BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: NELLIE GUERRERO 569 S. Bradshawe Avenue Los Angeles, CA 90022 Pharmacy Technician No. TCH 19426 Respondent.	Case No. 2839 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about June 21, 2005, Complainant Patricia F. Harris, in her official capacity as the Executive Officer of the Board of Pharmacy (Board), filed Accusation No. 2839 against Nellie Guerrero (Respondent) before the Board.

2. On or about June 14, 1996, the Board issued Pharmacy Technician Registration No. TCH 19426 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2007, unless renewed.

3. On or about July 11, 2005, Anna Carpenter, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation No. 2839, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board , which was and is 569 S. Bradshawe Avenue, Los Angeles, CA

90022. A copy of the Accusation is attached as exhibit A, and is incorporated herein by reference.

4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c).

5. On or about July 20, 2005, the United States Postal Domestic Return Receipt was returned by the United States Postal Service, signed by an individual at the address of record. The postal returned receipt is incorporated herein by reference.

6. Government Code section 11506 states, in pertinent part:

"(c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

7. Respondent failed to file a Notice of Defense within 15 days after service upon her of the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 2839.

8. California Government Code section 11520 states, in pertinent part:

"(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent."

9. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on Respondent's express admissions by way of default and the evidence before it finds that the allegations in Accusation No. 2839 are true.

10. The total costs for investigation and enforcement are $2,810.50 as of December 19, 2005.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Nellie Guerrero has subjected her Pharmacy Technician Registration No. TCH 19426 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician Registration license based upon the following violations alleged in the Accusation:

a. Business and Professions Code section 4301, subdivision (f) - theft of dangerous drugs and/or controlled substances.

b. Business and Professions Code sections 4051 and 4059 furnished dangerous drug and/or controlled substance without a prescription.

c. Business and Professions Code section 4063 - refilling a prescription without authorization.

d. Health and Safety Code section 11173 - obtained a controlled substance by fraud, deceit, misrepresentation or subterfuge.

ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 19426, heretofore issued to Respondent Nellie Guerrero, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

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This Decision shall become effective on May 31, 2006.

It is so ORDERED May 1, 2006

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

STANLEY W. GOLDENBERG
Board President

60134289.wpd/

DOJ docket number:LA2005500173

Attachment: Exhibit A: Accusation No.2839

Exhibit A

Accusation No. 2839

60134289.wpd

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BEFORE THE
BOARD OF PHARMACY
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STATE OF CALIFORNIA

In the Matter of the Accusation Against:	Case No. 2839
NELLIE GUERRERO 569 S. Bradshawe Avenue Los Angeles, CA 90022 Pharmacy Technician No. TCH 19426 Respondent.	**A C C U S A T I O N**

Complainant alleges:

PARTIES

1. Patricia F. Harris (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

2. On or about June 14, 1996, the Board issued Original Pharmacy Technician Registration No. TCH 19426 to Nellie Guerrero (Respondent). The pharmacy technician registration was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2005, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 4300 of the Code permits the Board to take disciplinary action to suspend or revoke a license issued by the Board.

5. Section 4301 of the Code 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 procured by fraud or misrepresentation or 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.

. . .

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

6. Section 4051, subdivision (a), of the Code states:

"Except as otherwise provided in this chapter, it is unlawful for any person to manufacture, compound, furnish, sell, or dispense any dangerous drug or dangerous device, or to dispense or compound any prescription pursuant to Section 4040 of a prescriber unless he or she is a pharmacist under this chapter."

7. Section 4059, subdivision (a), of the Code states:

"A person may not furnish any dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian. A person may not furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian."

8. Section 4060 states:

"No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section

2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, physician, podiatrist, dentist, optometrist, veterinarian, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

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

9. Section 4063 of the Code states:

"No prescription for any dangerous drug or dangerous device may be refilled except upon authorization of the prescriber. The authorization may be given orally or at the time of giving the original prescription. No prescription for any dangerous drug that is a controlled substance may be designated refillable as needed."

10. Health and Safety Code section 11173, subdivision (a), states:

"No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact."

11. Section 118, subdivision (b), of the Code states:

"The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground."

12. Section 125.3, subdivision (a), of the Code states, in pertinent part:

"Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department . . . 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."

CONTROLLED SUBSTANCE / DANGEROUS DRUG

13. "Norco" and "Lortab" are brand names for hydrocodone with acetaminophen, a Schedule III controlled substance pursuant to Health and Safety Code Section 11056, subdivision (e)(4), and a dangerous drug pursuant to section 4022 of the Code.

SUMMARY OF FACTS

14. From on or about July 22, 1996 through on or about September 26, 2002, Respondent was employed as a pharmacy technician at Kaiser Foundation Hospital Pharmacy #319 in Los Angeles, California.

15. Kaiser Pharmacy #319 maintained a pharmacy technician signature log. Respondent's signature and initials were kept on file. She logged into the computer as "NMG."

16. On or about July 1, 2002, an internal audit by Kaiser Foundation disclosed an unexplained variance of approximately 5,800 Norco 10mg/325mg brand and generic tablets unaccounted for at Kaiser Pharmacy #319.

17. On or about July 11, 2002, covert video cameras were installed at Kaiser Pharmacy #319, and Mark Horowitz, Pharmacist-in-Charge, began conducting a daily inventory of Norco and Lortab, brand and generic.

18. On or about July 28, 2002, Kaiser Pharmacy #319 completed a DEA form 106 reporting the loss of 2300 tablets of Norco 10mg/325mg, brand, and 3400 tablets of Hydrocodone with Acetaminophen 10mg/325mg, generic, for a total loss of 5700 tablets. The average wholesale price (AWP) for the missing 2300 Norco brand tablets is $1,640.59, and of the missing 3500 Norco generic tablets is $782.59, for a total AWP estimated loss of $2,423.54.

19. On or about August 2, 2002, Mr. Horowitz found that two (2) generic Norco tablets (Hydrocodone with Acetaminophen 5mg/325mg) were missing.

20. A review of the covert video camera's footage for August 1, 2002, showed Respondent at 0918 hours taking tablets and placing them in her laboratory jacket pocket. Pharmacy records show no prescriptions for generic Norco ordered or filled on August 1, 2002.

21. On or about August 6, 2002, Mr. Horowitz found that two (2) more generic Norco tablets (Hydrocodone with Acetaminophen 5mg/325mg) were missing.

22. A review of the covert camera's video footage for August 5, 2002, showed Respondent at 1331 hours taking tablets and placing them in her laboratory jacket pocket. Pharmacy records show no prescriptions for generic Norco ordered or filled on August 5, 2002.

23. On or about September 20, 2002, Mr. Horowitz ran a prescription utilization log for Norco for the month and he found a prescription for Norco for Freddie Guerrero. The prescription, Prescription No. 197411105, was for fifty (50) Norco 10mg/325mg tablets. The prescription had been renewed on or about August 17, 2002, and was filled twice–the first time on or about August 31, 2002, and the second time on or about September 19, 2002.

24. Mr. Horowitz reviewed the office employee files and found that Freddie Guerrero was married to Respondent. Mr. Horowitz also found that Prescription No. 197411105 was renewed from Prescription No. 197268794.

25. The records indicated that "NMG" (Respondent, Nellie Guerrero) renewed this prescription on or about August 17, 2002, by telephone. The doctor listed as authorizing the prescription renewal was Dr. Natalie N. Matsuno.

26. On or about September 24, 2002, Mr. Horowitz contacted Dr. Matsuno by telephone and email to verify the prescription. Dr. Matsuno told Mr. Horowitz she had no record of refilling a Norco prescription for Freddie Guerrero on or about August 17, 2002. Further, Dr. Matsuno had not seen Mr. Guerrero as a patient since December 2001.

27. On or about September 26, 2002, Respondent was confronted by Kaiser staff members, including Mr. Horowitz, and Human Resources Consultant Cheri L. DeKeyser, at Kaiser's West Los Angeles Medical Center Human Resources Office. Respondent admitted she had forged her husband's prescription and falsified the documents at the pharmacy in order to obtain drugs for her husband. She claimed she was helping her husband out and denied being drug dependent. Respondent was confronted with the covert video footage, depicting her taking drugs and placing them in her laboratory jacket pocket. Respondent could not explain her

actions as depicted on the video, but she denied taking drugs. When Respondent was notified by Ms. DeKeyser that pharmacy management intended to terminate her services with the pharmacy for fraud and theft, Respondent resigned her position.

FIRST CAUSE FOR DISCIPLINE

(Theft of Dangerous Drugs/Controlled Substances)

28. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (f) of the Code, in that Respondent took dangerous drugs and controlled substances from her employer, Kaiser Pharmacy #319, as set forth more fully above in paragraphs 19 - 22.

SECOND CAUSE FOR DISCIPLINE

(Possess, Furnish Dangerous Drug/Controlled Substance Without a Prescription)

29. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (j) of the Code, on the grounds of unprofessional conduct for violating sections 4051, 4059, and 4060 of the Code, in that Respondent possessed, furnished, sold or dispensed a controlled substance to her husband, without a prescription, as set forth above in paragraphs 23 - 27.

THIRD CAUSE FOR DISCIPLINE

(Refill Prescription Without Authorization)

30. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (j) of the Code, on the grounds of unprofessional conduct for violating section 4063 of the Code, in that she obtained 100 tablets of Norco, a controlled substance and a dangerous drug, for her husband, Freddie Guerrero, without authorization from the prescriber, as set forth above in paragraphs 23 - 27.

FOURTH CAUSE FOR DISCIPLINE

(Obtain Controlled Substance by Fraud, Deceit, Misrepresentation, or Subterfuge)

31. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (j) of the Code, on the grounds of unprofessional conduct for violating Health and Safety Code section 11173, in that she obtained Norco, a controlled substance, for her husband by fraud, deceit, misrepresentation or subterfuge, as set forth above in paragraphs 23 - 27.

PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration No. TCH 19426, issued to Nellie Guerrero;

2. Ordering Nellie Guerrero 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: 6/21/05

P. F. Harris

PATRICIA F. HARRIS
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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