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

10 In the Matter of the Accusation Against:

Case No. 3227

11 **ALEJANDRA PALOMERA**  
12 **14928 Ryan Street**  
13 **Sylmar, CA 91342**

**DEFAULT DECISION AND ORDER**

14 **Pharmacy Technician No. TCH 61961**

[Gov. Code, §11520]

15 Respondent.

16  
17 **FINDINGS OF FACT**

18 1. On or about October 22, 2009, Complainant Virginia Herold, in her official capacity  
19 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed  
20 Accusation No. 3227 against Alejandra Palomera ("Respondent") before the Board of Pharmacy.

21 2. On or about April 15, 2005, the Board of Pharmacy ("Board") issued Pharmacy  
22 Technician No. TCH 61961 to Respondent. The license is set to expire on June 30, 1010, unless  
23 renewed.

24 3. On or about November 16, 2009, Carolina Lopez-Castillo, an employee of the  
25 Department of Justice, served by Certified and First Class Mail a copy of the Accusation No.  
26 3227, Statement to Respondent, Notice of Defense, Request for Discovery, and Government  
27 Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board,  
28 which was and is:

1 14928 Ryan Street  
2 Sylmar, CA 91342.

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

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

6 5. On or about December 14, 2009, the aforementioned documents were returned by the  
7 U.S. Postal Service marked "No Forwarding Address."

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

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

14 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of  
15 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 3227.

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

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

21 9. Pursuant to its authority under Government Code section 11520, the Board finds  
22 Respondent is in default. The Board will take action without further hearing and, based on the  
23 evidence on file herein, finds that the allegations in Accusation No. 3227 are true.

24 10. The total cost for investigation and enforcement in connection with the Accusation  
25 are \$3,018.00 as of December 18, 2009.

#### 26 **DETERMINATION OF ISSUES**

27 1. Based on the foregoing findings of fact, Respondent Alejandra Palomera has  
28 subjected her Pharmacy Technician No. TCH 61961 to discipline.

2. A copy of the Accusation is attached.

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

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

1 a. Respondent is subject to disciplinary action pursuant to Code section 4301,  
2 subdivision (l), on the grounds of unprofessional conduct, in that on or about May 31, 2007, in  
3 the criminal proceeding entitled People vs. Alejandra Palomera (Super. Ct., Los Angeles Cty.,  
4 2007, Case No. PA055983), Respondent was convicted by the court following her plea of nolo  
5 contendere of a violation of Penal Code section 487, subdivision (a) (grand theft, property over  
6 \$400), a misdemeanor. The circumstances of the crime are that Respondent admitted that  
7 between approximately September 2006, and March 2007, during the course of her employment  
8 with Vons Pharmacy #2111, she took approximately 900 Lorcet 10/650 tablets, 400 Norco 10/325  
9 tablets, 100 Vicodin ES tablets, as well as Xanax #300 tablets from pharmacy supplies without  
10 lawful authority.

11 b. Respondent is subject to disciplinary action pursuant to Code section 4301,  
12 subdivision (f), on the grounds of unprofessional conduct, in that between approximately  
13 September 2006, to March 2007, while employed as a registered pharmacy technician at Vons  
14 Pharmacy #2111, Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit  
15 or corruption, as more fully discussed in subparagraph (a), above.

16 c. Respondent is subject to disciplinary action pursuant to Code section 4301,  
17 subdivision (j), on the grounds of unprofessional conduct, in that between approximately  
18 September 2006, to March 2007, while employed at Vons Pharmacy #2111, as a registered  
19 pharmacy technician, Respondent violated the following state laws regulating controlled  
20 substances. Respondent possessed approximately 900 Lorcet 10/650 tablets, 400 Norco 10/325  
21 tablets, 100 Vicodin ES tablets, as well as Xanax #300 tablets without lawful prescriptions for the  
22 medications from a physician, dentist, podiatrist, optometrist, or veterinarian, in violation of Code  
23 section 4060 and Health & Safety Code section 11350, subdivision (a). Respondent obtained  
24 approximately 900 Lorcet 10/650 tablets, 400 Norco 10/325 tablets, 100 Vicodin ES tablets, as  
25 well as Xanax #300 tablets by fraud deceit, misrepresentation, or subterfuge by removing the  
26 drugs from pharmacy supplies, in violation of Health and Safety Code section 11173, subdivision  
27 (a).

28 ///

1 d. Respondent is subject to disciplinary action pursuant to Code section 4301,  
2 subdivision (o), on the grounds of unprofessional conduct, as more fully discussed in  
3 subparagraph (a), above, in that Respondent violated or attempted to violate, Code section 4059,  
4 subdivision (a), by furnishing the following controlled substances to herself from the inventory of  
5 the pharmacy without a prescription: approximately 900 Lorcet 10/650 tablets, 400 Norco 10/325  
6 tablets, 100 Vicodin ES tablets, as well as Xanax #300 tablets.

7 **RECORD**

8 The Record upon which this default decision and order are based is located at the  
9 Sacramento headquarters of the Board.

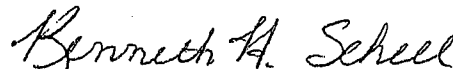
10 **ORDER**

11 IT IS SO ORDERED that Pharmacy Technician No. TCH 61961, heretofore issued to  
12 Respondent Alejandra Palomera, is revoked.

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

17 This Decision shall become effective on April 8, 2010.

18 It is so ORDERED March 9, 2010.

19 

20 KENNETH H. SCHELL, BOARD PRESIDENT  
21 FOR THE BOARD OF PHARMACY  
22 DEPARTMENT OF CONSUMER AFFAIRS

23  
24 Attachment:

25 Exhibit A: Accusation No.3227

26  
27 60503269.DOC  
28 DOJ Matter ID: LA2008602053

Exhibit A  
Accusation No. 3227

1 EDMUND G. BROWN JR., Attorney General  
of the State of California  
2 GREGORY J. SALUTE  
Supervising Deputy Attorney General  
3 ALVARO MEJIA, State Bar No. 216956  
Deputy Attorney General  
4 300 So. Spring Street, Suite 1702  
Los Angeles, CA 90013  
5 Telephone: (213) 897-0083  
Facsimile: (213) 897-2804  
6  
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:	Case No. 3227
12 ALEJANDRA PALOMERA 14928 Ryan Street 13 Sylmar, California 91342 14 Pharmacy Technician Registration Number TCH 61961 15 16 Respondent.	ACCUSATION

17 Virginia Herold ("Complainant") alleges:

18 PARTIES

19 1. Complainant brings this Accusation solely in her official capacity as the  
20 Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

21 Pharmacy Technician Registration

22 2. On or about April 5, 2005, the Board of Pharmacy issued Pharmacy  
23 Technician Registration Number TCH 61961 to Alejandra Palomera ("Respondent"). The  
24 pharmacy technician registration will expire on June 30, 2010.

25 STATUTORY PROVISIONS

26 3. Business and Professions Code ("Code") section 4202, subdivision (d),  
27 states that the Board may suspend or revoke a registration issued pursuant to this section on any  
28 ground specified in Section 4301.

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4. Code section 4300 states, in pertinent part:

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

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

(1) Suspending judgment.

(2) Placing him or her upon probation.

(3) Suspending his or her right to practice for a period not exceeding one year.

(4) Revoking his or her license.

(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

5. Code section 4301 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 . . .

(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.

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

5 6. Code section 4022 states:

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

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

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

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

17 7. Bus. & Prof. Code section 4059, subdivision (a), states:

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

22 8. Code section 4060 states, in pertinent part:

23 No person shall possess any controlled substance, except that furnished to  
24 a person upon the prescription of a physician, dentist, podiatrist, or veterinarian,  
25 or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant  
26 to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician  
27 assistant pursuant to Section 3502.1. This section shall not apply to the  
28 possession of any controlled substance by a manufacturer, wholesaler, pharmacy,  
physician, podiatrist, dentist, 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.

9. Health and Safety Code section 11350, subdivision (a), states:

Except as otherwise provided in this division, every person who possesses  
any controlled substance specified in subdivision (b), (c), or (e), or paragraph (1)  
of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of  
subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section  
11055, or specified in subdivision (h) of Section 11056, or (2) any controlled  
substance classified in Schedule III, IV, or V which is a narcotic drug, unless  
upon the written prescription of a physician, dentist, podiatrist, or veterinarian  
licensed to practice in this state, shall be punished by imprisonment in the state  
prison.

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

(a) 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.

COST RECOVERY

11. Code section 125.3 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.

CONTROLLED SUBSTANCE

12. "Vicodin," "Vicodin ES," and "Norco" are brand names of Hydrocodone combined with acetaminophen, which is a Schedule III controlled substance, as designated by Health and Safety Code section 11056, subdivision (e)(4) and a dangerous drug under Code section 4022.

13. "Xanax," a brand of alprazolam, is a Schedule IV controlled substance as designated by Health and Safety Code section 11057, subdivision (d)(1) and a dangerous drug under Code section 4022 in that under federal or state law it requires a prescription.

FACTUAL BACKGROUND

14. At the end of February 2007, Vons Pharmacy #2111, located in Newhall, California, suspected that Respondent, employed at that facility as a registered pharmacy technician, was taking Lorcet tablets. The pharmacy installed covert cameras and Respondent was caught on tape taking two white bottles of Lorcet tablets from the Lorcet section, placing them into a cardboard box, and taking the cardboard box to the back of the pharmacy where the employees kept their personal belongings. Respondent then exited the pharmacy, where she was stopped by a loss prevention officer. During a detailed interview, Respondent admitted that between approximately September 2006, and March 2007, during the course of her employment with the pharmacy, she took approximately 900 Lorcet 10/650 tablets, 400 Norco 10/325 tablets, 100 Vicodin ES tablets, as well as Xanax #300 tablets from pharmacy supplies.





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2 P R A Y E R

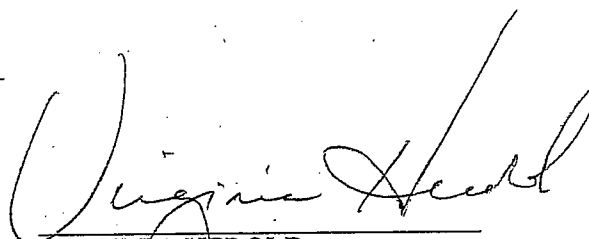
3 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
4 alleged, and that following the hearing, the Board of Pharmacy issue a decision:

5 1. Revoking or suspending Pharmacy Technician Registration Number  
6 TCH 61961, issued to Alejandra Palomera;

7 2. Ordering Alejandra Palomera to pay the Board of Pharmacy the  
8 reasonable costs of the investigation and enforcement of this case, pursuant to Code section  
9 125.3; and,

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

11 DATED: 10/22/09

12 

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

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21 DOJ Matter ID: LA2008602053  
22 60482311.wpd  
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