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8	BEFORE THE BOARD OF PHARMACY	
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA	
10		7
11	In the Matter of the Accusation Against:	Case No. 3500
12	AMADA A. MENENDEZ 2013 Hawthorne Terrace	
13	Novato, CA 94949	ACCUSATION
14	Pharmacy Technician License No. TCH 4332	9
15	Responden	t.
15 16	Responden Complainant alleges:	t.
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- 4. 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.].
- 5. Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked.
- 6. Section 118(b) of the Code provides, in pertinent part, 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. Section 4402(a) of the Code provides that any pharmacist 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. Section 4402(e) of the Code provides that any other license issued by the Board may be canceled by the Board if not renewed within 60 days after its expiration, and any license canceled in this fashion may not be reissued but will instead require a new application to seek reissuance.

## 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.
- (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.
- (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.

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8. California Code of Regulations, title 16, section 1770, states:

"For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by her license or registration in a manner consistent with the public health, safety, or welfare."

- 9. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous drug or dangerous device except upon the prescription of an authorized prescriber.
- 10. Section 4060 of the Code provides, in pertinent part, that no person shall possess any controlled substance, except that furnished upon a valid prescription/drug order.
- 11. Health and Safety Code section 11170 provides that no person shall prescribe, administer, or furnish a controlled substance for himself or herself.
- 12. Health and Safety Code section 11173, subdivision (a), provides that no person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.
- 13. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess any controlled substance listed in Schedule II (Health and Safety Code section 11055), subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

#### COST RECOVERY

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

# CONTROLLED SUBSTANCES / DANGEROUS DRUGS

15. 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."

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.

- 22. 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 by Kaiser and Board of Pharmacy investigators, Respondent admitted to a course of conduct of diverting/stealing controlled substances and dangerous drugs from the pharmacy as an accomplice to another Kaiser pharmacy technician (M.S.)<sup>1</sup> on at least five to six occasions from approximately October 2008 to February 2009. She admitted to taking and/or helping accomplice M.S. take from the pharmacy, significant quantities (whole bottles and/or containers) of controlled substances **Norco** (or its generic equivalent), **Vicodin ES** (or its generic equivalent), and **Phenergan/Promethazine with Codeine**, and the dangerous drug **Viagra**.
- 23. A subsequent verification audit of the controlled substances stock of the pharmacy by which Respondent was employed (Kaiser Foundation Health Plan Pharmacy in San Rafael, CA [# 396; PHY 44385]), for the period from March 2008 to February 2009 could not account for the controlled substance losses of approximately 35,155 dosage units (tablets) of **Hydrocodone with APAP 10/325** (generic **Norco**), approximately 2,690 dosage units (tablets) of **Vicodin ES**, and 40,591 mls (86 one-pint bottles) of **Promethazine with Codeine** syrup.

#### FIRST CAUSE FOR DISCIPLINE

(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

24. Respondent is subject to discipline under section 4301(f) of the Code in that Respondent, as described in paragraphs 20 to 23 above, committed numerous acts involving moral turpitude, dishonesty, fraud, deceit, or corruption.

<sup>&</sup>lt;sup>1</sup> The full name of the accomplice will be revealed during the discovery process.

## 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.

## **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.

TED: VIRGINIA HEROLD
Executive Officer

Board of Pharmacy

Department of Consumer Affairs

State of California Complainant

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