

1 XAVIER BECERRA
Attorney General of California
2 LINDA K. SCHNEIDER
Senior Assistant Attorney General
3 GREGORY J. SALUTE
Supervising Deputy Attorney General
4 State Bar No. 164015
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 738-9431
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

12 In the Matter of the Accusation Against:
13 **MELISSA ANAHI HERNANDEZ LOPEZ**
2265 Canyon Dr. #E
14 Costa Mesa, CA 92627
15 **Pharmacy Technician Registration No. TCH**
157949
16
17 Respondent.

Case No. 6095

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
21 capacity as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer
22 Affairs.

23 2. On November 16, 2016, the Board issued Pharmacy Technician Registration
24 Number TCH 157949 to Melissa Anahi Hernandez Lopez (Respondent). Respondent has also
25 been known as Melissa A. Hernandez. The Pharmacy Technician Registration was in full force
26 and effect at all times relevant to the charges brought herein, and will expire on May 31, 2018,
27 unless renewed.

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 (Code) unless otherwise indicated.

5 4. Code section 4300, subdivision (a), provides that every license issued by the Board
6 may be suspended or revoked.

7 5. Code section 4300.1 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. Code section 482 states:

14 Each board under the provisions of this code shall develop criteria to
15 evaluate the rehabilitation of a person when:

- 16 (a) Considering the denial of a license by the board under Section 480; or
17 (b) Considering suspension or revocation of a license under Section 490.

18 Each board shall take into account all competent evidence of rehabilitation
19 furnished by the applicant or licensee.

20 7. Code section 490 provides, in pertinent part, that a board may suspend or revoke a
21 license on the ground that the licensee has been convicted of a crime substantially related to the
22 qualifications, functions, or duties of the business or profession for which the license was issued.

23 8. Code section 493 states:

24 Notwithstanding any other provision of law, successful completion of any
25 diversion program under the Penal Code, or successful completion of an alcohol
26 and drug problem assessment program under Article 5 (commencing with Section
27 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit
28 any agency established under Division 2 (commencing with Section 500) of this
code, or any initiative act referred to in that division, from taking disciplinary
action against a licensee or from denying a license for professional misconduct,
notwithstanding that evidence of that misconduct may be recorded in a record
pertaining to an arrest. This section shall not be construed to apply to any drug
diversion program operated by any agency established under Division 2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(commencing with Section 500) of this code, or any initiative act referred to in that division.

9. Code section 4301 states, in pertinent part:

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

...

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

...

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

....

REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1769, states:

...

(b) When considering the suspension or revocation of a facility or a personal license on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) Evidence, if any, of rehabilitation submitted by the licensee.

11. 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

12. Code section 125.3 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, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

FIRST CAUSE FOR DISCIPLINE

(January 23, 2017 Criminal Conviction for Forgery and Identity Theft on July 21, 2015)

13. Respondent subjected her Pharmacy Technician Registration to discipline under Code sections 490 and 4301, subdivision (l) in that she was convicted of crimes substantially related to the qualifications, functions, and duties of a registered pharmacy technician. The circumstances are as follows:

///
///
///

1 a. On January 23, 2017, in a criminal proceeding entitled *The People of the*
2 *State of California vs. Melissa A. Hernandez*, in Orange County Superior Court, Harbor Justice
3 Center - Newport Beach Facility, Case Number 16HF0785, Respondent was convicted on her
4 plea of guilty of violating Penal Code (PC) sections 470, subdivision (d), forgery, and 530.5,
5 subdivision (a), identity theft, both felonies reduced to misdemeanors under PC section 17,
6 subdivision (b). Felony charges for an additional 11 counts of violation of PC section 470,
7 subdivision (d) and 11 counts of violation of PC section 530.5, subdivision (a), were dismissed
8 under a plea bargain.

9 b. As a result of the convictions, on January 23, 2017, Respondent was
10 sentenced to 90 days in the Orange County Jail, with credit for one day actually served.
11 Respondent's service of the 89-day balance was stayed pending completion of 100 hours of
12 community service. Respondent was granted formal probation for three years, which would be
13 converted to informal probation upon service of the balance of the jail sentence or successful
14 completion of 100 hours of community service. Respondent was ordered to pay assessments,
15 fines, fees, and restitution and provide a DNA¹ sample under PC sections 296 and 296.1.
16 Respondent was also ordered not to possess any type of dangerous and deadly weapon and not to
17 engage in the profession of elderly or dependent caregiving.

18 c. The facts that led to the conviction are that on September 10, 2015, an
19 elderly man deposited approximately \$7,000.00 into an LLC checking account. Several days
20 later, the elderly man returned to the bank to withdraw the money but was told that his account
21 was overdrawn. The elderly man reviewed the checks issued against the LLC checking account
22 and determined that some were written and cashed without his permission.

23 d. On September 21, 2015, Respondent's mother placed a telephone call to
24 the elderly man to advise him that she would not be able to clean his house due to a prior
25 appointment. Respondent's mother was hired by the elderly man about two and a half years prior

26 _____
27 ¹ Deoxyribonucleic acid (DNA) profiles will be subject to continual searches, anytime in
28 the future, against other DNA profiles, prints, and photographs in any local, state, national, or
international law enforcement database.

1 because he was diagnosed with Alzheimer's disease and he needed a housekeeper. Respondent's
2 mother had full access, including her own key, to the elderly man's residence in Newport Beach,
3 California. Respondent would accompany her mother on several occasions.

4 e. On September 21, 2015, the elderly man filed a complaint at the Newport
5 Beach Police Department alleging that personal items disappeared from his home including a
6 checkbook for his LLC account and approximately \$13,951.00 in unauthorized check
7 withdrawals. After several months of investigation, it appeared that on July 21, August 7, 10, 14,
8 17, 22, 25, 26, and 29, and September 2, 4, and 5, 2015, Respondent altered checks and cashed
9 them at various financial institutions with check cashing services. In a photo line up, Respondent
10 was identified by staff of the financial institutions as the person who cashed the checks. On
11 January 23, 2017, Respondent admitted to altering a check with intent to defraud on July 21,
12 2015.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Unprofessional Conduct - Commission of Any Act Involving Moral Turpitude, Dishonesty,
15 Fraud, Deceit, or Corruption)**

16 14. Respondent has subjected her Pharmacy Technician Registration to discipline
17 under Code section 4301, subdivision (f), in that she committed acts involving moral turpitude,
18 dishonesty, fraud, deceit, and corruption when she attempted to pass, as true and genuine, a
19 check, knowing the same to be counterfeited, and obtained identifying information of another
20 person to complete fraudulent current account transactions, as described in paragraph 13, above.

21 **PRAYER**

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

24 1. Revoking or suspending Pharmacy Technician Registration Number TCH
25 157949, issued to Melissa Anahi Hernandez Lopez;

26 ///

27 ///

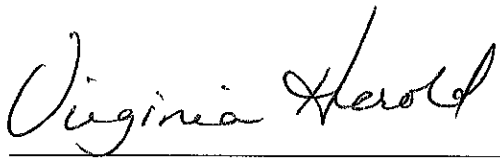
28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2. Ordering Melissa Anahi Hernandez Lopez 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: 5/9/17



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

GJS:JRL
SD2017704582
81669674.doc