

1 KAMALA D. HARRIS  
Attorney General of California  
2 GLORIA A. BARRIOS  
Supervising Deputy Attorney General  
3 KATHERINE MESSANA  
Deputy Attorney General  
4 State Bar No. 272953  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2554  
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

11 In the Matter of the Statement of Issues  
Against:  
12 **MELISSA ARLENE HERNANDEZ**  
13 860 S. Berendo Ave., #1  
14 Los Angeles, CA 90005  
15 Applicant for Pharmacy Technician  
Registration  
16 Respondent.

Case No. 4204

**STATEMENT OF ISSUES**

18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold ("Complainant") brings this Statement of Issues solely in her official  
21 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.  
22 2. On or about December 20, 2010, the Board of Pharmacy, Department of Consumer  
23 Affairs received an Applicant for Registration as a Pharmacy Technician from Melissa Arlene  
24 Hernandez ("Respondent"). On or about December 8, 2010, Melissa Arlene Hernandez certified  
25 under penalty of perjury to the truthfulness of all statements, answers, and representations in the  
26 application. The Board denied the application on August 22, 2011.

27 ///  
28 ///

1 **JURISDICTION AND STATUTORY PROVISIONS**

2 3. This Statement of Issues is brought before the Board of Pharmacy ("Board"),  
3 Department of Consumer Affairs, under the authority of the following laws. All section  
4 references are to the Business and Professions Code ("Code") unless otherwise indicated.

5 4. Section 480 of the Code states, in pertinent part:

6 "(a) A board may deny a license regulated by this code on the grounds  
7 that the applicant has one of the following:

8 ...

9 (2) Done any act involving dishonesty, fraud, or deceit with the intent to  
substantially benefit himself or herself or another, or substantially injure another.

10 (3) (A) Done any act that if done by a licentiate of the business or  
11 profession in question, would be grounds for suspension or revocation of license.

12 (B) The board may deny a license pursuant to this subdivision only if the  
13 crime or act is substantially related to the qualifications, functions, or duties of the  
business or profession for which application is made."

14 5. Section 4301 of the Code states:

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

17 6. Section 4402 of the Code states:

18 "...

19 (e) Any other license issued by the board may be canceled by the board if  
20 the license is not renewed within 60 days after its expiration. Any license canceled  
under this subdivision may not be reissued. Instead, a new application will be  
21 required."

22 **REGULATIONS**

23 7. California Code of Regulations, title 16, section 1770 states:

24 "For the purpose of denial, suspension, or revocation of a personal or  
25 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  
26 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  
27 to perform the functions authorized by his license or registration in a manner  
consistent with the public health, safety, or welfare."

28 8. California Code of Regulations, title 16, section 1717 states, in pertinent part:

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

“...  
...”

(c) Promptly upon receipt of an orally transmitted prescription, the pharmacist shall reduce it to writing, and initial it, and identify it as an orally transmitted prescription. If the prescription is then dispensed by another pharmacist, the dispensing pharmacist shall also initial the prescription to identify him or herself. All orally transmitted prescriptions shall be received and transcribed by a pharmacist prior to compounding, filling, dispensing, or furnishing. Chart orders as defined in section 4019 of the Business and Professions Code are not subject to the provisions of this subsection.”

9. California Code of Regulations, title 16, section 1793.1(a) states, in pertinent part:

“Only a pharmacist, or an intern pharmacist acting under the supervision of a pharmacist, may:

(a) Receive a new prescription order orally from a prescriber or other person authorized by law.

...”

### OLYMPIC PLAZA PHARMACY

10. On or about March 8, 2004, the Board issued pharmacy technician license TCH 55447 to Respondent. The license expired on December 31, 2009 and was not renewed. The license was subsequently cancelled on April 4, 2010 pursuant to section 4402, subdivision (e) of the Code.

11. On or about May 7, 2008, Respondent was hired by Olympic Plaza Pharmacy (“Olympic”). Respondent worked at Olympic until April 9, 2010.

12. On or about April 7, 2010, during a physical CII inventory count, pharmacy technician D.R. discovered a loss/shortage of 50 tablets Hydromorphone 4mg. A security access report indicated that Respondent was the only person who accessed the patient’s file.

13. On or about April 9, 2010, when confronted with the allegations, Respondent resigned from Olympic.

14. On or about May 18, 2010, T.B., the Pharmacist-in-Charge at Olympic notified the Board via E-mail that Olympic Plaza Pharmacy, Inc. discovered a “theft / shortage of controlled substance on or about April 7, 2010 of Hydromorphone 4mg tabs, NDC # 00054-0264-25, missing quantity #50. Our internal investigation, although could not determine definetly (sic) seriously implicated one of our employees, clerk/tech, which led to her resignation. Please see attached copy of the DEA 106 form that has recently been filed with DOJ...” Attached to the E-

1 mail was a copy of a DEA-106 Loss Report, indicating that 50 Hydromorphone 4mg was missing  
2 from the pharmacy.

3 15. On or about May 25, 2010, the Board contacted Olympic Plaza Pharmacy, Inc. and  
4 was informed the employee implicated in the thefts was Pharmacy Technician, Melissa  
5 Hernandez.

6 16. The Board conducted an investigation. Interviews and a review of relevant  
7 documents revealed the following:

8 a. On March 3, 2008, Respondent furnished herself 40 Hydrocodone/APAP 5-500  
9 (“Vicodin”) tablets. She personally transcribed as a prescription without legal or prescriber  
10 authorization under the name of patient G.D. and Dr. B.P.

11 b. On or about March 30, 2010, Respondent furnished herself 50 Hydromorphone  
12 4mg tablets by manipulation of prescription records, decreasing Hydromorphone amount  
13 dispensed from 250 to 200 tablets. As the theft was about to be revealed, Respondent  
14 manipulated the prescription record of a second Hydromorphone 4mg prescription on April 7,  
15 2010, increasing the quantity from 150 to 200 to balance the pharmacy records and conceal the  
16 original theft on March 30, 2010.

17 **FIRST CAUSE FOR DENIAL OF APPLICATION**

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

19 17. Respondent's application is subject to denial under section 480, subdivision (a)(2) of  
20 the Code in that Respondent committed acts involving dishonesty, fraud or deceit with the intent  
21 to substantially benefit herself or another or substantially injure another in that Respondent  
22 furnished herself Hydrocodone and Hydromorphone without prescription or authorization. The  
23 conduct is described in more particularity in paragraph 10 through paragraph 16, subdivisions (a)  
24 and (b), above, inclusive and herein incorporated by reference.

25 18. Respondent's application is subject to denial under section 480, subdivision (a)(2) of  
26 the Code in that Respondent committed acts involving dishonesty, fraud or deceit with the intent  
27 to substantially benefit himself or another or substantially injure another, in that on February 29,  
28 2008, March 3, 2008 and May 27, 2009, Respondent received and transcribed an orally

1 transmitted prescription from a prescriber without being a registered pharmacist, in violation of  
2 California Code of Regulations, title 16, section 1717, subdivision (c) and section 1793.1,  
3 subdivision (a).

4 **SECOND CAUSE FOR DENIAL OF APPLICATION**

5 **(Act Which if Done by Licentiate Would be Grounds for Discipline)**

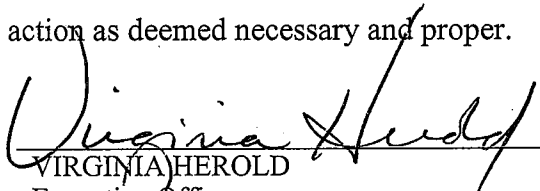
6 19. Respondent's application is subject to denial under section 480, subdivision (a)(3) of  
7 the Code, as defined in section 4301 of the Code in that Respondent committed unprofessional  
8 conduct, an act which if done by a licentiate would be grounds for discipline. The conduct is  
9 described in more particularity in paragraph 10 through paragraph 16, subdivisions (a) and (b),  
10 above, inclusive and herein incorporated by reference.

11 **PRAYER**

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

- 14 1. Denying the application of Melissa Arlene Hernandez for Registration as a Pharmacy  
15 Technician;  
16 2. Taking such other and further action as deemed necessary and proper.

17 DATED: 3/6/12

18   
19 VIRGINIA HEROLD  
20 Executive Officer  
21 Board of Pharmacy  
22 Department of Consumer Affairs  
23 State of California  
24 Complainant

22 LA2011504920  
23 51022678.doc