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

In the Matter of the Accusation Against:

**ROBERT CASTANEDA**  
460 East Sequoia  
Woodlake, CA 93286

**Pharmacy Technician Registration No. TCH  
74030**

Respondent.

Case No. 3520

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about January 26, 2010, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 3520 against Robert Adrian Castaneda (Respondent) before the Board of Pharmacy.

2. On or about February 10, 2007, the Board of Pharmacy (Board) issued Pharmacy Technician License No. TCH 74030 to Respondent. The License was in full force and effect at all times relevant to the charges brought herein, and will expire on September 30, 2010, if not renewed.

3. On or about February 10, 2007, C. Cruz, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation No. 3520, a Statement to Respondent, two copies of a form Notice of Defense, a Request for Discovery, and copies of

1 Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with  
2 the Board: 460 East Sequoia, Woodlake, CA 93287. Copies of the Accusation are attached as  
3 exhibit A, and are 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. Government Code section 11506 states, in pertinent part:

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

11 6. Respondent failed to file a Notice of Defense within 15 days after service upon him  
12 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.  
13 3520.

14 7. California Government Code section 11520 states, in pertinent part:

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

18 8. Pursuant to its authority under Government Code section 11520, the Board finds  
19 Respondent is in default. The Board will take action without further hearing and, based on the  
20 evidence on file herein, finds that the allegations in Accusation No. 3520 are true.

21 9. The total costs for investigation and enforcement in connection with the Accusation  
22 are \$1,657.50 as of March 9, 2010.

23  
24 DETERMINATION OF ISSUES

25 1. Based on the foregoing findings of fact, Respondent Robert Adrian Castaneda has  
26 subjected his Pharmacy Technician License No. TCH 74030 to discipline.

27 2. A copy of the Accusation is attached.

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

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

3 a. In violation of Business and Professions Code section 4301(k) and 4301(l), in or  
4 around July 24, 2009, Respondent was convicted by his plea of *nolo contendere* to violation of  
5 Penal Code section 496(a), a substantially related crime;

6 b. In violation of Business and Professions Code sections 4301(f), Respondent  
7 committed acts involving moral turpitude, dishonesty fraud, deceit, or corruption;

8 c. In violation of Business and Professions Code section 4301 (j), in conjunction with  
9 Section 4060 of the Code and Health and Safety Code sections 11170, Respondent possessed and  
10 self administered medications without a lawful prescription.

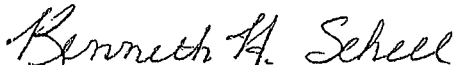
11 ORDER

12 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 74030, heretofore  
13 issued to Respondent Robert Adrian Castenada, is revoked.

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

18  
19 This Decision shall become effective on May 26, 2010.

20 It is so ORDERED April 26, 2010.

21   
22 \_\_\_\_\_  
23 KENNETH H. SCHELL, BOARD PRESIDENT  
24 FOR THE BOARD OF PHARMACY  
25 DEPARTMENT OF CONSUMER AFFAIRS  
26

27 Attachment: Exhibit A: Accusation No. 3520  
28

**Exhibit A**  
**Accusation No. 3520**

1 EDMUND G. BROWN JR., Attorney General  
of the State of California  
2 ARTHUR D. TAGGART,  
Supervising Deputy Attorney General  
3 STERLING A. SMITH, State Bar No. 84287  
Deputy Attorney General  
4 California Department of Justice  
1300 I Street, Suite 125  
5 P.O. Box 944255  
Sacramento, CA 94244-2550  
6 Telephone: (916) 445-0378  
Facsimile: (916) 327-8643  
7 Attorneys for Complainant

8  
9 **BEFORE THE**  
**BOARD OF PHARMACY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**  
12

13 In the Matter of the Accusation Against:	Case No. 3520
14 <b>ROBERT ADRIAN CASTENADA</b>	<b>ACCUSATION</b>
15 460 East Sequoia	
16 Woodlake, California 93286	
17 Pharmacy Technician Registration No. TCH 74030	
18 Respondent.	

19 Virginia Herold ("Complainant") alleges:

20 **PARTIES**

- 21 1. Complainant brings this Accusation solely in her official capacity as the  
22 Executive Officer of the Board of Pharmacy ("Board"), Department of Consumer Affairs.
- 23 2. On or about February 10, 2007, the Board of Pharmacy issued Pharmacy  
24 Technician Registration Number TCH 74030 to Robert Adrian Castenada (Respondent). The  
25 license will expire on September 30, 2010, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board of Pharmacy (Board),  
28 Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code unless otherwise indicated.

2 4. Section 4300 of the Code states, in pertinent part:

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

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

7 “(1) Suspending judgment.

8 “(2) Placing him or her upon probation.

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

10 “(4) Revoking his or her license.

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

13 5. Section 4301 of the Code states, in pertinent part:

14 “The board shall take action against any holder of a license who is guilty of  
15 unprofessional conduct or whose license has been procured by fraud or misrepresentation or  
16 issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the  
17 following:

18 ...

19 “(f) The commission of any act involving moral turpitude, dishonesty, fraud,  
20 deceit, or corruption, whether the act is committed in the course of relations as a licensee or  
21 otherwise, and whether the act is a felony or misdemeanor or not.

22 ...

23 “(j) The violation of any of the statutes of this state or of the United States  
24 regulating controlled substances and dangerous drugs.

25 (l) The conviction of a crime substantially related to the qualifications, functions,  
26 and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
27 (commencing with Section 801) of Title 21 of the United States Code regulating controlled  
28 substances or of a violation of the statutes of this state regulating controlled substances or

1 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the  
2 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.  
3 The board may inquire into the circumstances surrounding the commission of the crime, in order  
4 to fix the degree of discipline or, in the case of a conviction not involving controlled substances  
5 or dangerous drugs, to determine if the conviction is an offense substantially related to  
6 qualifications, functions, and duties of a licensee under this chapter. A plea of guilty or a  
7 conviction following a plea of nolo contendere is deemed to be a conviction within the meaning  
8 of this provision. The board may take action when the time for appeal has elapsed, or the  
9 judgment of conviction has been affirmed on appeal or when an order granting probation is made  
10 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4  
11 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of  
12 not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
13 indictment.”

14           6.       Section 111, subdivision (b) of the Code provides, in pertinent part, that  
15 “the suspension, expiration, or forfeiture by operation of law of a license issued by a board in the  
16 department, or its suspension, forfeiture, or cancellation by order of the board or by order of a  
17 court of law, or its surrender without the written consent of the board, shall not, during any  
18 period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its  
19 authority to institute or continue a disciplinary proceeding against the licensee upon any ground  
20 provided by law or to enter an order suspending or revoking the license or otherwise taking  
21 disciplinary action against the licensee on any such ground”.

22           7.       Section 4021 of the Code provides that “‘controlled substance’ means any  
23 substance listed in Chapter 2 (commencing with Section 11053 of Division 10 of the Health &  
24 Safety Code”.

25           8.       Health and Safety Code section 11170 provides that “no one shall  
26 prescribe, administer or furnish a controlled substance for himself.”

27           9.       Section 4060 of the Code provides, in pertinent part, that no person shall  
28 possess any controlled substance, except that furnished to a person upon lawful prescription.

1 10. Penal Code section 496, subdivision (a), provides, in pertinent part, that  
2 “every person who buys or receives any property that has been stolen or that has been obtained  
3 in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or  
4 who conceals, sells, withholds, or aids in concealing, selling, or withholding any property from  
5 the owner, knowing the property to be so stolen or obtained, shall be punished by imprisonment  
6 in a state prison, or in a county jail for not more than one year.”

7 12. Section 125.3 of the Code provides, in pertinent part, that the Board may  
8 request the administrative law judge to direct a licensee found to have committed a violation or  
9 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
10 and enforcement of the case.

11 13. Hydrocodone is a Schedule III controlled substance as designated by  
12 Health and Safety Code section 11056(e)(4).

13 14. Viagra is a dangerous drug within the meaning of section 4022 of the  
14 Code.

15 15. Tylenol with Codeine is a Schedule III controlled substance as designated  
16 by Health and Safety Code section 11056(e)(2).

17 16. Cialis is a dangerous drug within the meaning of section 4022 of the Code.

18 **FIRST CAUSE FOR DISCIPLINE**

19 (Criminal Conviction)

20 17. Respondent is subject to disciplinary action under sections 4301(k) and  
21 4301(l) in that on or about July 24, 2009, he was convicted by his plea of nolo contendere to  
22 violation of Penal Code section 496(a), a felony, in *People v. Robert Adrian Castenada*, Tulare  
23 County Superior Court Case No. VCF221385, a crime substantially related to the qualifications,  
24 functions, and duties of a pharmacy technician. The circumstances of the conviction are that  
25 Respondent diverted Hydrocodone, Tylenol with Codeine, Cialis and Viagra for his own use that  
26 were the property of Foothill Drugs, his employer, while Respondent was on duty as a pharmacy  
27 technician.

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**SECOND CAUSE FOR DISCIPLINE**

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

18. Respondent is subject to disciplinary action under section 4301(f) by committing acts involving moral turpitude, dishonesty fraud, deceit, or corruption. In addition to the facts alleged in Paragraph 17, Respondent sold or otherwise distributed some of the aforesaid controlled substances and dangerous drugs to others.

**THIRD CAUSE FOR DISCIPLINE**

(Violation of Drug Laws)

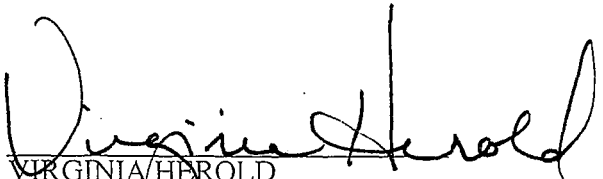
15. Based upon the allegations of Paragraphs 17 and 18, Respondent is subject to disciplinary action under section 4301(j), in conjunction with Section 4060 of the Code and Health and Safety Code sections 11170, by his possession of the aforesaid medications without a lawful prescription, and by his self-administration of Hydrocodone, in violation of California statutes regulating controlled substances and dangerous drugs.

**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:

- A. Revoking or suspending Pharmacy Technician Registration Number TCH 74030 issued to Robert Adrian Castenada;
- B. Ordering Robert Adrian Castenada 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;
- C. Taking such other and further action as deemed necessary and proper.

DATED: 1/26/10

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

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Accusation.wpd

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