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

11 In the Matter of the Accusation Against:
12 **ANGEL M. AYALA**
2555 Wabash Ave.
13 Los Angeles, CA 90033
14 **Pharmacy Technician Registration No.**
TCH 62830
15
16 Respondent.

Case No. 4483
ACCUSATION
(Gov. Code, § 11503.)

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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 April 6, 2006, the Board issued Pharmacy Technician Registration Number
23 TCH 68230 to Respondent Angel M. Ayala. The registration was in full force and effect at all
24 times relevant to the charges brought herein, and will expire on August 31, 2015 unless it is
25 renewed.

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1 **JURISDICTION**

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

5 4. Code section 4300 provides that every license issued by the Board may be revoked or
6 suspended and that proceedings to discipline a license are to be conducted according to the
7 Administrative Procedure Act (Gov. Code, §§ 11370, *et seq.*).

8 5. Code sections 118 and 4300.1 provide that the suspension, expiration, forfeiture,
9 cancellation or surrender of a license will not deprive the Board of jurisdiction to institute or
10 continue a disciplinary proceeding against a licensee.

11 **STATUTES**

12 6. Section 4301 of the Code states, in relevant part:

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

17 ...

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

21 ...

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

24 ...

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

(p) Actions or conduct that would have warranted denial of a license.

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DRUG STATUTES

7. Section 4060 of the Code states:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

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

8. Health and Safety Code section 11173 states, in relevant part:

(a) 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...

9. Health and Safety Code section 11350 states, in relevant part:

(a) Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b), (c), (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 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 a county jail for not more than one year, except that such person shall instead be punished pursuant to subdivision (h) of Section 1170 of the Penal Code if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code.

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REGULATIONS

10. 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 his license or registration in a manner consistent with the public health, safety, or welfare.

COST RECOVERY

11. Section 125.3 of the Code provides, in relevant 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 the reasonable costs of the investigation and enforcement of the case.

DRUG CLASSIFICATIONS

12. Hydromorphone is an opioid pain medication. It is a Schedule II controlled substance and a dangerous drug. (Health & Saf. Code, § 11055, subd. (b)(1)(J); Bus. & Prof. Code, § 4022.)

STATEMENT OF FACTS

13. Pasadena-based Huntington Memorial Hospital employed Respondent in its pharmacy as a Pharmacy Technician from February 2008 to December 8, 2011.

14. At first, the pharmacy assigned Respondent to the night shift and tasked him with restocking the hospital's Pyxis MedStation machines. A Pyxis MedStation machine is an automated drug-dispensing system that stores dangerous drugs and controlled substances to be administered to patients. It logs each access attempt, and hospital employees are required to use a unique, employee-specific access code to gain entry.

15. Respondent transferred to the daytime shift in July of 2010 and the pharmacy re-assigned him to its sterile intravenous drug compounding area. It also reduced his Pyxis-restocking duties.

16. In June of 2011, the pharmacy assigned Respondent to perform tasks that did not require him to access a Pyxis machine. Respondent's user identification code and password, however, remained active, allowing him continued access.

1 a. **Bus. & Prof. Code, § 4060:** Code section 4060, in relevant part, prohibits the
2 possession of a controlled substance except with a valid prescription. Respondent violated Code
3 section 4060 by possessing hydromorphone without a valid prescription or lawful purpose
4 between September 1 and November 27, 2011. Complainant realleges paragraphs 12–18.

5 b. **Health & Saf. Code, § 11173:** Health and Safety Code section 11173 criminalizes
6 obtaining or attempting to obtain a controlled substance by fraud, deceit, misrepresentation, or
7 subterfuge. Respondent violated Health and Safety code section 11173 by obtaining
8 hydromorphone, a controlled substance and dangerous drug, between September 1 and November
9 27, 2011, by means of fraud, deceit, misrepresentation and subterfuge. Complainant realleges
10 paragraphs 12–18.

11 c. **Health & Saf. Code, § 11350:** Health and Safety Code section 11350 criminalizes
12 possession of a controlled substance unless upon the written prescription of a physician, dentist,
13 podiatrist, or veterinarian. Respondent violated Health and Safety Code section 11350 by
14 possessing hydromorphone without a valid prescription or lawful purpose between September 1
15 and November 27, 2011. Complainant realleges paragraphs 12–18.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Violate Pharmacy Law)**

18 21. Respondent is subject to disciplinary action under Code section 4301, subdivision (o),
19 in conjunction with California Code of Regulations, title 16, section 1770, for unprofessional
20 conduct because he violated provisions of the Pharmacy Law (Bus. & Prof. Code, §§ 2700, *et*
21 *seq.*). Complainant realleges paragraphs 12–20.

22 **FOURTH CAUSE FOR DISCIPLINE**

23 **(Conduct that Would Have Warranted License Denial)**

24 22. Respondent is subject to disciplinary action under Code section 4301, subdivision (p),
25 in conjunction with California Code of Regulations, title 16, section 1770, for unprofessional
26 conduct because he committed acts that would have warranted denial of a license. Complainant
27 realleges paragraphs 12–21.

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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 Registration Number TCH 62830, issued to Respondent Angel M. Ayala;
2. Ordering Respondent Angel M. Ayala 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: _____

5/9/15



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

LA2013508523