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

In the Matter of the Accusation Against: ANTHONY G. MARTINEZ 947 E. Broadway Ave. #5 Long Beach, CA 90802 Pharmacy Technician Registration No. TCH 30168 Respondent.	Case No. 3148 OAH No. **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about June 10, 2008, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, filed Accusation No. 3148 against Anthony G. Martinez (Respondent) before the Board.

2. On or about August 3, 1999, the Board issued Pharmacy Technician Registration No. TCH 30168 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 March 31, 2009, unless renewed.

3. On or about June 27, 2008, one, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation No. 3148, Statement to Respondent, two blank "Notice of Defense" forms, a Request for Discovery, a copy of Government Code sections 11507.5, 11507.6 and 11507.7 to Respondent's address of record with the Board, which was and is: 947 E. Broadway Ave. #5, Long Beach, CA 90802.

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 2, 2008, the aforementioned documents were returned by the U.S. Postal Service marked "Attempted Not Known."

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 him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 3148.

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 the evidence on file herein, finds that the allegations in Accusation No. 3148 are true.

10. The total cost for investigation and enforcement in connection with the Accusation are $4,547.50 as of July 2, 2008.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent has subjected his Pharmacy Technician Registration No. TCH 30168 to discipline.

2. A copy of the Accusation is attached.

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

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

a. Convictions for the substantially related crimes of felony grand theft (Pen. Code, § 487, subd. (a)), felony possession of a narcotic controlled substance for sale (Health & Saf. Code, § 11351), felony possession of a controlled substance for sale (Health & Saf. Code, § 11378) and felony possession for sale of a controlled substance (Health & Saf. Code, § 11378, subd. (b)(1)), subjecting Respondent to disciplinary action under Business and Professions Code sections 490, 4300 and 4301, subdivision (l);

b. Unprofessional conduct for committing acts involving moral turpitude, dishonesty, fraud, deceit or corruption, subjecting Respondent to disciplinary action under Business and Professions Code section 4301, subdivision (f);

c. Unprofessional conduct for violating statutes regulating controlled substances and dangerous drugs, subjecting Respondent to disciplinary action under Business and Professions Code section 4301, subdivision (j);

d. Unprofessional conduct for offering controlled substances for sale, subjecting Respondent to disciplinary action under Business and Professions Code section 4301, subdivision (i);

e. Unprofessional conduct for self-administration of controlled substances, subjecting Respondent to disciplinary action under Business and Professions Code section 4301, subdivision (h);

f. Unprofessional conduct for knowingly making false prescriptions, subjecting Respondent to disciplinary action under Business and Professions Code section 4301, subdivision (g);

g. Unprofessional conduct for misuse of patient records for false prescriptions, subjecting Respondent to disciplinary action under Business and Professions Code section 4301, subdivision (f); and

h. Unprofessional conduct for possession of a methamphetamine pipe, subjecting Respondent to disciplinary action under Business and Professions Code section 4301, subdivision (j).

ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 30168, heretofore issued to Respondent, 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.

This Decision shall become effective on October 3, 2008.

It is so ORDERED September 3, 2008

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

KENNETH H. SCHELL
Board President

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DOJ docket number:LA2008600427

Attachment:

Exhibit A: Accusation No.3148

Exhibit A

Accusation No. 3148

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

In the Matter of the Accusation Against: ANTHONY G. MARTINEZ 947 E. Broadway Ave. #5 Long Beach, CA 90802 Pharmacy Technician Registration No. TCH 30168 Respondent.	Case No. 3148 **ACCUSATION**

Complainant alleges:

PARTIES

1. Virginia Herold (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 August 3, 1999, the Board Pharmacy Technician Registration Number TCH 30168 to Anthony G. Martinez (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2009, 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.

STATUTORY PROVISIONS

4. Section 118, subdivision (b) of the Code provides that the suspension/expiration/surrender/cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 4300 of the Code provides in pertinent part that every license issued by the Board is subject to discipline, including suspension or revocation.

6. Section 4301 of the Code states:

"The board shall take action against any holder of a license who is guilty of unprofessional conduct. . . . 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.

"(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

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

"(i) Except as otherwise authorized by law, knowingly selling, furnishing, giving away, or administering or offering to sell, furnish, give away, or administer any controlled substance to an addict.

"(j) The violation of any of the statutes of this state, or any other state, or of the

United States regulating controlled substances and dangerous drugs.

. . .

"(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."

7. Section 4022 of the Code defines the term "dangerous drug" as including any drug "that by federal or state law can be lawfully dispensed only on prescription . . . ."

8. Section 4059 of the Code prohibits the furnishing of any dangerous drug "except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor . . . ."

9. Section 4060 of the Code states in pertinent part: "No person shall possess any controlled substances, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor . . . ."

10. Section 490 of the Code states in pertinent part that the Board may

"suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. . . ."

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."

12. Section 125.3 of the Code states 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.

FIRST CAUSE FOR DISCIPLINE

(Convictions for Substantially Related Crime)

13. Respondent is subject to disciplinary action under sections 490, 4300 and 4301, subdivision (l) of the Code, in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent was convicted of five crimes substantially related to the qualifications, functions or duties of a pharmacy technician as follows:

a. On or about August 7, 2007, in a criminal proceeding entitled *People v. Martinez*, in Los Angeles County Superior Court, Case No. NA074348, the criminal court convicted Respondent on his plea of nolo contendere to the following five counts:

i. the felony of grand theft, in violation of Penal Code section 487, subdivision (a);

ii. the felony of possession of a narcotic controlled substance for sale,

in violation of Health and Safety Code section 11351;

iii. the felony of possession of a narcotic substance for sale, in violation of Health and Safety Code section 11351;

iv. the felony of possession of a controlled substance for sale, in violation of Health and Safety Code section 11378; and

v. the felony of possession for sale of a controlled substance, in violation of Health and Safety Code section 11378, subdivision (b)(1).

b. The circumstances of the convictions are that from on or about December 23, 2006 through March 4, 2007, exact dates unknown, Respondent, while working as a pharmacy technician at a Kaiser Permanente medical facility, diverted and stole generic and brand Deconamine SR, Ketalar, Ketamine, Levitra, Propecia, Viagra, Vicodin and Xanax, schedule III controlled substances and dangerous drugs within the meaning of section 4022 which Respondent obtained without a prescription, in violation of Code sections 4059 and 4060. On or about March 9, 2007, Respondent was arrested for removing multiple prescription drugs from his place of employment at the Kaiser Permanente pharmacy. When the arresting police officers searched Respondent's car in the pharmacy's parking lot, multiple bottles of prescription medication, including a container labeled Bayer that contained Levitra, were found. The police also found clear baggies containing a crystalline substance resembling methaphetamine, and clear baggies containing a substance resembling cocaine HCl and rock cocaine.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct -- Dishonest Acts)

14. Respondent is subject to disciplinary action under section 4301, subdivision (f) of the Code in that he committed acts involving moral turpitude, dishonesty, fraud, deceit or corruption, as set forth in paragraph 13 above and as incorporated by reference.

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THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct -- Violation of Controlled Substances Laws)

15. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the Code in that he violated statutes regulating controlled substances and dangerous drugs, as set forth in paragraph 13 above and as incorporated by reference.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct -- Offering Controlled Substances for Sale)

16. Respondent is subject to disciplinary action under section 4301, subdivision (i) of the Code in that he possessed for sale the controlled substances of Ketamine, Vicodin ES and Xanax, as set forth in paragraph 13 above and as incorporated by reference. In addition, on or about March 9, 2007, during a work interview prior Respondent's arrest, he admitted giving some of the Xanax he stole to friends.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct -- Self-Administration of Controlled Substances)

17. Respondent is subject to disciplinary action under section 4301, subdivision (h) of the Code in that he administered to himself the controlled substances, which he stole from his place of employment as set forth in paragraph 13 above. The circumstances are as follows:

a. On or about March 9, 2007, during a work interview with the pharmacist in charge and other Kaiser employees, Respondent admitted that he used the Xanax that he stole.

SIXTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct -- False Prescriptions)

18. Respondent is subject to disciplinary action under section 4301, subdivision (g) of the Code in that he knowingly made false prescriptions. The circumstances are as follows:

a. From on or about January 21 through March 4, 2007, exact dates

unknown, Respondent created fictitious prescriptions for Ketamine, generic Vicodin and Xanax, in violation of Health and Safety Code section 11173. These fictitious prescriptions included:

i. On or about January 21, 2007, Respondent generated prescription number 288801590 for two milligrams of Xanax, quantity 300, using a non-member patient's name and naming Dr. Richard S. Segal without the physician's authorization. On or about January 23, 2007, the prescription was filled and placed in the will-call section. Thereafter, the prescription was missing.

ii. On or about February 2, 2007, Respondent generated prescription number 288816267 for 500 milliliters of Ketalar (Ketamine), using Dr. Michael P. Acord's name without the physician's authorization. On or about February 5, 2007, the prescription was filled for 50 milliliters and placed in the will-call section in bin number 54. After Respondent came to work on his day off, the medication was missing.

iii. On or about February 3, 2007, Respondent generated prescription number 288817293 for two milligrams of Xanax, quantity 200, using Dr. Acord's name without the physician's authorization. On or about February 6, 2007, the prescription was filled and placed in bin number 34. The next day, the medication was missing.

iv. On or about February 7, 2007, Respondent generated prescription number 288822333 for two miligrams of Xanax, quantity 200, using Dr. Acord's name without the physician's authorization, and the prescription was filled. The medication was subsequently placed in the return-to-stock area. On or about February 21, 2007, the medication was missing.

v. On or about February 21, 2007, Respondent generated prescription number 288837660 for two milligrams of Xanax, quantity 300, using Dr. Segal's name without the physician's authorization. On or about February 22, 2007, the prescription was filled. On or about February 23, 2007, the prescription went missing.

vi. On or about March 2, 2007, Respondent generated prescription number 288848126 for two milligrams of Xanax, quantity 400, using Dr. Acord's name without the physician's authorization. On or about March 3, 2007, the prescription was filled with two milligrams of Xanax, quantity 200. On or about March 7, 2007, the prescription went missing.

SEVENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct -- Misuse of Patient Records for False Prescriptions)

19. Respondent is subject to disciplinary action under section 4301, subdivision (f) of the Code and California Code of Regulations, title 16, section 1764, in that he committed acts involving moral turpitude, dishonesty, fraud, deceit or corruption. The circumstances are as follows:

a. From on or about January 21 through March 4, 2007, Respondent breached patient confidentiality by using patient records to create fictitious prescriptions and then stole those prescriptions from his employer.

EIGHTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Possession of Methamphetamine Pipe)

20. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the Code in that he violated a state statute regulating controlled substances and dangerous drugs. The circumstances are as follows:

a. On or about March 9, 2007, during a Kaiser internal investigatory interview prior to Respondent's arrest, Respondent dropped a glass pipe used for smoking the controlled substance of methamphetamine. Possession of a pipe used for smoking a Schedule III controlled substance constitutes a violation of Health and Professions Code section 11364.

PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 30168, issued to Respondent.

2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3;

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

DATED: 6/10/08

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

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