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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 **JUAN LUIS ALARCON**  
11233 Sue Ave.  
13 Lynwood, CA 90262  
14 Pharmacy Technician Registration  
No. TCH 82087  
15 Respondent.

Case No. 4870  
**A C C U S A T I O N**

18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.  
22 2. On or about March 13, 2008, the Board of Pharmacy (Board) issued Pharmacy  
23 Technician Registration No. TCH 82087 to Juan Luis Alarcon (Respondent). The Pharmacy  
24 Technician Registration was in full force and effect at all times relevant to the charges brought  
25 herein and will expire on March 31, 2016, unless 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 unless otherwise indicated.

4 **STATUTORY PROVISIONS**

5 4. Section 4060 states:

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

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

20 5. Section 4300 provides in pertinent part, that every license issued by the Boards is  
21 subject to discipline, including suspension or revocation.

22 6. Section 4300.1 states:

23 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by  
24 operation of law or by order or decision of the board or a court of law, the placement of a license  
25 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board  
26 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary  
27 proceeding against, the licensee or to render a decision suspending or revoking the license."

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1 7. Section 4301 states, in pertinent part:

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

5 . . . .

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

9 . . . .

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

12 . . . .

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

17 **COST RECOVERY**

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

24 9. **CONTROLLED SUBSTANCES/DANGEROUS DRUGS**

25 a. "Phenergan with Codeine", a brand name for Promethazine with Codeine, is a  
26 Schedule V controlled substance as designated by Health and Safety Code section 11058,  
27 subdivision (c)(1) and is categorized as a dangerous drug pursuant to section 4022.

28 b. "Soma", is designated as a dangerous drug pursuant to section 4022

1 c. "Vicodin", is a Schedule III controlled substance as defined in Health and Safety  
2 Code section 11056, subdivision (e)(7) and is categorized as a dangerous drug according to  
3 section 4022.

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Illegally Obtained or Possessed Controlled Substances)**

6 10. Respondent is subject to disciplinary action under section 4301, subdivision (j) and  
7 (o), for violating section 4060, as follows,

8 a. On or about September 4, 2011, Respondent while employed by CVS was observed  
9 by the pharmacist picking up medication through the drive thru window. An investigation was  
10 conducted and the video surveillance showed another employee filling a prescription bottle with  
11 Promethazine with Codeine, placing it in a bag without label or receipt and passing it to  
12 Respondent without prescription or payment. Respondent admitted to picking up the medications  
13 for self-use thru the drive thru window without a prescription or payment from another employee  
14 several times. These included Promethazine-Codeine, Soma, and Vicodin. Respondent was  
15 subsequently arrested on September 20, 2011 for violating Penal Code section 496 [receiving  
16 stolen property].

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Acts Involving Dishonesty, Fraud, or Deceit)**

19 11. Respondent is subject to disciplinary action under section 4301, subdivision (f), in  
20 that Respondent committed acts involving dishonesty, fraud, or deceit with the intent to  
21 substantially benefit himself, or substantially injure another. Complainant refers to, and by this  
22 reference incorporates, the allegations set forth above in paragraph 10, subparagraph (a), as  
23 though set forth fully.

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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 issue a decision:

1. Revoking or suspending Pharmacy Technician Registration No. TCH 82087, issued to Juan Luis Alarcon;
2. Ordering Juan Luis Alarcon to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 8/12/14 Virginia Herold  
VIRGINIA HEROLD  
Executive Officer  
Board of Pharmacy  
Department of Consumer Affairs  
State of California  
*Complainant*

LA2013510088