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

In the Matter of the Accusation Against:

MELINDA S. PAGUIRIGAN
4064 Montgomery Hill Drive
Antioch, California 94531

Pharmacy Technician License No. TCH 51809

Respondent.

Case No. 3348

OAH No. 2009091097

DEFAULT DECISION AND ORDER

[Gov. Code, § 11520]

FINDINGS OF FACT

1. On or about July 28, 2009, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board), filed Accusation No. 3348 against Melinda S. Paguirigan (Respondent) before the Board of Pharmacy.

2. On or about October 10, 2003, the Board issued Pharmacy Technician License No. TCH 51809 to Respondent. The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2011, unless renewed.

3. On or about July 30, 2009, Fe M. Domingo, an employee of the Department of Justice, served by Certified and First Class Mail a copy of Accusation No. 3348, along with a Statement to Respondent, two copies of a Notice of Defense, a Request for Discovery, and copies of Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is: 4064 Montgomery Hill Drive, Antioch, California 94531. A copy of the Accusation is attached as exhibit A, and is incorporated herein by reference.

///

- 1 2. A copy of the Accusation is attached.
- 2 3. The agency has jurisdiction to adjudicate this case by default.
- 3 4. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
4 License based upon the following violations alleged in the Accusation:
- 5 a. In violation of Business and Professions Code section 4301(f), Respondent engaged
6 in actions involving moral turpitude, dishonesty, fraud, deceit or corruption when she, on at least
7 the occasion of April 26, 2008, diverted/stole from the Rite Aid Pharmacy in which she worked
8 as a pharmacy technician, at least two (2) bottles, containing 100 tablets each, of **oxycodone-**
9 containing drugs (one brand **Oxycontin** and one generic **oxycodone**) and at least nine (9) bottles,
10 also of 100 tablets each, of **hydrocodone**-containing drugs (one bottle of brand **Norco** and eight
11 bottles of generic **Hydrocodone with APAP 10/325**, the generic equivalent of **Norco**);
- 12 b. In violation of Business and Professions Code section 4301(h), Respondent admitted
13 that the drugs taken as described in paragraph 4(a) above were for purposes of self-use, and thus
14 on April 26, 2008 and/or on prior or subsequent occasion(s) Respondent self-administered a
15 controlled substance and/or used alcoholic beverages in a dangerous or injurious manner;
- 16 c. In violation of Business and Professions Code sections 4301(j), 4301(o) and/or 4059,
17 and/or Health and Safety Code section 11170, by way of the actions described in paragraphs 4(a)
18 and 4(b) above, Respondent furnished to herself or another without a valid prescription, and/or
19 conspired to furnish without a prescription, and/or assisted or abetted furnishing of without a
20 prescription, a controlled substance.
- 21 d. In violation of Business and Professions Code sections 4301(j), 4301(o) and/or 4060,
22 and/or Health and Safety Code section 11350, by way of the actions described in paragraphs 4(a)
23 and 4(b) above, Respondent possessed, conspired to possess, and/or assisted in or abetted
24 possession of, a controlled substance, without a prescription;
- 25 e. In violation of Business and Professions Code sections 4301(j), 4301(o) and/or Health
26 and Safety Code section(s) 11170 and/or 11550 , by way of the actions described in paragraphs
27 4(a) and 4(b) above, Respondent self-administered/used, conspired to self-administer/use, and/or
28 assisted in or abetted self-administration use of, a controlled substance, without a prescription;

1 f. In violation of Business and Professions Code sections 4301(j), 4301(o) and/or Health
2 and Safety Code section 11173(a) , by way of the actions described in paragraphs 4(a) and 4(b)
3 above, Respondent obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a
4 controlled substance, by fraud, deceit, subterfuge, or concealment of material fact;

5 g. In violation of Business and Professions Code section 4301, by way of the actions
6 described in paragraph(s) 4(a) to 4(f) above, Respondent engaged in unprofessional conduct.

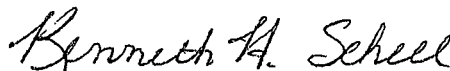
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9 ORDER

10 IT IS SO ORDERED that Pharmacy Technician License No. TCH 51809, heretofore issued
11 to Respondent Melinda S. Paguirigan, is revoked.

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

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

17 It is so ORDERED March 9, 2010.

18 

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

22 default decision_LIC.rtf
23 DOJ docket number:SF2009403658

24 Attachments:

25 Exhibit A: Accusation No.3348

26 Exhibit B: Notice of Defense, Notice of Hearing (with service documents)

Exhibit A
Accusation No. 3348

Exhibit B
Notice of Defense, Notice of Hearing (with service documents)

1 EDMUND G. BROWN JR.
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JOSHUA A. ROOM
Deputy Attorney General
4 State Bar No. 214663
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-1299
6 Facsimile: (415) 703-5480
Attorneys for Complainant

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

10 In the Matter of the Accusation Against
11 **MELINDA S. PAGUIRIGAN**
12 **4064 Montgomery Hill Drive**
Antioch, California 94531

Case No. 3348

13 **Pharmacy Technician**
14 **License No. TCH 51809**

ACCUSATION

15 Respondent.

16
17 Complainant alleges:

18 PARTIES

- 19 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
21 2. On or about October 10, 2003, the Board of Pharmacy issued Pharmacy Technician
22 License Number TCH 51809 to Melinda S. Paguirigan (Respondent). The Pharmacy Technician
23 License was in full force and effect at all times relevant to the charges brought herein and will
24 expire on April 30, 2011, unless renewed.

25 JURISDICTION

- 26 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
27 Consumer Affairs, under the authority of the following laws. All section references are to the
28 Business and Professions Code (Code) unless otherwise indicated.

1 ...
2 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
3 prescription or furnished pursuant to Section 4006.”

4 17. **Oxycontin, Percocet, and Roxicodone** are among the brand names for compounds or
5 drugs containing or consisting entirely of **oxycodone**, a Schedule II controlled substance as
6 designated by Health and Safety Code section 11055(b)(1)(N) and a dangerous drug as designated
7 by Business and Professions Code section 4022. These are narcotic drugs.

8 18. **Norco, Vicodin, Vicodin ES, Lortab, and Lorcet** are among the brand names for
9 compounds of varying dosages of acetaminophen (aka APAP) and **hydrocodone**, a Schedule III
10 controlled substance as designated by Health and Safety Code section 11056(e)(4) and dangerous
11 drug as designated by Business and Professions Code section 4022. The varying compounds are
12 also known generically as **Hydrocodone with APAP**. These are narcotic drugs.

13 FACTUAL BACKGROUND

14 19. For an unknown time period prior to and including May 21, 2008, Respondent was
15 employed as a pharmacy technician at a RiteAid Pharmacy (PHY 45256) in Antioch, CA.

16 20. On at least one occasion during her employment, Respondent took advantage of her
17 access to controlled substances and/or dangerous drugs to divert/steal same from the pharmacy.
18 The total number of occasions on which diversions were undertaken is not known, nor is the total
19 quantity of drugs diverted. However, as Respondent subsequently admitted, on or about May 21,
20 2008 during an interview with RiteAid investigators, on or about April 26, 2008 Respondent had
21 taken/stolen at least two (2) bottles, containing 100 tablets each, of **oxycodone**-containing drugs
22 (one brand **Oxycontin** and one generic **oxycodone**) and also on that date she had taken/stolen at
23 least nine (9) bottles, also of 100 tablets each, of **hydrocodone**-containing drugs (one 100 bottle
24 of brand **Norco** and eight 100 bottles of generic **Hydrocodone with APAP 10/325**). Respondent
25 further admitted that she took/stole the drugs for purposes of self-administration

26 21. A controlled substance audit subsequently performed by RiteAid Pharmacy for the
27 period between May 1, 2007 and June 4, 2008 showed losses including 1,300+ missing tablets of
28 **oxycodone**-containing drugs and 4,500+ missing tablets of **hydrocodone**-containing drugs.

1 FIRST CAUSE FOR DISCIPLINE

2 (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

3 22. Respondent is subject to discipline under section 4301(f) of the Code in that
4 Respondent, as described in paragraphs 19 and 20 above, committed acts involving moral
5 turpitude, dishonesty, fraud, deceit, or corruption.

6 SECOND CAUSE FOR DISCIPLINE

7 (Self-Administration of Controlled Substance)

8 23. Respondent is subject to discipline under section 4301(h) of the Code, in that
9 Respondent, as described in paragraphs 19 and 20 above, administered one or more controlled
10 substances to herself, including **oxycodone-** and/or **hydrocodone-**containing products.

11 THIRD CAUSE FOR DISCIPLINE

12 (Furnishing of Controlled Substance)

13 24. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
14 4059 of the Code, and/or Health and Safety Code section 11170 in that Respondent, as described
15 in paragraphs 19 and 20 above, furnished to herself or another without a valid prescription, and/or
16 conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.

17 FOURTH CAUSE FOR DISCIPLINE

18 (Possession of Controlled Substance)

19 25. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
20 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described
21 in paragraphs 19 and 20 above, possessed, conspired to possess, and/or assisted in or abetted
22 possession of, a controlled substance, without a prescription.

23 FIFTH CAUSE FOR DISCIPLINE

24 (Self-Administration/Use of Controlled Substance)

25 26. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
26 and/or Health and Safety Code section(s) 11170 and/or 11550, in that Respondent, as described in
27 paragraphs 19 and 20 above, self-administered/used, conspired to self-administer/use, and/or
28 assisted in/abetted self-administration/use, of a controlled substance, without prescription.

1 SIXTH CAUSE FOR DISCIPLINE

2 (Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

3 27. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
4 and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs
5 19 and 20 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a
6 controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

7 SEVENTH CAUSE FOR DISCIPLINE

8 (Unprofessional Conduct)

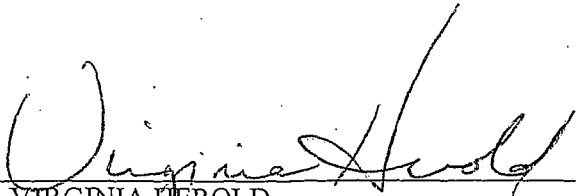
9 28. Respondent is subject to discipline under section 4301 of the Code in that
10 Respondent, as described in paragraphs 19 to 27 above, engaged in unprofessional conduct.

11 PRAYER

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

- 14 1. Revoking or suspending Pharmacy Technician License Number TCH 51809, issued
- 15 to Melinda S. Paguirigan (Respondent);
- 16 2. Ordering Respondent to pay the Board reasonable costs of the investigation and
- 17 enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 18 3. Taking such other and further action as is deemed necessary and proper.
- 19
- 20

21
22 DATED: 7/28/09

23 

24 VIRGINIA HEROLD
25 Executive Officer
26 Board of Pharmacy
27 Department of Consumer Affairs
28 State of California
Complainant

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Exhibit B
Notice of Defense, Notice of Hearing (with service documents)

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

In the Matter of the Accusation Against: MELINDA S. PAGUIRIGAN Respondent.	Case No. 3348 NOTICE OF DEFENSE [Gov. Code §§ 11505 and 11506]
---	---

I, the undersigned Respondent in the above-entitled proceeding, hereby acknowledge receipt of a copy of the Accusation; Statement to Respondent; Government Code sections 11507.5, 11507.6 and 11507.7, Complainant's Request for Discovery; and two copies of a Notice of Defense.

I hereby request a hearing to permit me to present my defense to the charges contained in the Accusation.

Dated: 8/12/09

Respondent's Name: Melinda Paguirigan

Respondent's Signature: Melinda Paguirigan

Respondent's Mailing Address: 4064 Montgomeray Hill Drive

City, State and Zip Code: Antick, CA 94531

Respondent's Telephone: (925) 565-4369

Check appropriate box:

I do not consent to electronic reporting.

The hearing in this case will be electronically reported/recorded, unless you check the above-left box to indicate that you do not consent to electronic recording, in which case the hearing will be reported by a stenographic reporter. If you do not check this box, you may withdraw your consent to electronic recording at any point up to fifteen (15) calendar days prior to the date set for hearing, by a written statement served on the Office of Administrative Hearings and on counsel for Complainant. If the box is not checked, and no written withdrawal of consent is served on the Office of Administrative Hearing and on counsel for Complainant by fifteen (15) calendar days prior to the hearing, you waive any right to stenographic reporting.

I am represented by counsel, whose name, address and telephone number appear below:

Counsel's Name _____

Counsel's Mailing Address _____

City, State and Zip Code _____

Counsel's Telephone Number _____

- I am not now represented by counsel. If and when counsel is retained, immediate notification of the attorney's name, address and telephone number will be filed with the Office of Administrative Hearing and a copy sent to counsel for Complainant so that counsel will be on record to receive legal notices, pleadings and other papers.

The agency taking the action described in the Accusation may have formulated guidelines to assist the administrative law judge in reaching an appropriate penalty. You may obtain a copy of the guidelines by requesting them from the agency in writing.

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1 EDMUND G. BROWN JR.
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JOSHUA A. ROOM
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4 State Bar No. 214663
455 Golden Gate Avenue, Suite 11000
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Telephone: (415) 703-1299
6 Facsimile: (415) 703-5480
Attorneys for Complainant

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

10 In the Matter of the Accusation Against:

Case No. 3348

11 **MELINDA S. PAGUIRIGAN**

OAH No. 2009091097

12 Respondent.

NOTICE OF HEARING
[Gov. Code § 11509]

Hearing: Thursday, December 17, 2009

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15
16 YOU ARE HEREBY NOTIFIED that a hearing in this matter will commence on
17 **Thursday, December 17, 2009 at 9:00 a.m.** before an Administrative Law Judge at
18 **Office of Administrative Hearings**
19 **1515 Clay Street, Suite 206**
Oakland, CA 94612.

20 The hearing will be conducted before the Board of Pharmacy, Department of Consumer
21 Affairs by an Administrative Law Judge of the Office of Administrative Hearings, upon the
22 charges made in Accusation No. 3348 served upon you.

23 If you object to the place of hearing, you must notify the presiding officer within ten (10)
24 days after this notice is served on you. Failure to notify the presiding officer within ten (10) days
25 will deprive you of a change in the place of hearing.

26 You may be present at the hearing. You have the right to be represented by an attorney at
27 your own expense. You are not entitled to the appointment of an attorney to represent you at
28 public expense. You are entitled to represent yourself without legal counsel. You may present

1 any relevant evidence, and will be given full opportunity to cross-examine all witnesses testifying
2 against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses
3 and the production of books, documents, or other things by applying to the Office of
4 Administrative Hearings, 1515 Clay Street, Suite 206, Oakland, CA 94612, telephone: (510)
5 622-2722.

6 INTERPRETER: Pursuant to section 11435.20 of the Government Code, the hearing shall
7 be conducted in the English language. If a party or a party's witness does not proficiently speak
8 or understand the English language and before commencement of the hearing requests language
9 assistance, an agency subject to the language assistance requirement in section 11435.15 of the
10 Government Code shall provide a certified interpreter or an interpreter approved by the
11 administrative law judge conducting the proceedings. The cost of providing the interpreter shall
12 be paid by the agency having jurisdiction over the matter if the administrative law judge or
13 hearing officer so directs, otherwise by the party for whom the interpreter is provided. If you or a
14 witness require the assistance of an interpreter, ample advance notice of this fact should be given
15 to the Office of Administrative Hearings so that appropriate arrangements can be made.

16 CONTINUANCES: Under section 11524 of the Government Code, the agency may grant a
17 continuance, but when an administrative law judge of the Office of Administrative Hearings has
18 been assigned to the hearing, no continuance may be granted except by him or her or by the
19 presiding Administrative Law Judge for good cause. When seeking a continuance, a party shall
20 apply for the continuance within ten (10) working days following the time the party discovered or
21 reasonably should have discovered the event or occurrence which establishes good cause for the
22 continuance. A continuance may be granted for good cause after the ten (10) working days have
23 lapsed only if the party seeking the continuance is not responsible for and has made a good faith
24 effort to prevent the condition or event establishing the good cause.

25 Continuances are not favored. If you need a continuance, immediately write or call the
26 Office of Administrative Hearings: 1515 Clay Street, Suite 206, Oakland, CA 94612 telephone:
27 (510) 622-2722.
28

Dated: October 2, 2009

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of California
FRANK H. PACOE
Supervising Deputy Attorney General



JOSHUA A. ROOM
Deputy Attorney General
Attorneys for Complainant

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DECLARATION OF SERVICE
(Certified and First Class Mail)

In the Matter of the Accusation Against: *Melinda S. Paguirigan*
Agency Case No. 3348
OAH No. 2009091097

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. 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 October 2, 2009, I served the attached **Notice of Hearing** 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 same document(s) 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 at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

Melinda S. Paguirigan
4064 Montgomery Hill Drive
Antioch, California 94531

Certified Article Number

7160 3701 9848 3692 9524

SENDER'S RECORD

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 October 2, 2009 at San Francisco, California.

FE M. DOMINGO

Typed Name

FE M. Domingo
Signature

7160 3901 9848 3692 9524

TO:

Melinda S. Paguirigan
4064 Montgomery Hill Drive
Antioch, California 94531

SENDER: JAR

REFERENCE:

SF2009403658

PS Form 3800, January 2005

RETURN RECEIPT SERVICE	Postage	
	Certified Fee	
	Return Receipt Fee	
	Restricted Delivery	
Total Postage & Fees		

US Postal Service

POSTMARK OR DATE

**Receipt for
Certified Mail**

No Insurance Coverage Provided
Do Not Use for International Mail

2. Article Number



7160 3901 9848 3692 9524

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)	B. Date of Delivery 10/3/05
C. Signature <input checked="" type="checkbox"/> Addressee <input type="checkbox"/> Agent <i>Gordon Paguirigan</i>	
D. Is delivery address different from item 1? If YES, enter delivery address below: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee) Yes

1. Article Addressed to:

Melinda S. Paguirigan
4064 Montgomery Hill Drive
Antioch, California 94531

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JAR