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

| In the Matter of the Accusation Aga | gainst: |
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Case No. 3500

AMADA A. MENEDEZ 13 Tyler Street Novato, CA 94947

Pharmacy Technician License No. TCH 43329

Respondent.

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on November 18, 2010.

It is so ORDERED October 19, 2010.

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

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By

STANLEY C. WEISSER Board President

| 1 2 3 4 5 6 | EDMUND G. BROWN JR. Attorney General of California FRANK H. PACOE Supervising Deputy Attorney General JOSHUA A. ROOM Deputy Attorney General State Bar No. 214663 455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004 Telephone: (415) 703-1299 Facsimile: (415) 703-5480 Attorneys for Complainant BEFORE THE | | |
|----------------------------|--|--|--|
| 8 | BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS | | |
| 9 | STATE OF CALIFORNIA | | |
| 10 | In the Matter of the Accusation Against: Case No. 3500 | | |
| 11 | AMADA A. MENENDEZ 13 Tyler Street Novato, CA 94947 STIPULATED SURRENDER OF | | |
| 13 | Pharmacy Technician License No. TCH 43329 LICENSE AND ORDER | | |
| 14 | Respondent. | | |
| 15 | In the interest of a prompt and speedy resolution of this matter, consistent with the public | | |
| 16 | interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs | | |
| 17 | the parties hereby agree to the following Stipulated Surrender of License and Order which will be | | |
| 18 | submitted to the Board for approval and adoption as the final disposition of the Accusation. | | |
| 19 | <u>PARTIES</u> | | |
| 20 | 1. Virginia Herold (Complainant), Executive Officer of the Board of Pharmacy, brought | | |
| 21 | this action solely in her official capacity and is represented in this matter by Edmund G. Brown | | |
| · 22 . | Jr., Attorney General of the State of California, by Joshua A. Room, Deputy Attorney General. | | |
| 23 | 2. Amada A. Menendez (Respondent) is representing herself in this proceeding and has | | |
| 24 | chosen not to exercise her right to be represented by counsel. | | |
| 25 | 3. On or about July 15, 2002, the Board of Pharmacy issued Pharmacy Technician | | |
| 26 | License No. TCH 43329 to Amada A. Menendez (Respondent). The Pharmacy Technician | | |
| 27 | License was in full force and effect at all times relevant to the charges brought in Accusation No. | | |
| 28 | 3500 and will expire on February 20, 2012, unless renewed | | |

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JURISDICTION

4. Accusation No. 3500 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on April 19, 2010.

Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation No. 3500 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

- Respondent has carefully read and understands the charges and allegations in Accusation No. 3500. Respondent also has carefully read and understands the effects of this Stipulated Surrender of License and Order.
- 6. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.
- 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

- 8. Respondent admits the truth of each and every charge and allegation in Accusation No. 3500, agrees that cause exists for discipline, and hereby surrenders her Pharmacy Technician License No. TCH 43329 for the Board's formal acceptance.
- 9. Respondent understands that by signing this stipulation she enables the Board to issue an order accepting the surrender of her Pharmacy Technician License without further process.

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RESERVATION

10. The admissions made by Respondent are only for the purposes of this proceeding, or any other proceedings in which the Board of Pharmacy or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

- 11. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.
- 12. The parties understand and agree that facsimile copies of this Stipulated Surrender of License and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.
- 13. This Stipulated Surrender of License and Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.
- 14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

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ORDER

IT IS HEREBY ORDERED that Pharmacy Technician License No. TCH 43329, issued to Respondent Amada A. Menendez, is surrendered and accepted by the Board of Pharmacy.

- 15. The surrender of Respondent's Pharmacy Technician License and the acceptance of the surrendered License by the Board shall constitute imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.
- 16. Respondent shall lose all rights and privileges as a Pharmacy Technician in California as of the effective date of the Board's Decision and Order.
- 17. Respondent shall cause to be delivered to the Board both her wall license certificate and, if one was issued, pocket license on or before the effective date of the Decision and Order.
- 18. Respondent may not apply, reapply, or petition for any licensure or registration of the Board for three (3) years from the effective date of the Decision and Order.
- 19. If she ever applies for licensure or petitions for reinstatement in the State of California, the Board shall treat it as a new application for licensure. Respondent must comply with all the laws, regulations and procedures for licensure in effect at the time the application or petition is filed, and all of the charges and allegations contained in Accusation No. 3500 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the application or petition.
- 20. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation, No. 3500 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.
- 21. Respondent shall pay the Board its costs of investigation and enforcement in the amount of \$3,750.00 prior to issuance of a new or reinstated license.

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ACCEPTANCE

I have carefully read the Stipulated Surrender of License and Order. I understand the stipulation and the effect it will have on my Pharmacy Technician License. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 7/9/200 (Suuda Melecuca)

AMADA A. MENENDEZ

Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated: JULY 23, 2010

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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Exhibit A

Accusation No. 3500

| 1 2 3 4 5 6 7 | EDMUND G. BROWN JR. Attorney General of California FRANK H. PACOE Supervising Deputy Attorney General JOSHUA A. ROOM Deputy Attorney General State Bar No. 214663 455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004 Telephone: (415) 703-1299 Facsimile: (415) 703-5480 Attorneys for Complainant | | |
|---------------|--|--------------------|--|
| 8 | BEFORE THE BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA | | |
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| 10 | STATE OF CA | LIII OKUA | |
| | In the Matter of the Accusation Against: | Case No. 3500 | |
| 11 | AMADA A. MENENDEZ | . : | |
| 12 | 2013 Hawthorne Terrace Novato, CA 94949 | ACCUSATION | |
| 14 | Pharmacy Technician License No. TCH 43329 | | |
| 15 | Respondent. | | |
| 16 | | | |
| 17 | PARTIES | | |
| 18 | 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity | | |
| 19 | | | |
| 20 | 2. On or about July 15, 2002, the Board of Pharmacy issued Pharmacy Technician | | |
| 21 | License Number TCH 43329 to Amada A. Menendez (Respondent). The Pharmacy Technician | | |
| 22 | License was in full force and effect at all times relevant to the charges brought herein and will | | |
| -23 | expire on February 28, 2010, unless renewed. | | |
| 24 | JURISDICTION | | |
| 25 | 3. This Accusation is brought before the Board of Pharmacy (Board), Department of | | |
| 26 | Consumer Affairs, under the authority of the following laws. All section references are to the | | |
| 27 | Business and Professions Code (Code) unless oth | nerwise indicated. | |
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- 4. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].
- 5. Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked.
- 6. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration, surrender, or 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. Section 4402(a) of the Code provides that any pharmacist 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. Section 4402(e) of the Code provides that any other license issued by the Board may be canceled by the Board if not renewed within 60 days after its expiration, and any license canceled in this fashion may not be reissued but will instead require a new application to seek reissuance.

STATUTORY AND REGULATORY PROVISIONS

- 7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action against any holder of a license who is guilty of "unprofessional conduct," defined to include, but not be 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 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.

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3. 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, functions 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 her license or registration in a manner consistent with the public health, safety, or welfare."

- 9. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous drug or dangerous device except upon the prescription of an authorized prescriber.
- 10. Section 4060 of the Code provides, in pertinent part, that no person shall possess any controlled substance, except that furnished upon a valid prescription/drug order.
- 11. Health and Safety Code section 11170 provides that no person shall prescribe, administer, or furnish a controlled substance for himself or herself.
- 12. Health and Safety Code section 11173, subdivision (a), provides that 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.
- 13. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess any controlled substance listed in Schedule II (Health and Safety Code section 11055), subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

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 of the licensing act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

CONTROLLED SUBSTANCES / DANGEROUS DRUGS

15. Section 4021 of the Code states:

"'Controlled substance' means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code."

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27 28 Section 4022 of the Code states, in pertinent part:

"Dangerous drug' or 'dangerous device' means any drug or device unsafe for self use. except yeterinary drugs that are labeled as such, 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.
- "(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."
- Norco, Vicodin, Vicodin ES, Lortab, and Lorcet are among the brand names for compounds of varying dosages of acetaminophen (aka APAP) and hydrocodone, a Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4) and dangerous drug as designated by Business and Professions Code section 4022. The varying compounds are also known generically as Hydrocodone with APAP. These are all narcotic drugs.
- 18. Phenergan with Codeine is a brand name for a compound consisting of the antihistamine promethazine, a dangerous drug as designated by Business and Professions Code section 4022, and codeine, a Schedule V controlled substance as designated by Health and Safety Code section 11058 and a dangerous drug as designated by Business and Professions Code section 4022. This drug is also known generically as Promethazine with Codeine. It is an antihistamine/antitussive, narcotic analgesic, and sleep aid.
- Viagra is a brand name for sildenafil, a dangerous drug as designated by Business 19. and Professions Code section 4022, intended as a treatment for erectile dysfunction.

FACTUAL BACKGROUND

- Beginning in or about 2005 and until on or about February 20, 2009, Respondent was employed as a pharmacy technician at a Kaiser Foundation Health Plan Pharmacy in San Rafael, CA (# 396; PHY 44385), where she had access to controlled substances and dangerous drugs.
- Between in or about October 2008 and in or about February 2009, Respondent used her access to divert/steal controlled substances and dangerous drugs, including Norco, Vicodin ES, or other Hydrocodone products, Phenergan/Promethazine with Codeine, and/or Viagra.

| 22. The exact number of instances of diversion/theft by Respondent, and the full quantity |
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| of controlled substances or dangerous drugs diverted/stolen by Respondent, are not known, but ir |
| he course of investigations by Kaiser and Board of Pharmacy investigators, Respondent admitted |
| to a course of conduct of diverting/stealing controlled substances and dangerous drugs from the |
| pharmacy as an accomplice to another Kaiser pharmacy technician (M.S.) on at least five to six |
| occasions from approximately October 2008 to February 2009. She admitted to taking and/or |
| nelping accomplice M.S. take from the pharmacy, significant quantities (whole bottles and/or |
| containers) of controlled substances Norco (or its generic equivalent), Vicodin ES (or its generic |
| equivalent), and Phenergan/Promethazine with Codeine, and the dangerous drug Viagra. |
| · |

A subsequent verification audit of the controlled substances stock of the pharmacy by 23. which Respondent was employed (Kaiser Foundation Health Plan Pharmacy in San Rafael, CA [# 396; PHY 44385]), for the period from March 2008 to February 2009 could not account for the controlled substance losses of approximately 35,155 dosage units (tablets) of Hydrocodone with APAP 10/325 (generic Norco), approximately 2,690 dosage units (tablets) of Vicodin ES, and 40,591 mls (86 one-pint bottles) of Promethazine with Codeine syrup.

FIRST CAUSE FOR DISCIPLINE

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

Respondent is subject to discipline under section 4301(f) of the Code in that Respondent, as described in paragraphs 20 to 23 above, committed numerous acts involving moral turpitude, dishonesty, fraud, deceit, or corruption.

The full name of the accomplice will be revealed during the discovery process.

SECOND CAUSE FOR DISCIPLINE

(Furnishing of Controlled Substance)

Respondent is subject to discipline under section 4301(i) and/or (o) and/or section 4059 of the Code, and/or Health and Safety Code section 11170, in that Respondent, as described in paragraphs 20 to 23 above, furnished to herself or another without a valid prescription, and/or conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.

THIRD CAUSE FOR DISCIPLINE

(Possession of Controlled Substance)

26. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described in paragraphs 20 to 23 above, possessed, conspired to possess, and/or assisted in or abetted possession of, a controlled substance, without a prescription.

FOURTH CAUSE FOR DISCIPLINE

(Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

Respondent is subject to discipline under section 4301(j) and/or (o) of the Code, 27. and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs 20 to 23 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

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FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

Respondent is subject to discipline under section 4301 of the Code in that Respondent, as described in paragraphs 20 to 27 above, engaged in unprofessional conduct.

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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 of Pharmacy issue a decision:

- 1. Revoking or suspending Pharmacy Technician License Number TCH 43329, issued to Amada A. Menendez (Respondent);
- 2. Ordering Respondent 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 is deemed necessary and proper.

DATED: 329/10

VIRGINIA HEROLD

Executive Officer
Board of Pharmacy

Department of Consumer Affairs

State of California Complainant