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7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:	Case No. 2892
11 EMMANUEL ZARCO	OAH No.
12 Respondent.	DEFAULT DECISION
	AND ORDER
	[Gov. Code, §11520]

15
16 FINDINGS OF FACT

- 17 1. On or about September 11, 2003, the Board of Pharmacy (Board) issued
18 Pharmacy Technician License No. TCH 50747 to Emmanuel Zarco (Respondent). The Pharmacy
19 Technician License was in full force and effect at all times relevant to the charges brought herein
20 and will expire on September 30, 2005, unless renewed.
- 21 2. On or about July 22, 2005, Complainant Patricia F. Harris, in her official
22 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs,
23 filed Accusation No. 2892 against Respondent before the Board of Pharmacy.
- 24 3. On or about July 26, 2005, Fe M. Domingo, an employee of the California
25 Department of Justice, served by Certified and First Class Mail a copy of Accusation No. 2892, a
26 Statement to Respondent, two copies of a Notice of Defense, a Request for Discovery, and a copy
27 of Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record
28 with the Board, which was and is 1220 Severus Drive, Vallejo, CA 94589-1484. A copy of the

1 Accusation, the related documents, and Declaration of Service are attached as exhibit A, and are
2 incorporated herein by reference.

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

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

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

10 6. Respondent failed to file a Notice of Defense within 15 days after service
11 upon him of the Accusation, and has therefore waived his right to a hearing on the merits of
12 Accusation No. 2892.

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

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

17 8. Pursuant to its authority under Government Code section 11520, the Board
18 finds Respondent is in default. The Board will take action without further hearing and, based on
19 Respondent's express admissions by way of default and the evidence before it, contained in
20 exhibits A and B finds that the allegations in Accusation No. 2892 are true.

21 9. The total costs for investigation and enforcement are \$1,775.50 as of
22 August 29, 2005.

23 DETERMINATION OF ISSUES

24 1. Based on the foregoing findings of fact, Respondent Emmanuel Zarco has
25 subjected his Pharmacy Technician License No. TCH 50747 to discipline.

26 2. A copy of the Accusation and the related documents and Declaration of
27 Service are attached.

28 3. The agency has jurisdiction to adjudicate this case by default.

1 4. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy
2 Technician License based upon the following violations alleged in the Accusation:

3 a. In violation of Business and Professions Code section 4301(f),
4 Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit or corruption
5 when he, while employed as a Pharmacy Technician (Cashier) in or about June 2004 at Rite Aid
6 Pharmacy # 6233 (PHY 43899), in San Francisco, California, stole or attempted to steal from his
7 employer retail items and controlled substances **diazepam** and **APAP with hydrocodone**.

8 b. In violation of Business and Professions Code sections 4301(h), (j),
9 (o), 4059, and/or Health and Safety Code section 11170, Respondent furnished **diazepam**, a
10 dangerous drug / controlled substance, to himself without a valid prescription.

11 c. In violation of Business and Professions Code sections 4301(h), (j),
12 (o), 4059, and/or Health and Safety Code section 11170, Respondent furnished **APAP with**
13 **hydrocodone**, a dangerous drug / controlled substance, to himself without a valid prescription.

14 d. In violation of Business and Professions Code sections 4301(j), (o),
15 and/or 4060, Respondent, possessed, conspired to possess, and/or assisted in or abetted the
16 possession of **diazepam**, a controlled substance, without a valid prescription.

17 e. In violation of Business and Professions Code sections 4301(j), (o),
18 and/or 4060, Respondent, possessed, conspired to possess, and/or assisted in or abetted the
19 possession of **APAP with hydrocodone**, a controlled substance, without a valid prescription.

20 f. In violation of Business and Professions Code sections 4301(j), (o),
21 and/or Health and Safety Code section 11173(a), Respondent obtained **diazepam**, a controlled
22 substance, by fraud, deceit, or subterfuge.

23 g. In violation of Business and Professions Code sections 4301(j), (o),
24 and/or Health and Safety Code section 11173(a), Respondent obtained **APAP with**
25 **hydrocodone**, a controlled substance, by fraud, deceit, or subterfuge.

26 h. In violation of Business and Professions Code sections 4301(j), (o),
27 and/or Health and Safety Code section 11375, Respondent possessed, conspired to possess,
28 and/or assisted in or abetted possession of **diazepam**, without a prescription.

1 i. In violation of Business and Professions Code sections 4301(j), (o),
2 and/or Health and Safety Code section 11350, Respondent possessed, conspired to possess,
3 and/or assisted in or abetted possession of **APAP with hydrocodone**, a narcotic controlled
4 substance, without a prescription.

5 j. In violation of Business and Professions Code sections 4301(j), (o),
6 and/or Health and Safety Code section 11377, Respondent possessed, conspired to possess,
7 and/or assisted in or abetted possession of **diazepam**, a non-narcotic controlled substance,
8 without a prescription.

9 k. In violation of Business and Professions Code section 4301,
10 Respondent engaged in unprofessional conduct by way of the foregoing acts.

11
12 ORDER


13 IT IS SO ORDERED that Pharmacy Technician License No. TCH 50747,
14 heretofore issued to Respondent Emmanuel Zarco, is revoked.

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

19 This Decision shall become effective on November 2, 2005.

20 It is so ORDERED October 3, 2005

21 BOARD OF PHARMACY
22 DEPARTMENT OF CONSUMER AFFAIRS
23 STATE OF CALIFORNIA

24 By 
25 STANLEY W. GOLDENBERG
26 Board President

27 40061946.wpd
28 DOJ docket number:SF2005200203

29 Attachments:

30 Exhibit A: Accusation No.2892, Related Documents, and Declaration of Service

Exhibit A
Accusation No. 2892,
Related Documents and Declaration of Service

1 BILL LOCKYER, Attorney General
of the State of California
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8 **BOARD OF PHARMACY**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 2892

11 EMMANUEL ZARCO
1220 Severus Drive
12 Vallejo, CA 94589-1484

OAH No.

A C C U S A T I O N

13 Pharmacy Technician License No. TCH 50747

14 Respondent.

15
16 Complainant alleges:

17 PARTIES

- 18 1. Patricia F. Harris (Complainant) brings this Accusation solely in her
19 official capacity as the Executive Officer, Board of Pharmacy, Department of Consumer Affairs.
20 2. On or about September 11, 2003, the Board of Pharmacy issued Pharmacy
21 Technician License Number TCH 50747 to Emmanuel Zarco (Respondent). The Pharmacy
22 Technician License was in full force and effect at all times relevant to the charges brought herein
23 and will expire on September 30, 2005, unless renewed.

24
25 JURISDICTION

- 26 3. This Accusation is brought before the Board of Pharmacy (Board),
27 Department of Consumer Affairs, under the authority of the following laws. All section
28 references are to the Business and Professions Code unless otherwise indicated.

1 4. Section 4011 of the Code provides that the Board shall administer and
2 enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled
3 Substances Act [Health & Safety Code, § 11000 et seq.].

4 5. Section 4300(a) of the Code provides that every license issued by the
5 Board may be suspended or revoked.

6 6. Section 118(b) of the Code provides, in pertinent part, that the suspension,
7 expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to
8 proceed with a disciplinary action during the period within which the license may be renewed,
9 restored, reissued or reinstated. Section 4402(a) of the Code provides that any license that is not
10 renewed within three years following its expiration may not be renewed, restored, or reinstated
11 and shall be canceled by operation of law at the end of the three-year period.

12
13 STATUTORY PROVISIONS

14 7. Section 4301 of the Code provides, in pertinent part, that the Board shall
15 take action against any holder of a license who is guilty of “unprofessional conduct,” defined to
16 include, but not be 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 licensee or
20 otherwise, and whether the act is a felony or misdemeanor or not.

21 ...

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

24 ...

25 “(o) Violating or attempting to violate, directly or indirectly, or assisting in or
26 abetting the violation of or conspiring to violate any provision or term of this chapter or of the
27 applicable federal and state laws and regulations governing pharmacy, including regulations
28 established by the board.

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8. 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.”

9. Section 4059 of the Code provides, in pertinent part, that a person may not furnish any dangerous drug or dangerous device except upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian.

10. Section 4060 of the Code provides, in pertinent part, that no person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, or veterinarian, or furnished pursuant to a drug order issued by a certified nurse-midwife, a nurse practitioner, or a physician assistant.

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

12. Health and Safety Code section 11173, subdivision (a), provides that 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.

13. Health and Safety Code section 11350, in pertinent part, makes it unlawful for any person to possess any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon a written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state.

14. Health and Safety Code section 11375, in pertinent part, makes it unlawful for any person to possess without a prescription, or to possess for sale, or to sell, **diazepam**.

1 FACTUAL BACKGROUND

2 21. From on or about August 2, 2003 to on or about July 2, 2004, Respondent
3 was employed as a Pharmacy Technician (Cashier) at Rite Aid Pharmacy # 6233 (PHY 43899),
4 located at 776 Market Street in San Francisco, California.

5 22. On or about June 23, 2004, Respondent was apprehended during his lunch
6 break by plainclothes store security at Rite Aid Pharmacy # 6233 while attempting to shoplift one
7 or more retail items from the store, including a Snapple® juice drink.

8 23. On or about June 23, 2004 Respondent admitted his attempted theft to Rite
9 Aid security and/or supervisors, and further admitted in writing that he had also stolen other
10 items, including food items, one bottle (100 tablets - 5 mg) of **diazepam**, and one bottle (100
11 tablets) of generic **APAP with hydrocodone** (500 mg acetaminophen/5 mg hydrocodone).

12 24. On or about June 23, 2004, Respondent executed a promissory note for the
13 payment of restitution to Rite Aid of \$96.84, to cover the cost of the stolen items.

14 25. On or about July 1, 2004, an audit performed at Rite Aid Pharmacy # 6233
15 confirmed a loss of 100 tablets of 5 mg **diazepam**, and 100 tablets of **APAP with hydrocodone**.

16
17 FIRST CAUSE FOR DISCIPLINE

18 (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

19 26. Respondent is subject to discipline under section 4301(f) of the Code in
20 that Respondent, as described in paragraphs 21-25 above, committed numerous acts involving
21 moral turpitude, dishonesty, fraud, deceit, or corruption.

22
23 SECOND CAUSE FOR DISCIPLINE

24 (Unlawful Self-Furnishing of Dangerous Drug / Controlled Substance)

25 27. Respondent is subject to discipline under section 4301(h), (j), and/or (o) of
26 the Code, section 4059 of the Code, and/or Health and Safety Code section 11170, in that
27 Respondent, as described in paragraphs 21-25 above, furnished **diazepam (Valium)**, a dangerous
28 drug and controlled substance, to himself without a valid prescription.

1 THIRD CAUSE FOR DISCIPLINE

2 (Unlawful Self-Furnishing of Dangerous Drug / Controlled Substance)

3 28. Respondent is subject to discipline under section 4301(h), (j), and/or (o) of
4 the Code, section 4059 of the Code, and/or Health and Safety Code section 11170, in that
5 Respondent, as described in paragraphs 21-25 above, furnished **APAP with hydrocodone**
6 (**Vicodin**), a dangerous drug and controlled substance, to himself without a valid prescription.

7
8 FOURTH CAUSE FOR DISCIPLINE

9 (Unlawful Possession of Controlled Substance)

10 29. Respondent is subject to discipline under section 4301(j) and/or (o) of the
11 Code, and/or section 4060 of the Code, in that Respondent, as described in paragraphs 21-25
12 above, possessed, conspired to possess, and/or assisted in or abetted the possession of **diazepam**
13 (**Valium**), a controlled substance, without a valid prescription.

14
15 FIFTH CAUSE FOR DISCIPLINE

16 (Unlawful Possession of Controlled Substance)

17 30. Respondent is subject to discipline under section 4301(j) and/or (o) of the
18 Code, and/or section 4060 of the Code, in that Respondent, as described in paragraphs 21-25
19 above, possessed, conspired to possess, and/or assisted in or abetted the possession of **APAP**
20 **with hydrocodone (Vicodin)**, a controlled substance, without a valid prescription.

21
22 SIXTH CAUSE FOR DISCIPLINE

23 (Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

24 31. Respondent is subject to discipline under section 4301(j) and/or (o) of the
25 Code, and/or Health and Safety Code section 11173(a), in that Respondent, as described in
26 paragraphs 21-25 above, obtained **diazepam (Valium)**, a controlled substance, by fraud, deceit,
27 or subterfuge.

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SEVENTH CAUSE FOR DISCIPLINE

(Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

32. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code, and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs 21-25 above, obtained **APAP with hydrocodone (Vicodin)**, a controlled substance, by fraud, deceit, or subterfuge.

EIGHTH CAUSE FOR DISCIPLINE

(Unlawful Possession of Narcotic Controlled Substance)

33. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code, and/or Health and Safety Code section 11350, in that, as described in paragraphs 21-25 above, Respondent possessed, conspired to possess, and/or assisted in or abetted possession of **APAP with hydrocodone (Vicodin)**, a narcotic controlled substance, without a prescription.

NINTH CAUSE FOR DISCIPLINE

(Unlawful Possession of Diazepam)

34. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code, and/or Health and Safety Code section 11375, in that, as described in paragraphs 21-25 above, Respondent possessed, conspired to possess, and/or assisted in or abetted possession of **diazepam (Valium)**, without a prescription.

TENTH CAUSE FOR DISCIPLINE

(Unlawful Possession of Non-Narcotic Controlled Substances)

35. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code, and/or Health and Safety Code section 11377, in that, as described in paragraphs 21-25 above, Respondent possessed, conspired to possess, and/or assisted in or abetted possession of **diazepam (Valium)**, a non-narcotic controlled substance, without a prescription.

1 ELEVENTH CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct)

3 36. Respondent is subject to discipline under section 4301 of the Code in that
4 Respondent, as described in paragraphs 21-25 above, engaged in unprofessional conduct.

5
6
7 PRAAYER

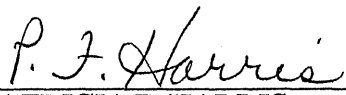
8 WHEREFORE, Complainant requests that a hearing be held on the matters herein
9 alleged, and that following the hearing, the Board of Pharmacy issue a decision:

10 A. Revoking or suspending Pharmacy Technician License Number TCH
11 50747, issued to Emmanuel Zarco.

12 B. Ordering Emmanuel Zarco to pay the Board of Pharmacy the reasonable
13 costs of the investigation and enforcement of this case, pursuant to Business and Professions
14 Code section 125.3; and

15 C. Taking such other and further action as is deemed necessary and proper.

16 DATED: 7/22/05

17
18 
19 PATRICIA F. HARRIS
20 Executive Officer
21 Board of Pharmacy
22 Department of Consumer Affairs
23 State of California
24 Complainant

23 SF2005200203

24 20018835.wpd