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9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA
11

12 In the Matter of the Accusation Against:

Case No. 3735

13 **JOSE PERUCHO SAENZ**
1890 Fargo Lane #01
14 Chula Vista, CA 91913

ACCUSATION

15 **Pharmacy Technician Registration**
16 **Number TCH 49120**

Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On May 16, 2003, the Board issued Pharmacy Technician Registration Number TCH
23 49120 to Respondent Jose Perucho Saenz. The registration was in full force and effect at all
24 times relevant to the charges brought herein and will expire on May 31, 2011, unless renewed.

25 **JURISDICTION**

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

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1
2 (l) The conviction of a crime substantially related to the qualifications,
3 functions, and duties of a licensee under this chapter. The record of conviction of a
4 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
5 States Code regulating controlled substances or of a violation of the statutes of this
6 state regulating controlled substances or dangerous drugs shall be conclusive
7 evidence of unprofessional conduct. In all other cases, the record of conviction shall
8 be conclusive evidence only of the fact that the conviction occurred. The board may
9 inquire into the circumstances surrounding the commission of the crime, in order to
10 fix the degree of discipline or, in the case of a conviction not involving controlled
11 substances or dangerous drugs, to determine if the conviction is of an offense
12 substantially related to the qualifications, functions, and duties of a licensee under this
13 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
14 contendere is deemed to be a conviction within the meaning of this provision. The
15 board may take action when the time for appeal has elapsed, or the judgment of
16 conviction has been affirmed on appeal or when an order granting probation is made
17 suspending the imposition of sentence, irrespective of a subsequent order under
18 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
19 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
20 dismissing the accusation, information, or indictment.

.....

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

.....

18 9. Section 11350 of the Health & Safety (H&S) Code states in pertinent part:

19 (a) Except as otherwise provided in this division, every person who possesses
20 (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of
21 subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of
22 subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section
23 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled
24 substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon
25 the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to
26 practice in this state, shall be punished by imprisonment in the state prison.

.....

25 10. Section 11352 of the H&S Code states:

26 (a) Except as otherwise provided in this division, every person who transports,
27 imports into this state, sells, furnishes, administers, or gives away, or offers to
28 transport, import into this state, sell, furnish, administer, or give away, or attempts to
import into this state or transport (1) any controlled substance specified in subdivision
(b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in

1 paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in
2 subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section
3 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 for three, four, or five years.

4 (b) Notwithstanding the penalty provisions of subdivision (a), any person who
5 transports for sale any controlled substances specified in subdivision (a) within this
6 state from one county to another noncontiguous county shall be punished by
imprisonment in the state prison for three, six, or nine years.

7 **COST RECOVERY**

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

12 **FACTS**

13 12. On March 6, 2008, Drug Enforcement Administration (DEA) and Federal Bureau of
14 Investigation (FBI) agents simultaneously served federal search warrants at White Cross
15 Pharmacy, Park Blvd. Pharmacy, and Galloway Pharmacy in San Diego after a two-year
16 investigation into controlled substance diversion from the three pharmacies. On March 6, 2008,
17 while Respondent was employed as a Pharmacy Technician at Galloway Pharmacy, he was
18 served with a federal arrest warrant as part of the above investigation.

19 13. The search and warrants produced the following information:

20 a. Galloway was using the building located at 2984 Newton Avenue, San Diego, in
21 back of the pharmacy, as part of the pharmacy for storing prescription records, prescriptions filled
22 with controlled substances and being packaged for delivery, and computer terminals containing
23 confidential patient information, but the building was not licensed with the Board as a pharmacy.

24 b. From July 21, 2005, to March 6, 2008, Galloway purchased 467,400 tablets of
25 Hydrocodone 5/500; 2,111,400 tablets of Hydrocodone 10/325; and 154,900 tablets of
26 Oxycodone 80mg.

27 c. The DEA Biennial Inventory of July 21, 2005, for Galloway shows 730 tablets of
28 Oxycodone 80; 31,200 tablets of Hydrocodone 5/500; and 22,5000 tablets of Hydrocodone

1 10/325; and a closing inventory (stock on hand) on March 6, 2008, of 956 tablets of Oxycodone
2 80; 5,396 tablets of Hydrocodone 5/500; and 2,378 tablets of Hydrocodone 10/325.

3 d. The DEA computation chart shows that from July 21, 2005, to March 6, 2008,
4 Galloway dispensed 74,846 tablets of Oxycodone 80mg; 370,767 tablets of Hydrocodone 5/500;
5 and 103,623 tablets of Hydrocodone 10/325.

6 Together, this information revealed that Galloway was short 79,828 (51%) tablets of
7 Oxycodone 80mg; short 122,437 (25%) tablets of Hydrocodone 5/500 and short 2,028,899 (95%)
8 of Hydrocodone 10/325.

9 14. On March 16, 2009, in a criminal proceeding entitled, *United States of America vs.*
10 *Jose Jesus Peruch Saenz*, in the United States District Court, Southern District of California, Case
11 No. 3:08-cr-0511-BEN, Respondent was convicted by a plea of guilty to charges contained in a
12 Superseding Information of knowingly and intentionally conspiring to distribute approximately
13 90,000 Hydrocodone Bitartrate tablets, a Schedule III controlled substance, beginning in 2005
14 and continuing through July 2007, in violation of 21 United States Code sections 846 and 841,
15 subdivision (a); and filing a false income tax return on April 15, 2007, in violation of 26 United
16 States Code section 7206(a), both felonies.

17 15. Pursuant to the March 16, 2009 Plea Agreement between the United States and
18 Respondent, Respondent agreed to forfeit \$23,801.92 seized from his bank account, \$1,031.00 in
19 U.S. currency found in his residence, a ring with an estimated value of \$17,070 a Lexus GS 600
20 and a BMW 740i. Respondent also understood that the crimes to which he pled guilty carry the
21 following penalties:

22 Count 1: Distribution of Oxycodone

- 23 A. A maximum term of imprisonment of 5 years;
24 B. A maximum fine of \$250,000;
C. A mandatory special assessment of \$100; and
D. A term of supervised release of 3 years.

25 Count 2: Filing False Income Tax Return

- 26 A. A maximum term of imprisonment of 3 years;
27 B. A maximum fine of \$100,000, together with costs of prosecution;
C. A mandatory special assessment of \$100; and
28 D. A term of supervised release of up to 1 year.

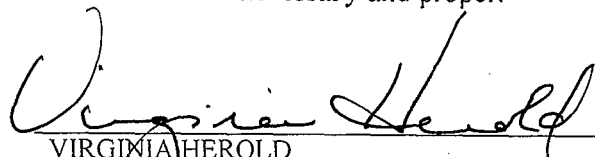
PRAYER

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 49120 issued to Jose Perucho Saenz;
2. Ordering Jose Perucho Saenz 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:

7/16/10



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