

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 NICOLE R. TRAMA
Deputy Attorney General
4 State Bar No. 263607
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2143
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 5045

12 **ALEX VASQUEZ**
13 **11930 Banner Drive #8**
14 **Garden Grove, CA 92843**

ACCUSATION

15 **Pharmacy Technician Registration No. TCH**
93066

16 Respondent.

17
18
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about August 4, 2009, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 93066 to Alex Vasquez (Respondent). The Pharmacy Technician
25 Registration was in full force and effect at all times relevant to the charges brought herein and
26 will expire on August 31, 2015, unless renewed.

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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 4. Section 4300, subdivision (a) of the Code states "Every license issued may be
6 suspended or revoked."

7 5. Section 4300.1 of the Code states:

8 The expiration, cancellation, forfeiture, or suspension of a board-issued
9 license by operation of law or by order or decision of the board or a court of law,
10 the placement of a license on a retired status, or the voluntary surrender of a
11 license by a licensee shall not deprive the board of jurisdiction to commence or
12 proceed with any investigation of, or action or disciplinary proceeding against, the
13 licensee or to render a decision suspending or revoking the license.

12 **STATUTORY PROVISIONS**

13 6. Section 4301 of the Code states:

14 The board shall take action against any holder of a license who is guilty of
15 unprofessional conduct or whose license has been procured by fraud or
16 misrepresentation or issued by mistake. Unprofessional conduct shall include, but
17 is 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.

20

21 (h) The administering to oneself, of any controlled substance, or the use of
22 any dangerous drug or of alcoholic beverages to the extent or in a manner as to be
23 dangerous or injurious to oneself, to a person holding a license under this chapter,
24 or to any other person or to the public, or to the extent that the use impairs the
25 ability of the person to conduct with safety to the public the practice authorized by
26 the license.

25

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

28

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

6

7 7. Section 4059 of the Code states:

8 (a) A person may not furnish any dangerous drug, except upon the
9 prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or
10 naturopathic doctor pursuant to Section 3640.7. A person may not furnish any
11 dangerous device, except upon the prescription of a physician, dentist, podiatrist,
12 optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

13

14 8. Section 4060 of the Code states:

15 No person shall possess any controlled substance, except that furnished to a
16 person upon the prescription of a physician, dentist, podiatrist, optometrist,
17 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
18 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
19 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant
20 pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a
21 pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv)
22 of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This
23 section shall not apply to the possession of any controlled substance by a
24 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
25 optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
26 practitioner, or physician assistant, when in stock in containers correctly labeled
27 with the name and address of the supplier or producer.

28 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.

9. Health and Safety Code section 11170 states that no person shall prescribe,
administer, or furnish a controlled substance for himself.

COST RECOVERY

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

1 **DRUGS**

2 11. Phenergan/Codeine, the brand name for Promethazine with Codeine Syrup is a
3 Schedule V controlled substance under Health and Safety Code section 11058 and is a dangerous
4 drug pursuant to Business and Professions Code section 4022.

5 12. Xanax, is a brand name for alprazolam (a benzodiazepine), a Schedule IV controlled
6 substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous
7 drug pursuant to Business and Professions Code section 4022.

8 **FACTUAL ALLEGATIONS**

9 13. Respondent was employed as a pharmacy technician at CVS/Caremark store
10 #5841 (hereinafter "CVS"). In or around November 2012, the loss prevention manager at CVS
11 received a report regarding CVS's inventory of promethazine with codeine. The loss prevention
12 manager contacted the pharmacy supervisor to obtain counts so that an audit could be performed.
13 The audit demonstrated a loss of 12,320 mls of promethazine with codeine.

14 14. On January 18, 2013, the pharmacy supervisor and loss prevention manager
15 conducted interviews of pharmacy staff at CVS. During the first interview with Respondent,
16 Respondent denied taking any promethazine with codeine and stated that he had smelled
17 promethazine with codeine syrup on another technician M.C. and that he witnessed her running
18 over to the area where the promethazine with codeine was kept when the pharmacist left for break
19 or bathroom. The pharmacy supervisor and loss prevention manager then interviewed M.C.
20 M.C. admitted that for the past few months, she had been drinking promethazine with codeine
21 directly from the stock bottle and that she did not have a prescription for it. M.C. also told her
22 supervisors that Respondent was taking and consuming promethazine with codeine syrup from
23 CVS. Following the interview with M.C., supervisors re-interviewed Respondent. During the
24 second interview, Respondent admitted that he drank 30 ml promethazine with codeine syrup
25 directly from the bottle on at least one occasion.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Dishonest Act)**

3 15. Respondent has subjected his license to disciplinary action under section 4301,
4 subdivision (f) of the Code in that Respondent committed an act involving dishonesty, fraud,
5 deceit, or corruption, when he stole controlled substances from his employer while working as a
6 pharmacy technician, as detailed in paragraphs 13 and 14, above, and which are incorporated
7 herein by reference.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Use of Controlled Substances in Dangerous Manner)**

10 16. Respondent has subjected her license to disciplinary action under section 4301,
11 subdivision (h) of the Code in that Respondent administered to himself controlled substances to
12 the extent or in a manner as to be dangerous or injurious to herself or the public, or to the extent
13 that it impaired his ability to practice safely, as evidenced by Respondent's admissions that while
14 working as a pharmacy technician, he consumed promethazine with codeine, as detailed in
15 paragraphs 13 and 14, above, and which are incorporated herein by reference.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Unlawful Administration of a Controlled Substance)**

18 17. Respondent has subjected her license to disciplinary action under section 4301,
19 subdivision (j) of the Code for violation of Health and Safety Code section 11170 in that
20 Respondent illegally administered to himself controlled substances without a prescription, as
21 evidenced by Respondent's admissions that he consumed promethazine with codeine from the
22 CVS stock bottle, as detailed in paragraphs 13 and 14, above, and which are incorporated herein
23 by reference.

24 **FOURTH CAUSE FOR DISCIPLINE**

25 **(Unlawful Possession of a Controlled Substance)**

26 18. Respondent has subjected her license to disciplinary action under section 4301,
27 subdivision (o) of the Code for violation of Code section 4060 in that Respondent illegally
28 possessed controlled substances without a prescription, as evidenced by Respondent's

1 admissions that he took promethazine with codeine from CVS, as detailed in paragraphs 13 and
2 14, above, and which are incorporated herein by reference.

3 **PRAYER**

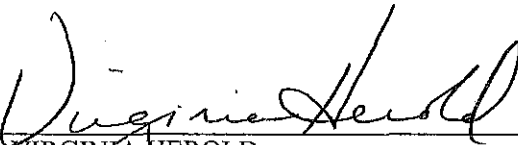
4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
5 and that following the hearing, the Board of Pharmacy issue a decision:

6 1. Revoking or suspending Pharmacy Technician Registration Number TCH 93066,
7 issued to Alex Vasquez;

8 2. Ordering Alex Vasquez to pay the Board of Pharmacy the reasonable costs of the
9 investigation and enforcement of this case, pursuant to Business and Professions Code section
10 125.3;

11 3. Taking such other and further action as deemed necessary and proper.

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14 DATED: 4/5/14



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

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