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

In the Matter of the Accusation Against:
JOSE PERUCHO SAENZ
1890 Fargo Lane, #01
Chula Vista, CA 91913

Pharmacy Technician License No. TCH
49120

Respondent.

Case No. 3735

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about July 16, 2010, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, filed Accusation No. 3735 against Respondent Jose Perucho Saenz before the Board. (Accusation attached as Exhibit A.)

2. On or about May 16, 2003, the Board issued Pharmacy Technician License No. TCH 49120 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 May 31, 2011, unless renewed.

3. On or about July 22, 2010, Respondent was served by Certified and First Class Mail copies of the Accusation No. 3735, Statement to Respondent, blank Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record (which, pursuant to Business and Professions Code (Code) section 136 and 4100, and title 16, California Code of Regulations section 1704, is

1 required to be reported and maintained with the Board), which was and is: 1890 Fargo Lane, #01,
2 Chula Vista, CA 91913.

3 4. Service of the Accusation was effective as a matter of law under the provisions of
4 Government Code section 11505, subdivision (c) and/or Code section 124.

5 5. On or about July 26, 2010, an unknown person signed the certified mail receipt
6 accompanying the Accusation and related documents signed above.

7 6. As of September 14, 2010, Respondent has not filed a Notice of Defense.

8 7. Government Code section 11506 states, in pertinent part:

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

14 8. Respondent failed to file a Notice of Defense within 15 days after service upon him
15 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
16 3735.

17 9. California Government Code section 11520 states, in pertinent part:

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

22 10. 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 relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,
25 as well as taking official notice of all the investigatory reports, exhibits and statements contained
26 therein on file at the Board's offices regarding the allegations contained in Accusation No. 3735,
27 finds that the charges and allegations in Accusation No. 3735, are separately and severally, found
28 to be true and correct by clear and convincing evidence.

11. Taking official notice of its own internal records, pursuant to Code section 125.3, it is
hereby determined that the reasonable costs for Investigation and Enforcement is \$1,845.00 as of
September 14, 2010.

DETERMINATION OF ISSUES

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2 1. . . Based on the foregoing findings of fact, Respondent Jose Perucho Saenz has
3 subjected his Pharmacy Technician License No. TCH 49120 to discipline.

4 2. The agency has jurisdiction to adjudicate this case by default.

5 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
6 License based upon the following violations alleged in the Accusation which are supported by the
7 evidence contained in the Default Decision Investigatory Evidence Packet maintained by the
8 Board in this case:

9 a. Respondent is subject to disciplinary action under Code sections 490 and
10 4301(l) in that on or about March 16, 2009, in a criminal proceeding entitled *United States of*
11 *America v. Jose Jesus Peruch Saenz*, United States District Court, Southern District of California
12 Case Number 3:08-cr-0511-BEN, Respondent was convicted on his plea of guilty for violating 21
13 United States Code sections 846 and 841(a), knowingly and intentionally conspiring to distribute
14 approximately 90,000 Hydrocodone Bitartrate tablets, a Schedule III controlled substance, and 26
15 United States Code section 7206(a), filing a false income tax return on April 15, 2007, felony
16 crimes that are substantially related to the qualifications, duties and functions of a pharmacy
17 technician.

18 b. Respondent is subject to disciplinary action under Business and Professions
19 Code section 4301(f) for engaging in acts involving moral turpitude, dishonesty, fraud, deceit, or
20 corruption, as evidenced by his criminal conviction.

21 c. Respondent is subject to disciplinary action under Business and Professions
22 Code sections 4301(j) and (o), for violating Business and Professions Code section 4060 and
23 Health and Safety Code section 11350(a), by unlawfully possessing controlled substances.

24 d. Respondent is subject to disciplinary action under Business and Professions
25 Code sections 4301(j) and (o), for violating Business and Professions Code section 4059 and
26 Health and Safety Code section 11352(a) by furnishing controlled substances without a
27 prescription, and violating state and federal statutes and regulations governing the practice of
28 pharmacy.

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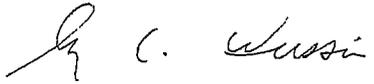
ORDER

IT IS SO ORDERED that Pharmacy Technician License No. TCH 49120, heretofore issued to Respondent Jose Perucho Saenz, 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 January 19, 2011.

It is so ORDERED December 20, 2010.



STANLEY C. WEISSNER, BOARD PRESIDENT
FOR THE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS

Attachment: Exhibit A: Accusation No. 3735

Exhibit A

Accusation No. 3735

1 EDMUND G. BROWN JR.
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 G. MICHAEL GERMAN
Deputy Attorney General
4 State Bar No. 103312
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2617
7 Facsimile: (619) 645-2061
Attorneys for Complainant
8

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

12 In the Matter of the Accusation Against:

Case No. 3735

13 **JOSE PERUCHO SAENZ**
1890 Fargo Lane #01
14 Chula Vista, CA 91913

ACCUSATION

15 **Pharmacy Technician Registration
Number TCH 49120**

Respondent.

16
17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On May 16, 2003, the Board issued Pharmacy Technician Registration Number TCH
23 49120 to Respondent Jose Perucho Saenz. The registration was in full force and effect at all
24 times relevant to the charges brought herein and will expire on May 31, 2011, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board, Department of Consumer Affairs, under
27 the authority of the following laws. All section references are to the Business and Professions

28 Code unless otherwise indicated.

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(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.

....

(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.

9. Section 11350 of the Health & Safety (H&S) Code states in pertinent part:

(a) Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in the state prison.

10. Section 11352 of the H&S Code states:

(a) Except as otherwise provided in this division, every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport (1) any controlled substance specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in

1 paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in
2 subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section
3 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a
narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist,
or veterinarian licensed to practice in this state, shall be punished by imprisonment in
the state prison for three, four, or five years.

4 (b) Notwithstanding the penalty provisions of subdivision (a), any person who
5 transports for sale any controlled substances specified in subdivision (a) within this
6 state from one county to another noncontiguous county shall be punished by
imprisonment in the state prison for three, six, or nine years.

7 COST RECOVERY

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

12 FACTS

13 12. On March 6, 2008, Drug Enforcement Administration (DEA) and Federal Bureau of
14 Investigation (FBI) agents simultaneously served federal search warrants at White Cross
15 Pharmacy, Park Blvd. Pharmacy, and Galloway Pharmacy in San Diego after a two-year
16 investigation into controlled substance diversion from the three pharmacies. On March 6, 2008,
17 while Respondent was employed as a Pharmacy Technician at Galloway Pharmacy, he was
18 served with a federal arrest warrant as part of the above investigation.

19 13. The search and warrants produced the following information:

20 a. Galloway was using the building located at 2984 Newton Avenue, San Diego, in
21 back of the pharmacy, as part of the pharmacy for storing prescription records, prescriptions filled
22 with controlled substances and being packaged for delivery, and computer terminals containing
23 confidential patient information, but the building was not licensed with the Board as a pharmacy.

24 b. From July 21, 2005, to March 6, 2008, Galloway purchased 467,400 tablets of
25 Hydrocodone 5/500; 2,111,400 tablets of Hydrocodone 10/325; and 154,900 tablets of
26 Oxycodone 80mg.

27 c. The DEA Biennial Inventory of July 21, 2005, for Galloway shows 730 tablets of
28 Oxycodone 80; 31,200 tablets of Hydrocodone 5/500; and 22,5000 tablets of Hydrocodone

1 10/325; and a closing inventory (stock on hand) on March 6, 2008, of 956 tablets of Oxycodone
2 80; 5,396 tablets of Hydrocodone 5/500; and 2,378 tablets of Hydrocodone 10/325.

3 d. The DEA computation chart shows that from July 21, 2005, to March 6, 2008,
4 Galloway dispensed 74,846 tablets of Oxycodone 80mg; 370,767 tablets of Hydrocodone 5/500;
5 and 103,623 tablets of Hydrocodone 10/325.

6 Together, this information revealed that Galloway was short 79,828 (51%) tablets of
7 Oxycodone 80mg; short 122,437 (25%) tablets of Hydrocodone 5/500 and short 2,028,899 (95%)
8 of Hydrocodone 10/325.

9 14. On March 16, 2009, in a criminal proceeding entitled, *United States of America vs.*
10 *Jose Jesus Peruch Saenz*, in the United States District Court, Southern District of California, Case
11 No. 3:08-cr-0511-BEN, Respondent was convicted by a plea of guilty to charges contained in a
12 Superseding Information of knowingly and intentionally conspiring to distribute approximately
13 90,000 Hydrocodone Bitartrate tablets, a Schedule III controlled substance, beginning in 2005
14 and continuing through July 2007, in violation of 21 United States Code sections 846 and 841,
15 subdivision (a); and filing a false income tax return on April 15, 2007, in violation of 26 United
16 States Code section 7206(a), both felonies.

17 15. Pursuant to the March 16, 2009 Plea Agreement between the United States and
18 Respondent, Respondent agreed to forfeit \$23,801.92 seized from his bank account, \$1,031.00 in
19 U.S. currency found in his residence, a ring with an estimated value of \$17,070 a Lexus GS 600
20 and a BMW 740i. Respondent also understood that the crimes to which he pled guilty carry the
21 following penalties:

22 Count 1: Distribution of Oxycodone

- 23 A. A maximum term of imprisonment of 5 years;
24 B. A maximum fine of \$250,000;
C. A mandatory special assessment of \$100; and
D. A term of supervised release of 3 years.

25 Count 2: Filing False Income Tax Return

- 26 A. A maximum term of imprisonment of 3 years;
27 B. A maximum fine of \$100,000, together with costs of prosecution;
C. A mandatory special assessment of \$100; and
D. A term of supervised release of up to 1 year.

28.

PRAYER

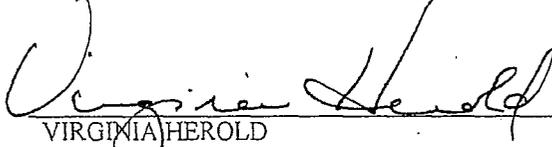
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Pharmacy Technician Registration Number TCH 49120 issued to Jose Perucho Saenz;

2. Ordering Jose Perucho Saenz 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: 7/16/10



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