

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 RITA M. LANE, State Bar No. 171352
Deputy Attorney General
4 110 West "A" Street, Suite 1100
San Diego, CA 92101

5
6 P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2614
7 Facsimile: (619) 645-2061

8 Attorneys for Complainant

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

12 In the Matter of the Accusation Against:
13 DAVID TORRES
8341 Acacia Avenue
14 Garden Grove, CA 92841
Pharmacy Technician Registration No. TCH
15 66714
16 Respondent.

Case No. 3160
**DEFAULT DECISION
AND ORDER**
[Gov. Code, §11520]

17
18 FINDINGS OF FACT

- 19 1. On or about January 1, 2008, Complainant Virginia Herold, in her official
20 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs,
21 filed Accusation No. 3160 against David Torres (Respondent) before the Board of Pharmacy.
- 22 2. On or about December 21, 2005, the Board of Pharmacy (Board) issued
23 Pharmacy Technician Registration No. TCH 66714 to Respondent. The Pharmacy Technician
24 Registration expired on May 31, 2007, and has not been renewed.
- 25 3. On or about September 2, 2008, Denise Hosman, an employee of the
26 Department of Justice, served by Certified and First Class Mail a copy of Accusation No. 3160,
27 Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code
28 sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which

1 was and is 8341 Acacia Avenue, Garden Grove, CA 92841. A copy of the Accusation is
2 attached as Exhibit A, and is 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. Business and Professions Code section 118 states, in pertinent part:

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

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

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

21 7. Respondent failed to file a Notice of Defense within 15 days after service
22 upon him of the Accusation, and therefore waived his right to a hearing on the merits of
23 Accusation No. 3160.

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

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

9 Pursuant to its authority under Government Code section 11520, the Board
10 finds Respondent is in default. The Board will take action without further hearing and, based on
11 the evidence on file herein, finds that the allegations in Accusation No. 3160 are true.

12 10. The total cost for investigation and enforcement in connection with the
13 Accusation are \$3,588.50 as of November 4, 2008.

14 ///

15 ///

1 DETERMINATION OF ISSUES

2 1. Based on the foregoing findings of fact, Respondent David Torres has
3 subjected his Pharmacy Technician Registration No. TCH 66714 to discipline.

4 2. A copy of the Accusation is attached.

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

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

8 a. Respondent is subject to disciplinary action under Code section
9 4301(f) for acts of dishonesty, fraud or deceit in that from approximately May 1, 2005
10 through March 9, 2007, while Respondent was working at Sav-On Drugs No. 9540, he
11 stole the controlled substances, Valium, Darvocet and Vicodin, from his employer.

12 b. Respondent is subject to disciplinary action under Code section
13 4301(j), in conjunction with Code section 4060, for possession of controlled substances
14 without a legitimate prescription, in that on February 16, 2007, Respondent was in
15 possession of 1.2 grams of Marijuana, 17 tablets of generic Darvocet, 37 tablets of
16 generic Diazepam and 20 tablets of generic Vicodin without a prescription.

17 c. Respondent is subject to disciplinary action under Code section
18 4301(j), in conjunction with H&S Code section 11170, for illegally furnishing controlled
19 substances to himself, as alleged in paragraphs 4(a) and (b).

20 d. Respondent is subject to disciplinary action under section 4301(j),
21 in conjunction with H&S Code section 11173, for obtaining controlled substances by
22 fraud, deceit, subterfuge or concealment of a material fact, as more particularly alleged in
23 paragraphs 4(a) and (b) above.

24 e. Respondent is subject to disciplinary action under Code section
25 4301(h), in conjunction with H&S Code section 11170, for administering controlled
26 substances to himself. On February 16, 2007, Respondent was arrested for being in
27 possession of 1.2 grams of Marijuana, and three bottles of prescription drugs consisting
28 of 17 tablets of generic Darvocet, 37 tablets of generic Diazepam and 20 tablets of

1 generic Vicodin. Each pill bottle was for a prescription in the name of someone other
2 than Respondent. The Darvocet pill bottle was missing 3 tablets from the original
3 prescribed amount, the Diazepam pill bottle was missing 13 tablets from the original
4 prescribed amount and the Vicodin pill bottle was missing 10 tablets from the original
5 prescribed amount. Respondent admitted to the arresting officer that he took the pills
6 from his employer with the specific intent to use the pills for himself.

7 ORDER

8 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 66714,
9 heretofore issued to Respondent David Torres, is revoked.


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

15 This Decision shall become effective on January 22, 2009.

16 It is so ORDERED December 23, 2008

17
18 BOARD OF PHARMACY
19 DEPARTMENT OF CONSUMER AFFAIRS
20 STATE OF CALIFORNIA

21 By


22 KENNETH H. SCHELL
23 Board President

24 80296210.wpd
25 DOJ docket number:SD2008800688

26 Attachment:

27 Exhibit A: Accusation No. 3160
28

Exhibit A
Accusation No. 3160

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 RITA M. LANE, State Bar No. 171352
Deputy Attorney General
4 110 West "A" Street, Suite 1100
San Diego, CA 92101
5
6 P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2614
7 Facsimile: (619) 645-2061

8 Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 3160

13 DAVID TORRES
8341 Acacia Avenue
14 Garden Grove, CA 92841

A C C U S A T I O N

15 Pharmacy Technician Registration No.
16 TCH 66714

17 Respondent.

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, Department of Consumer Affairs.
22 2. On or about December 21, 2005, the Board of Pharmacy issued Pharmacy
23 Technician Registration Number TCH 66714 to David Torres (Respondent). The Pharmacy
24 Technician Registration was canceled on May 31, 2007.

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
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

4. Section 4300, subdivision (a) of the Code states in pertinent part:

(a) Every license issued may be suspended or revoked.

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.

....

(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.

....

(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.

....

6. Section 4021 of the Code states "[c]ontrolled substance" means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

7. Section 4022 of the Code states

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

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

8. Section 4060 of the Code states:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, 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, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, 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.

9. Section 118, subdivision (b), of the Code provides that the 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.

10. Section 4402 of the Code states:

(a) Any pharmacy license that is not renewed within three years following its expiration may not be renewed, restored, or reinstated and shall be canceled by operation of law at the end of the three-year period.

11. 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.

12. Health & Safety Code (H&S Code) section 11170 states that "[n]o person shall prescribe, administer, or furnish a controlled substance for himself."

13. H&S Code section 11173 states in pertinent part that no person shall obtain a controlled substance by fraud, deceit, subterfuge or concealment of a material fact.

DRUGS

14. Hydrocodone is a narcotic Schedule III controlled substance, pursuant to H&S Code section 11056, and is a dangerous drug pursuant to Business and Professions Code section 4022. Hydrocodone is used as a narcotic analgesic in the relief of pain.

15. Vicodin is a trade name for the generic drug hydrocodone with acetaminophen which is designated by Health and Safety Code section 11056(e)(4) as a narcotic

1 drug and a Schedule III controlled substance, and by Business and Professions Code section 4022
2 as a dangerous drug. Vicodin is used as a narcotic analgesic in the relief of pain.

3 16. Darvocet is a brand name for propoxyphene napsylate, a narcotic analgesic
4 agent and a Schedule IV controlled substance, pursuant to Health & Safety Code section 11057.
5 Darvocet is used to treat pain.

6 17. Diazepam is the generic name for the trade name Valium, which is
7 designated by Health and Safety Code section 11057(d)(3) as a non-narcotic drug and a Schedule
8 IV controlled substance, and by Business and Professions Code section 4022 as a dangerous
9 drug. Diazepam is used in the management of anxiety.

10 18. Marijuana, a brand of Cannabis, is a Schedule I controlled substance as
11 designated by Health and Safety Code section 11054(d)(13) and is a hallucinogenic.

12 **FIRST CAUSE FOR DISCIPLINE**

13 **(Unprofessional Conduct: Stealing Controlled Substances)**

14 19. Respondent is subject to disciplinary action under Code section 4301(f) for
15 acts of dishonesty, fraud or deceit, as more particularly alleged below:

16 a. From approximately October 5, 2002 to March 9, 2007, Respondent was
17 employed as a pharmacy technician at Sav- On Drugs No. 9540, a.k.a. CVS Pharmacy No. 9540,
18 in Newport Beach, California.

19 b. From approximately May 1, 2005 through March 9, 2007, while
20 Respondent was working at Sav-On Drugs No. 9540, he stole the following quantities of brand
21 and generic controlled substances from his employer:

22 Valium - 595 tablets

23 Darvocet - 1,172 tablets

24 Vicodin - 875 tablets

25 **SECOND CAUSE FOR DISCIPLINE**

26 **(Unprofessional Conduct: Possession of Controlled Substances Without a Prescription)**

27 20. Respondent is subject to disciplinary action under Code section 4301(j), in
28 conjunction with Code section 4060, for possession of controlled substances without a legitimate

1 prescription, in that on February 16, 2007, Respondent was in possession of 1.2 grams of
2 Marijuana, 17 tablets of generic Darvocet, 37 tablets of generic Diazepam and 20 tablets of
3 generic Vicodin without a prescription.

4 **THIRD CAUSE FOR DISCIPLINE**

5 **(Unprofessional Conduct: Illegal Furnishing of Controlled Substances to Oneself)**

6 21. Respondent is subject to disciplinary action under Code section 4301(j), in
7 conjunction with H&S Code section 11170, for illegally furnishing controlled substances to
8 himself, as more particularly alleged in paragraph 19(a) and (b) above and incorporated herein by
9 reference.

10 **FOURTH CAUSE FOR DISCIPLINE**

11 **(Unprofessional Conduct: Obtaining Controlled Substances by Fraud, Subterfuge)**

12 22. Respondent is subject to disciplinary action under section 4301(j), in
13 conjunction with H&S Code section 11173, for obtaining controlled substances by fraud, deceit,
14 subterfuge or concealment of a material fact, as more particularly alleged in paragraph 19(a) and
15 (b) above, and incorporated herein by reference.

16 **FIFTH CAUSE FOR DISCIPLINE**

17 **(Unprofessional Conduct: Administering Controlled Substance to Oneself)**

18 23. Respondent is subject to disciplinary action under Code section 4301(h),
19 in conjunction with H&S Code section 11170, for administering controlled substances to himself
20 as more particularly alleged below:

21 a. On February 16, 2007, Respondent was arrested for being in possession of
22 1.2 grams of Marijuana, and three bottles of prescription drugs consisting of 17 tablets of generic
23 Darvocet, 37 tablets of generic Diazepam and 20 tablets of generic Vicodin. Each pill bottle was
24 for a prescription in the name of someone other than Respondent. The Darvocet pill bottle was
25 missing 3 tablets from the original prescribed amount, the Diazepam pill bottle was missing 13
26 tablets from the original prescribed amount and the Vicodin pill bottle was missing 10 tablets
27 from the original prescribed amount. Respondent admitted to the arresting officer that he took
28 the pills from his employer with the specific intent to use the pills for himself.

1 PRAYER

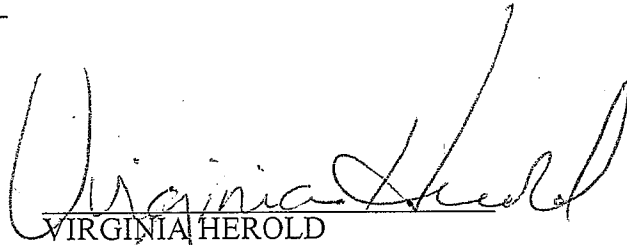
2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Board of Pharmacy issue a decision:

4 1. Revoking or suspending Pharmacy Technician Registration Number TCH
5 66714, issued to David Torres;

6 2. Ordering David Torres to pay the Board of Pharmacy the reasonable costs
7 of the investigation and enforcement of this case, pursuant to Business and Professions Code
8 section 125.3; and

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

10 DATED: 8/28/08

11
12
13 

14 VIRGINIA HEROLD
15 Executive Officer
16 Board of Pharmacy
17 Department of Consumer Affairs
18 State of California
19 Complainant

20 SD2008800688
21 80250369.wpd

DECLARATION OF SERVICE

(Certified & First Class Mail (separate mailing))

Case Name: Accusation Against: David Torres, TCH

Board of Pharmacy Case No. 3160

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 110 West "A" Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266

I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On September 2, 2008, I served the attached **Statement to Respondent; Accusation; Notice of Defense (2 copies); Request for Discovery; Copy of Government Code sections 11507.5, 11507.6, 11507.7** by placing a true copy thereof enclosed in a sealed envelope as certified mail with postage thereon fully prepaid and return receipt requested, and another true copy of the **Statement to Respondent; Accusation; Notice of Defense (2 copies); Request for Discovery; Copy of Government Code sections 11507.5, 11507.6, 11507.7** was enclosed in a second sealed envelope as first class mail with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General, addressed as follows:

David Torres
8341 Acacia Avenue
Garden Grove, CA 92841

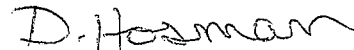
Certified Article No.
7007 2680 0000 0527 8899

Courtesy copies via 1st class mail only to:

Board of Pharmacy
Virginia K. Herold
1625 North Market Blvd., Suite N219
Sacramento, CA 95834

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on September 2, 2008, at San Diego, California.

D. Hosman



Typed Name

Signature

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

7007 2680 0000 0527 8899

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	


Postmark
Here

1 David Torres
 8341 Acacia Avenue
 Garden Grove, CA 92841

St
or
Ct

PS Form 3800, August 2005

See Reverse for Instructions

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature  <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) _____ C. Date of Delivery <u>9-4-08</u></p>
<p>1. Article Addressed to:</p> <p>David Torres 8341 Acacia Avenue Garden Grove, CA 92841</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number: (Transfer from service label)</p>	<p>7007 2680 0000 0527 8899</p>