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

In the Matter of the Accusation Against: **EMMANUEL ROMERO** **7288 Font Avenue** **Riverside, CA 92509** **Original Pharmacy Technician Registration No. TCH 51614** Respondent.	Case No. 3295 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about October 29, 2009, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 3295 against Emmanuel Romero (Respondent) before the Board of Pharmacy.

2. On or about October 3, 2003, the Board of Pharmacy (Board) issued Original Pharmacy Technician Registration No. TCH 51614 to Respondent. The Original Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2011, unless renewed.

3. On or about November 3, 2009, Denise Hosman, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation No. 3295, 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: 7288

Font Avenue, Riverside, CA 92509. 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. 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.

6. 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. 3295.

7. 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.

8. 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. 3295 are true.

9. The total cost for investigation and enforcement in connection with the Accusation are $3,680.00 as of December 8, 2009.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Emmanuel Romero has subjected his Original Pharmacy Technician Registration No. TCH 51614 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 Original Pharmacy Technician Registration based upon the following violations alleged in the Accusation:

///

a. Respondent is subject to disciplinary action under Business and Professions Code (Code) section 4301(f) for acts of dishonesty, fraud or deceit when on or about October 22, 2007, Respondent admitted to his employer that he had been stealing bottles of Hydrocodone/APAP from Pharmacy Express for two years.

b. Respondent is subject to disciplinary action under Code section 4301(j) in conjunction with Code section 4060 for possession of a controlled substance without a legitimate prescription, when he possessed Hydrocodone/APAP that he stole from his employer over a two year period.

c. Respondent is subject to disciplinary action under Code section 4301(j) in conjunction with Code section 4059(a) and Health & Safety Code section 11170 for illegally furnishing a controlled substance to himself when he stole Hydrocodone/APAP from his employer for over a two year period.

d. Respondent is subject to disciplinary action under Code section 4301(j) in conjunction with Health & Safety Code section 11173(a) for obtaining a controlled substance by fraud, deceit, subterfuge or concealment of a material fact when he stole Hydrocodone/APAP from his employer for over a two year period.

e. Respondent is subject to disciplinary action under Code section 4301(l) for conviction of a crime substantially related to the qualifications, functions, or duties of a pharmacy technician for Respondent stealing approximately 42,546 Hydrocodone/APAP pills from his employer Express Pharmacy.

ORDER

IT IS SO ORDERED that Original Pharmacy Technician Registration No. TCH 51614, heretofore issued to Respondent Emmanuel Romero, 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 April 8, 2010.

It is so ORDERED March 9, 2010.

Kenneth H. Schell

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

80412453.DOC
DOJ docket number:SD2009803785

Attachment:

Exhibit A: Accusation No.3295

Exhibit A
Accusation No. 3295

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

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

Attorneys for Complainant

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

In the Matter of the Accusation Against: EMMANUEL ROMERO 7288 Font Avenue Riverside, CA 92509 Pharmacy Technician Registration No. TCH 51614 Respondent.	Case No. 3295 **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, Department of Consumer Affairs.

2. On or about October 3, 2003, the Board of Pharmacy issued Pharmacy Technician Registration Number TCH 51614 to Emmanuel Romero (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, 2011, unless renewed.

///

///

JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws of the Business and Professions Code:

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

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

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

STATUTORY PROVISIONS

6. 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 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 4059 of the Code states:

(a) A person may not furnish any dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

. . . .

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.

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

9. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

10. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

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

12. 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.

REGULATORY PROVISIONS

13. 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, function 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 this license or registration in a manner consistent with the public health, safety, or welfare.

COST RECOVERY

14. Section 125.3 of the Code provides, 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.

DRUG

15. Hydrocodone/APAP is a narcotic Schedule III controlled substance, pursuant to H&S Code section 11056(e)(4).

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Acts of Dishonesty, Fraud and Deceit)

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

a. On October 22, 2007, Respondent was employed as a pharmacy technician at Pharmacy Express in Riverside, California and had been working there for almost four years.

b. On or about October 22, 2007, Respondent admitted to his employer that he had been stealing bottles of Hydrocodone/APAP from Pharmacy Express for the last two years.

Respondent ordered large quantities of Hydrocodone/APAP for Pharmacy Express. Once the Hydrocodone/APAP was delivered to the pharmacy, Respondent took the boxes of medication to the bathroom or storage room, placed the medications in a bag and later placed the bag of medications in his car. Respondent admitted that he began taking two bottles a week and then increased the amount after a few weeks. Respondent also admitted to his employer that he consumed 50 to 60 Hydrocodone/APAP pills a day for pain in his lower back.

c. Pharmacy Express initiated an audit of the Hydrocodone/APAP purchased and dispensed at Pharmacy Express during the time period Respondent was stealing Hydrocodone/APAP from Pharmacy Express. The Board also initiated an audit which showed that there were 42,546 tablets of Hydrocodone/APAP that were missing and that could not be accounted for between April 25, 2006 and November 10, 2007. On November 18, 2007, Respondent admitted to police that he was responsible for taking all of the Hydrocodone/APAP that was identified as missing in the audits.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Possession of a Controlled Substance W/O Prescription)

17. Respondent is subject to disciplinary action under section 4301(j) in conjunction with section 4060 for possession of a controlled substance without a legitimate prescription, as more particularly alleged in paragraphs 16(a), (b) and (c) above and incorporated herein by reference.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Illegal Furnishing of a Controlled Substance to Oneself)

18. Respondent is subject to disciplinary action under section 4301(j) in conjunction with section 4059(a) and H&S Code section 11170 for illegally furnishing a controlled substance to himself, as more particularly alleged in paragraphs 16(a), (b) and (c) above and incorporated herein by reference.

///

///

///

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Obtaining a Controlled Substance by Fraud, Subterfuge)

19. Respondent is subject to disciplinary action under section 4301(j) in conjunction with H&S Code section 11173(a) for obtaining a controlled substance by fraud, deceit, subterfuge or concealment of a material fact, as more particularly alleged in paragraphs 16(a), (b) and (c) above and incorporated herein by reference.

FIFTH CAUSE FOR DISCIPLINE

(May 22, 2008 Criminal Conviction - Grand Theft from January 2006 to November 2007)

20. Respondent is subject to disciplinary action under section 4301(l) for conviction for a crime substantially related to the qualifications, functions, or duties of a pharmacy technician, as more particularly alleged below:

a. On or about May 22, 2008, in Riverside County Superior Court Case No. RIF141687, Respondent pled guilty to a violation of Penal Code section 487(a) (grand theft/exceeds $400), a felony.

b. The facts and circumstances surrounding the conviction are that Respondent stole approximately 42,546 Hydrocodone/APAP pills from his employer Express Pharmacy as set forth in paragraphs 16(a), (b) and (c) above and incorporated herein by reference.

c. Respondent was sentenced to serve 120 days in jail, placed on formal probation for 36 months and ordered to pay various fines and restitution.

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 Number TCH 51614, issued to Emmanuel Romero;

2. Ordering Emmanuel Rombero 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; and

///

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

DATED: 10/29/09

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

SD2009803785
70200910.wpd