

1 15369 Daybreak Lane
2 Fontana, CA 92337.

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 October 23, 2009, the aforementioned documents that were served by
7 Certified Mail were delivered to Respondent's address of record with the Board, as evidenced by
8 the Certified Mail return receipt which the U.S. Postal Service returned to the Department of
9 Justice.

10 6. Government Code section 11506, subdivision (c), states, in pertinent part:

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

15 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
16 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
17 3325.

18 8. California Government Code section 11520, subdivision (a), states, in pertinent part:

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

22 9. Pursuant to its authority under Government Code section 11520, the Board finds
23 Respondent is in default. The Board will take action without further hearing and, based on the
24 evidence on file herein, finds that the allegations in Accusation No. 3325 are true.

25 10. The total costs for investigation and enforcement in connection with the Accusation
26 are \$2,645.00, as of November 12, 2009.

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DETERMINATION OF ISSUES

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2 1. Based on the foregoing findings of fact, Respondent Joseph L. Salas has subjected his
3 Pharmacy Technician Registration No. TCH 41750 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 is authorized to revoke Respondent's Pharmacy Technician Registration
7 based upon the following violations alleged in the Accusation:

8 a. Business and Professions Code section 4301, subdivision (f), for committing acts
9 involving moral turpitude, dishonesty, fraud or deceit.

10 b. Business and Professions Code sections 4301, subdivisions (j) and (o), 4059,
11 subdivision (a), and 4063, in conjunction with Health and Safety Code section 11158, subdivision
12 (a), for furnishing a dangerous drug/controlled substance without a prescription or authorization
13 from a prescriber.

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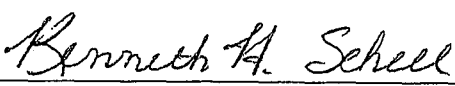
ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 41750, heretofore issued to Respondent Joseph L. Salas, 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, BOARD PRESIDENT
FOR THE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS

60489922.DOC
DOJ docket number: LA2009602868

Attachment:

Exhibit A: Accusation No. 3325

Exhibit A
Accusation No. 3325

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7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:
12 **JOSEPH L. SALAS**
13 **15369 Daybreak Lane**
14 **Fontana, CA 92337**
15 **Pharmacy Technician Registration No. TCH**
16 **41750**
17 Respondent.

Case No. 3325

A C C U S A T I O N

17 Complainant alleges:

18 PARTIES

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

21 2. On or about March 26, 2002, the Board of Pharmacy (Board) issued Pharmacy
22 Technician Registration Number TCH 41750 to Joseph L. Salas (Respondent). The Pharmacy
23 Technician Registration was in full force and effect at all times relevant to the charges brought
24 herein and will expire on January 31, 2010, unless renewed.

25 JURISDICTION

26 3. This Accusation is brought before the Board under the authority of the following
27 laws. All section references are to the Business and Professions Code unless otherwise indicated.

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STATUTORY PROVISIONS

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4. Section 4300, subdivision (a) states: "Every license issued may be suspended or revoked."

5. 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, of any other state, or of the United States regulating controlled substances and dangerous drugs.

....

"(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter [the Pharmacy Law (section 4600, et seq.)] or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency."

6. Section 4059, subdivision (a), states:

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

7. Section 4063 states:

"No prescription for any dangerous drug or dangerous device may be refilled except upon authorization of the prescriber. The authorization may be given orally or at the time of giving the

1 original prescription. No prescription for any dangerous drug that is a controlled substance may
2 be designated refillable as needed.”

3 8. Health and Safety Code section 11158, subdivision (a), states, in pertinent part:
4 “Except as provided in Section 11159 or when dispensed directly to an ultimate user by a
5 practitioner other than a pharmacist or pharmacy, no controlled substance classified in Schedule
6 III, IV, or V may be dispensed without a prescription meeting the requirements of this chapter.”

7 CONTROLLED SUBSTANCE/DANGEROUS DRUG

8 9. Norco (trade name for generic Hydrocodone/APAP) is a Schedule III controlled
9 substance as designated by Health and Safety Code section 11056, subdivisions (a) and (e), and is
10 a dangerous drug as defined in section 4022.

11 10. Section 4022 states, in pertinent part:

12 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self-use in
13 humans or animals, and includes the following:

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

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

19 COST RECOVERY PROVISION

20 11. Section 125.3 provides, in pertinent part, that the Board may request the
21 administrative law judge to direct a licentiate found to have committed a violation or violations of
22 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
23 enforcement of the case.

24 FIRST CAUSE FOR DISCIPLINE

25 (Unprofessional Conduct/Act Involving Moral Turpitude, Dishonesty, Fraud or Deceit)

26 12. Respondent is subject to disciplinary action under section 4301, subdivision (f), for
27 committing acts involving moral turpitude, dishonesty, fraud or deceit. The circumstances are as
28 follows:

1 a. On numerous occasions, while employed as a pharmacy technician at Kaiser
2 Permanente Pharmacy, Respondent processed and filled or re-filled fake prescriptions for Norco
3 (Hydrocodone/APAP) [hereafter referred to as "the drug"], and then dispensed and furnished the
4 drug to a relative of an acquaintance.

5 b. As part of Respondent's dishonest and fraudulent scheme to divert the drug from the
6 pharmacy, he engaged in the following acts: Respondent accessed the pharmacy computer
7 system, using another employee's access code. He filled fake prescriptions for the drug without
8 authorization from a provider. He would put the prescription drug in a bag and hand it someone
9 at the sales window. He would find a random sales slip that had been generated for some other
10 customer's prescription, and ask an employee at the cash register to ring-up the fake prescription
11 using that sales slip. After the sale, Respondent would delete the fake prescription from the
12 pharmacy computer system.

13 SECOND CAUSE FOR DISCIPLINE

14 (Furnishing a Dangerous Drug/Controlled Substance Without Authorization)

15 13. Respondent is subject to disciplinary action under section 4301, subdivisions (j) and
16 (o), section 4059, subdivision (a), and section 4063, in conjunction with Health and Safety Code
17 section 11158, subdivision (a), for furnishing a dangerous drug/controlled substance without a
18 prescription or authorization from a prescriber. Complainant refers to and incorporates all the
19 allegations set forth in paragraphs 12.a and 12.b, inclusive, as though set forth fully.

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PRAYER

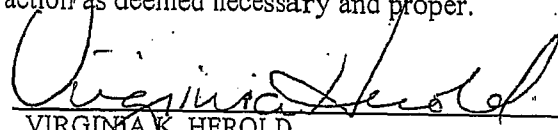
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Revoking or suspending Pharmacy Technician Registration Number TCH 41750, issued to Joseph L. Salas.

2. Ordering Joseph L. Salas to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 10/15/09



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

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