

1 KAMALA D. HARRIS  
Attorney General of California  
2 DIANN SOKOLOFF  
Supervising Deputy Attorney General  
3 KIM M. SETTLES  
Deputy Attorney General  
4 State Bar No. 116945  
1515 Clay Street, 20th Floor  
5 P.O. Box 70550  
Oakland, CA 94612-0550  
6 Telephone: (510) 622-2138  
Facsimile: (510) 622-2270  
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 4611

12 **JOSE LUIS BAROCIO JR.**  
13 **1130 Sherwood Drive**  
**Hollister, CA 95023**

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

14 **Pharmacy Technician Registration No. TCH**  
15 **50023**

16 Respondent.

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 August 21, 2003, the Board of Pharmacy issued Pharmacy Technician  
22 Registration Number TCH 50023 to Jose Luis Barocio Jr. (Respondent). The Pharmacy  
23 Technician Registration expired on January 31, 2013, and has not been 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 unless otherwise indicated.

28 4. Section 118, subdivision (b), of the Code provides that the expiration of a license

1 shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period  
2 within which the license may be renewed, restored, reissued or reinstated.

3 **STATUTORY/REGULATORY PROVISIONS**

4 5. Section 4300 of the Code states:

5 "(a) Every license issued may be suspended or revoked..."

6 6. Section 4301 of the Code states:

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

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

13 ...

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

16 7. Section 4324, subdivision (a) of the Code states:

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

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

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

28 9. Section 4060 of the Code states:

1 "No person shall possess any controlled substance, except that furnished to a person upon  
2 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor  
3 ..."

4 10. Section 4022 of the Code states

5 "Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in  
6 humans or animals, and includes the following:

7 "(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without  
8 prescription," "Rx only," or words of similar import.

9 "(b) Any device that bears the statement: "Caution: federal law restricts this device to sale  
10 by or on the order of a \_\_\_\_\_," "Rx only," or words of similar import, the blank to be filled  
11 in with the designation of the practitioner licensed to use or order use of the device.

12 "(c) Any other drug or device that by federal or state law can be lawfully dispensed only on  
13 prescription or furnished pursuant to Section 4006."

#### 14 COSTS

15 11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
16 administrative law judge to direct a licentiate found to have committed a violation or violations of  
17 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
18 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being  
19 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
20 included in a stipulated settlement.

#### 21 DRUGS

22 12. "Hydrocodone/APAP" ("Vicodin" and/or "Norco") is a Schedule III controlled  
23 substance pursuant to Health and Safety Code section 11056, subdivision (e)(4), and a dangerous  
24 drug pursuant to Business and Professions Code section 4022. It is a semisynthetic narcotic  
25 analgesic and antitussive with multiple actions qualitatively similar to codeine.

26 13. "Valium" ("Diazepam") is a Schedule IV controlled substance pursuant to Health and  
27 Safety Code section 11057, subdivision (d)(9), and a dangerous drug pursuant to Business and  
28 Professions Code section 4022. It is used to treat anxiety and for muscle relaxation.

1 14. "Soma" ("Carisoprodol") is a Schedule IV controlled substance pursuant to Health  
2 and Safety Code section 11057, and a dangerous drug pursuant to Business and Professions Code  
3 section 4022. It is used for muscle relaxation.

4 15. "Xanax" ("Alprazolam") is a Schedule IV controlled substance pursuant to Health  
5 and Safety Code section 11057, subdivision (d)(1), and a dangerous drug pursuant to Business  
6 and Professions Code section 4022. It is a benzodiazepam derivative used to treat anxiety and  
7 panic attacks.

8 16. "Phenergan with Codeine" ("Promethazine with Codein") is a Schedule V  
9 controlled substance pursuant to Health and Safety Code 11058, subdivision (c)(1), and a  
10 dangerous drug pursuant to Business and Professions Code section 4022. It is used as a cough  
11 suppressant.

12 17. "Phenergan VC with Codeine" ("Promethazine with Codein") is a Schedule V  
13 controlled substance pursuant to Health and Safety Code 11058, subdivision (c)(1), and a  
14 dangerous drug pursuant to Business and Professions Code section 4022. It is used as a cough  
15 suppressant.

16 18. "Ambien" ("Zolpidem") is a Schedule IV controlled substance pursuant to Health  
17 and Safety Code section 11057, subdivision (d)(32), and a dangerous drug pursuant to Business  
18 and Professions Code section 4022. It is a sedative that is used to treat insomnia.

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(Unprofessional Conduct: Dishonesty, Fraud Deceit)**

21 19. Respondent has subjected his license to disciplinary action under Code section 4301,  
22 subdivision (f) in that Respondent created fictitious prescriptions and obtained or attempted to  
23 obtain controlled substances and/or dangerous drugs through forged prescriptions as follows:

24 A. Between on or about October 4, 2010 and February 11, 2011, while employed as a  
25 pharmacy technician at Nob Hill Pharmacy, in Hollister, California, Respondent forged the  
26 following prescriptions:

<u>RX#</u>	<u>Drug Name/Strength</u>	<u>Quantity</u>
6601446	Carisoprodol 350 mg	360

1	4608069	Hydrocodone/Acetaminophen 5/500 mg	360
2	4611160	Hydrocodone/Acetaminophen 7.5/750 mg	360
3	4611981	Hydrocodone/Acetaminophen 5/500 mg	360
4	4608714	Zolpidem 10 mg	60
5	4611457	Hydrocodone/Acetaminophen 7.5/750 mg	360
6	4612657	Hydrocodone/Acetaminophen 10/325 mg	100

7 B. Between on or about May 19, 2011 and May 10, 2012, while employed as a  
8 pharmacy technician at ANSR Pharmacy, in Hollister, California, Respondent forged the  
9 following prescriptions:

10	<u>Drug Name/Strength</u>	<u>Quantities Dispensed</u>
11	Alprazolam 0.5 mg	30 tablets
12	Alprazolam 1 mg	30 tablets
13	Alprazolam 2 mg	1,350 tablets
14	Diazepam 10 mg	180 tablets
15	Hydrocodone/Acetaminophen 10/325 mg	23,210 tablets
16	Hydrocodone/Chlorpheniramine suspension	120 milliliters
17	Promethazine/Codeine Syrup	2,386 milliliters
18	Promethazine VC/Codeine Syrup	4,257 milliliters

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Unprofessional Conduct – Unlawful Self-Administration of Controlled Substances)**

21 20. Respondent has subjected his license to disciplinary action pursuant to Code section  
22 4301, subdivision (h), in that between on or about October 4, 2011 and May 10, 2012, while  
23 working as a pharmacy technician at Nob Hill Pharmacy in Hollister, California and ANSR  
24 Pharmacy in Hollister, California, Respondent admitted to self-administering the following  
25 controlled substances:

- 26 a. Xanax
- 27 b. Norco
- 28 c. Ambien

1 d. Phenergan VC

2 e. Valium

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct – Unlawful Possession of Controlled Substances)**

5 21. Respondent has subjected his license to disciplinary action pursuant to Code section  
6 4301, subdivision (j), in that Respondent created fictitious prescriptions for himself and diverted  
7 controlled substances from the fraudulent prescriptions for self-use and furnished controlled  
8 substances to others. The controlled substances are set forth in paragraph 19(A) and 18(B),  
9 above, and incorporated by reference.

10 **FOURTH CAUSE FOR DISCIPLINE**

11 **(Forgery and Possession of Drugs Obtained Through Forged Prescriptions)**

12 22. Respondent has subjected his license to disciplinary action pursuant to Code section  
13 4324, subdivision (a), in that Respondent created fictitious prescriptions and obtained or  
14 attempted to obtain controlled substances and/or dangerous drugs through forged prescriptions as  
15 follows:

16 A. Between on or about October 4, 2010 and February 11, 2011, while employed as a  
17 pharmacy technician at Nob Hill Pharmacy, in Hollister, California, Respondent created the  
18 following fictitious prescriptions and obtained or attempted to obtain controlled substances  
19 through the following forged prescriptions:

<u>RX#</u>	<u>Drug Name/Strength</u>	<u>Quantity</u>
6601446	Carisoprodol 350 mg	360
4608069	Hydrocodone/Acetaminophen 5/500 mg	360
4611160	Hydrocodone/Acetaminophen 7.5/750 mg	360
4611981	Hydrocodone/Acetaminophen 5/500 mg	360
4608714	Zolpidem 10 mg	60
4611457	Hydrocodone/Acetaminophen 7.5/750 mg	360
4612657	Hydrocodone/Acetaminophen 10/325 mg	100

B. Between on or about May 19, 2011 and May 10, 2012, while employed as a pharmacy technician at ANSR Pharmacy in Hollister, California, Respondent obtained the following controlled substances through forged prescriptions set forth below:

<u>RX#</u>	<u>Drug Name/Strength</u>	<u>Quantity/Refills</u>	<u>Refills Obtained</u>
9993	Alprazolam 2mg	#90 (3 refills)	2
11158	Promethazine/Codeine 480 ml	(5 refills)	2
14705	Diazepam 10 mg	#60 (6 refills)	2
3019	Hydrocodone/Acetaminophen 10/325 mg	#360 (5 refills)	1
5629	Hydrocodone/Acetaminophen 10/325 mg	#360 (5 refills)	5
13889	Hydrocodone/Acetaminophen 10/325 mg	#360 (6 refills)	3
2739	Hydrocodone/Acetaminophen 10/325 mg	#360 (5 refills)	2
5628	Hydrocodone/Acetaminophen 10/325 mg	#360 (5 refills)	5
14684	Hydrocodone/Acetaminophen 10/325 mg	#360 (6 refills)	3
17018	Alprazolam 1 mg	#30 (1 refill)	0
22838	Alprazolam 0.5 mg	#30 (1 refill)	0
7788	Hydrocodone/Acetaminophen 10/325 mg	#360 (6 refills)	5
19583	Hydrocodone/Acetaminophen 10/325 mg	#360 (1 refill)	0
21536	Hydrocodone/Acetaminophen 10/325 mg	#360 (3 refills)	0
7932	Alprazolam 2 mg	#90 (6 refills)	4
8174	Promethazine VC/Codeine 473 ml	(6 refills)	5
12710	Hydrocodone/Chlorpheniramine 120 ml	(2 refills)	0
13367	Hydrocodone/Acetaminophen 10/325 mg	#360 (3 refills)	2
23133	Hydrocodone/Acetaminophen 10/325 mg	#170	
12964	Promethazine/Codeine 473 ml	(3 refills)	1
<u>RX#</u>	<u>Drug Name/Strength</u>	<u>Quantity/Refills</u>	<u>Refills Obtained</u>
11461	Alprazolam 2 mg	#90 (3 refills)	2
7046	Hydrocodone/Acetaminophen 10/325	#360 (5 refills)	5
15609	Hydrocodone/Acetaminophen 10/325	#360 (5 refills)	2

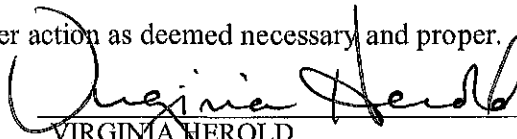
1	4805	Hydrocodone/Acetaminophen 10/325	#360 (6 refills)	5
2	13160	Hydrocodone/Acetaminophen 10/325	#360 (6 refills)	4
3	8172	Alprazolam 2 mg	#90 (6 refills)	4
4	8173	Promethazine VC/Codeine 473 ml	(6 refills)	2
5	7736	Hydrocodone/Acetaminophen 10/325 mg	#360 (6 refills)	5
6	19752	Hydrocodone/Acetaminophen 10/325 mg	#360 (5 refills)	1

**PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this Accusation, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Pharmacy Technician Registration Number TCH 50023, issued to Jose Luis Barocio Jr.;
2. Ordering Jose Luis Barocio Jr. 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;
3. Taking such other and further action as deemed necessary and proper.

DATED: 9/19/13



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

SF2013901406  
90305526.doc