
11 and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of
12 the Code provides that any other license issued by the Board may be canceled by the Board if not
13 renewed within 60 days after its expiration, and any license canceled in this fashion may not be
14 reissued but will instead require a new application to seek reissuance.

15 STATUTORY AND REGULATORY PROVISIONS

16 7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action
17 against any holder of a license who is guilty of “unprofessional conduct,” defined to include, but
18 not be limited to, any of the following:

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

22 (j) The violation of any of the statutes of this state, of any other state, or of the United
23 States regulating controlled substances and dangerous drugs.

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

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16. Section 4022 of the Code states, in pertinent part:

“Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use, except veterinary drugs that are labeled as such, 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.

...

“(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.

18. **Phenergan with Codeine** is a brand name for a compound consisting of the antihistamine **promethazine**, a dangerous drug as designated by Business and Professions Code section 4022, and **codeine**, a Schedule V controlled substance as designated by Health and Safety Code section 11058 and a dangerous drug as designated by Business and Professions Code section 4022. This drug is also known generically as **Promethazine with Codeine**. It is an antihistamine/antitussive, narcotic analgesic, and sleep aid.

19. **Viagra** is a brand name for **sildenafil**, a dangerous drug as designated by Business and Professions Code section 4022, intended as a treatment for erectile dysfunction.

FACTUAL BACKGROUND

20. Beginning in or about 2005 and until on or about February 20, 2009, Respondent was employed as a pharmacy technician at a Kaiser Foundation Health Plan Pharmacy in San Rafael, CA (# 396; PHY 44385), where she had access to controlled substances and dangerous drugs.

21. Between in or about October 2008 and in or about February 2009, Respondent used her access to divert/steal controlled substances and dangerous drugs, including **Norco, Vicodin ES**, or other **Hydrocodone** products, **Phenergan/Promethazine with Codeine**, and/or **Viagra**.

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SECOND CAUSE FOR DISCIPLINE

(Furnishing of Controlled Substance)

25. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section 4059 of the Code, and/or Health and Safety Code section 11170, in that Respondent, as described in paragraphs 20 to 23 above, furnished to herself or another without a valid prescription, and/or conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.

THIRD CAUSE FOR DISCIPLINE

(Possession of Controlled Substance)

26. 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, in that Respondent, as described in paragraphs 20 to 23 above, possessed, conspired to possess, and/or assisted in or abetted possession of, a controlled substance, without a prescription.

FOURTH CAUSE FOR DISCIPLINE

(Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

27. 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 20 to 23 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

(Unprofessional Conduct)

28. Respondent is subject to discipline under section 4301 of the Code in that Respondent, as described in paragraphs 20 to 27 above, engaged in unprofessional conduct.

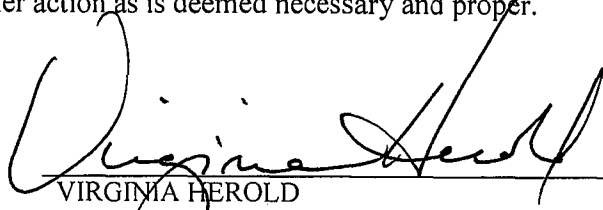
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PRAYER

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 License Number TCH 43329, issued to Amada A. Menendez (Respondent);
2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as is deemed necessary and proper.

DATED: 3/29/10



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

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