

1 KAMALA D. HARRIS  
Attorney General of California  
2 GREGORY J. SALUTE  
Supervising Deputy Attorney General  
3 HELENE E. SWANSON  
Supervising Deputy Attorney General  
4 State Bar No. 130426  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 620-3005  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*  
7

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

10 In the Matter of the Accusation Against:

Case No. 4136

11 **FRANCISCO JUNIOR VELASQUEZ**  
12 **6700 E. Olympic Blvd, #3**  
13 **Los Angeles, CA 90022**

**A C C U S A T I O N**

14 **Pharmacy Technician Registration**  
15 **No. TCH 77063**

Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about July 3, 2007, the Board of Pharmacy (Board) issued Pharmacy  
22 Technician Registration No. TCH 77063 to Francisco Junior Velasquez (Respondent). The  
23 Pharmacy Technician Registration expired on July 31, 2011, and has not been renewed.

24 ///

25 ///

26 ///

27 ///

28

1 **JURISDICTION**

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

5 **STATUTORY PROVISIONS**

6 4. Section 118, subdivision (b), of the Code provides 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.

10 5. Section 490 states:

11 "(a) In addition to any other action that a board is permitted to take against a licensee, a  
12 board may suspend or revoke a license on the ground that the licensee has been convicted of a  
13 crime, if the crime is substantially related to the qualifications, functions, or duties of the business  
14 or profession for which the license was issued.

15 (b) Notwithstanding any other provision of law, a board may exercise any authority to  
16 discipline a licensee for conviction of a crime that is independent of the authority granted under  
17 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties  
18 of the business or profession for which the licensee's license was issued.

19 (c) A conviction within the meaning of this section means a plea or verdict of guilty or a  
20 conviction following a plea of nolo contendere. Any action that a board is permitted to take  
21 following the establishment of a conviction may be taken when the time for appeal has elapsed, or  
22 the judgment of conviction has been affirmed on appeal, or when an order granting probation is  
23 made suspending the imposition of sentence, irrespective of a subsequent order under the  
24 provisions of Section 1203.4 of the Penal Code."

25 6. Section 4059 states:

26 "(a) A person may not furnish any dangerous drug, except upon the prescription of a  
27 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section  
28 3640.7. A person may not furnish any dangerous device, except upon the prescription of a

1 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section  
2 3640.7.”

3 7. Section 4060 states, in pertinent part:

4 “No person shall possess any controlled substance, except that furnished to a person upon  
5 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor  
6 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified  
7 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a  
8 physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to either Section  
9 4052.1 or 4052.2. This section shall not apply to the possession of any controlled substance by a  
10 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist,  
11 veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician  
12 assistant, when in stock in containers correctly labeled with the name and address of the supplier  
13 or producer.

14 Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a  
15 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and  
16 devices.”

17 8. Section 4300 provides, in pertinent part, that every license by the Board is subject to  
18 discipline, including suspension or revocation.

19 9. Section 4301 states:

20 "The board shall take action against any holder of a license who is guilty of unprofessional  
21 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.  
22 Unprofessional conduct shall include, but is not limited to, any of the following:

23 . . . .

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

27 . . . .

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

3           .....

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

21           10. Section 4342, subdivision (a), provided, in relevant part:

22           "Every person who signs the name of another, or of a fictitious person, or falsely  
23 makes, alters, forges, utters, publishes, passes, or attempts to pass, as genuine, any  
24 prescription for any drugs is guilty of forgery and upon conviction thereof shall be  
25 punished by imprisonment in the state prison, or by imprisonment in the county jail for not more  
26 than one year."

27           //

28           //

1 11. Health & Safety Code section 11352, subdivision (a), states that:

2 "Except as otherwise provided in this division, every person who transports, imports into  
3 this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state,  
4 sell, furnish, administer, or give away, or attempts to import into this state or transport (1) any  
5 controlled substance specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of  
6 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or  
7 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section  
8 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic  
9 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian  
10 licensed to practice in this state, shall be punished by imprisonment in the state prison for three,  
11 four, or five years."

12 **REGULATORY PROVISIONS**

13  
14 12. California Code of Regulations, title 16, section 1770, states:

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

21 **COST RECOVERY**

22 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
23 administrative law judge to direct a licentiate found to have committed a violation or violations of  
24 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
25 enforcement of the case.

26 //

27 //

28 //

**FIRST CAUSE FOR DISCIPLINE**  
**(Unprofessional Conduct - Criminal Conviction)**

1  
2       14. Respondent is subject to disciplinary action under Sections 4301, subdivision (l) and  
3 490, in conjunction with California Code of Regulations, title 16, section 1770, in that  
4 Respondent was convicted for a crime substantially related to the qualifications, functions or  
5 duties of a pharmacy technician, as follows:

6       a. On or about August 23, 2010, after pleading guilty, Respondent was convicted of one  
7 felony count of violating Business and Professions Code section 4324, subdivision (a) [forgery],  
8 in the criminal proceeding entitled *The People of the State of California v. Francisco Velasquez,*  
9 *Jr.* (Super. Ct., Los Angeles County, 2010, No. VA116445). On or about September 7, 2010, the  
10 criminal court sentenced Respondent to three years formal probation, 180 days in the Los Angeles  
11 County Jail, 120 hours of Cal Trans community service, and the payment of various restitution,  
12 fines and fees. The circumstances surrounding the conviction are as follows:

13       b. On or about July 30, 2010, while employed as a pharmacy technician at Walgreens  
14 Drug Store #5649 ("Walgreens") located at 8201 Greenleaf Avenue, Whittier, California,  
15 Respondent diverted four prescriptions of Hydrocodone/Acetaminophen 7.5/750 mg and  
16 distributed the drugs to an unknown vehicle through the Walgreens drive-thru window. A  
17 Walgreens assistant pharmacy manager stated that patients were coming in and stating that they  
18 never received their medications, but the pharmacy's records showed that the Respondent had  
19 distributed them. Respondent manipulated the pharmacy computer in order to divert four  
20 prescriptions of Hydrocodone, RX 730385, RX 743632, RX 743630, and RX 743590, all dated  
21 July 30, 2010. The assistant pharmacy manager subsequently reviewed surveillance camera  
22 video of that specific date and time and noticed that, following transactions Respondent made at  
23 drive-thru pharmacy window #2, Respondent immediately went on a break. When confronted by  
24 the Whittier Police, Respondent admitted diverting four prescriptions of Hydrocodone, by  
25 distributing the drugs to individuals through the drive-thru window.

26 //

27 //

28

1 **SECOND CAUSE FOR DISCIPLINE**  
2 **(Unprofessional Conduct - Possession of Controlled Substances**  
3 **Without a Valid Prescription)**

4 15. Respondent is subject to disciplinary action under Sections 4301, subdivision (l) and  
5 4301, subdivision (j), as defined in Section 4059, in that on or about July 30, 2010, Respondent,  
6 by his own admission, diverted four prescriptions of Hydrocodone (Vicodin) 7.5/750 mg, and  
7 distributed these drugs to two unknown individuals. Complainant refers to, and by this reference  
8 incorporates, the allegations set forth above in Paragraph 14, subparagraphs (a) and (b), inclusive,  
9 as set forth fully herein.

10 **THIRD CAUSE FOR DISCIPLINE**  
11 **(Unprofessional Conduct - Dishonest Acts)**

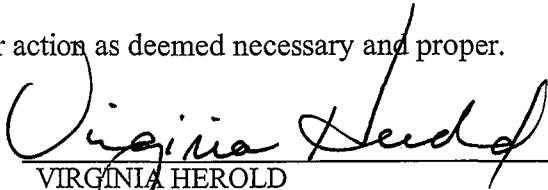
12 16. Respondent is subject to disciplinary action under Sections 4301, subdivision (f) and  
13 4342, subdivision (a), in that Respondent committed dishonest acts by admittedly diverting four  
14 prescriptions of Hydrocodone from his employer, which he furnished to others without a  
15 prescription. Complainant refers to, and by this reference incorporates, the allegations set forth  
16 above in Paragraph 14, subparagraphs (a) and (b), inclusive, as set forth fully herein.

17 **PRAYER**

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

- 20 1. Revoking or suspending Pharmacy Technician Registration No. TCH 77063, issued  
21 to Francisco Junior Velasquez;  
22 2. Ordering Francisco Junior Velasquez to pay the Board the reasonable costs of the  
23 investigation and enforcement of this case, pursuant to Business and Professions Code section  
24 125.3; and  
25 3. Taking such other and further action as deemed necessary and proper.

26 DATED: 4/9/12

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