

1
2
3
4
5
6 **BEFORE THE**
7 **BOARD OF PHARMACY**
8 **DEPARTMENT OF CONSUMER AFFAIRS**
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 4220

11 **AMANDALINA MARIE PADILLA**
12 **83082 Via Venecia**
13 **Indio, CA 92201**

DEFAULT DECISION AND ORDER

14 **Pharmacy Technician Registration**
15 **No. TCH 87325**

[Gov. Code, §11520]

Respondent.

16 **FINDINGS OF FACT**

17 1. On or about May 4, 2012, Complainant Virginia Herold, in her official capacity as the
18 Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation
19 No. 4220 against Amandalina Marie Padilla (Respondent) before the Board of Pharmacy.
(Accusation attached as Exhibit A.)

20 2. On or about November 1, 2008, the Board of Pharmacy (Board) issued Pharmacy
21 Technician Registration No. TCH 87325 to Respondent. The Pharmacy Technician Registration
22 expired on January 31, 2012, and has not been renewed. Business and Professions Code section
23 118, subdivision (b) provides that the suspension, expiration, surrender, or cancellation of a
24 license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the
25 period within which the license may be renewed, restored, reissued or reinstated.

26 3. On or about May 14, 2012, Respondent was served by Certified and First Class Mail
27 copies of the Accusation No. 4220, Statement to Respondent, Notice of Defense, Request for
28 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at

1 Respondent's address of record which, pursuant to Business and Professions Code section 4100
2 and California Code of Regulations, title 16, section 1704, is required to be reported and
3 maintained with the Board. Respondent's address of record was and is:

4 83082 Via Venecia
5 Indio, CA 92201

6 4. Service of the Accusation was effective as a matter of law under the provisions of
7 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
8 124.

9 5. On or about May 16, 2012, "Yareth Villagomez" signed the Domestic Return Receipt
10 on behalf of Respondent indicating the Accusation served by certified mail was received.

11 6. Government Code section 11506 states, in pertinent part:

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

17 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
18 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 4220.

19 8. California Government Code section 11520 states, in pertinent part:

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

24 9. Pursuant to its authority under Government Code section 11520, the Board finds
25 Respondent is in default. The Board will take action without further hearing and, based on the
26 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
27 taking official notice of all the investigatory reports, exhibits and statements contained therein on
28 file at the Board's offices regarding the allegations contained in Accusation No. 4220, finds that
the charges and allegations in Accusation No. 4220, are separately and severally, found to be true
and correct by clear and convincing evidence.

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER

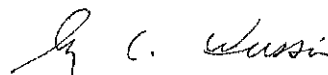
IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 87325, heretofore issued to Respondent Amandalina Marie Padilla, is revoked.

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 September 14, 2012.

It is so ORDERED August 15, 2012.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____
STANLEY C. WEISSER
Board President

DOJ Matter ID: SD2011801852

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 State Bar No. 101336
AMANDA DODDS
4 Senior Legal Analyst
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2141
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 4220

12 **AMANDALINA MARIE PADILLA**
13 **83082 Via Venecia**
14 **Indio, CA 92201**

A C C U S A T I O N

15 **Pharmacy Technician Registration**
No. TCH 87325

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about November 1, 2008, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 87325 to Amandalina Marie Padilla (Respondent). The Pharmacy
24 Technician Registration expired on January 31, 2012.

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
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

9. Section 4301 of the Code states:

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.

....

(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.

....

REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1769, states:

....

(b) When considering the suspension or revocation of a facility or a personal license on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).

1 (4) Whether the licensee has complied with all terms of parole, probation,
2 restitution or any other sanctions lawfully imposed against the licensee.

3 (5) Evidence, if any, of rehabilitation submitted by the licensee.

4 11. California Code of Regulations, title 16, section 1770, states:

5 For the purpose of denial, suspension, or revocation of a personal or facility
6 license pursuant to Division 1.5 (commencing with Section 475) of the Business and
7 Professions Code, a crime or act shall be considered substantially related to the
8 qualifications, functions or duties of a licensee or registrant if to a substantial degree
9 it evidences present or potential unfitness of a licensee or registrant to perform the
10 functions authorized by his license or registration in a manner consistent with the
11 public health, safety, or welfare.

12 COSTS

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

17 FIRST CAUSE FOR DISCIPLINE

18 **(November 8, 2011 Criminal Conviction for Caretaker Embezzlement From an Elder)**

19 13. Respondent has subjected her registration to discipline under sections 490 and 4301,
20 subdivision (l) of the Code in that she was convicted of a crime that is substantially related to the
21 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

22 a. On or about November 8, 2011, in a criminal proceeding entitled *People of the*
23 *State of California v. Amandalina Marie Padilla*, in Riverside County Superior Court, case
24 number INF1101755, Respondent was convicted on her plea of guilty to violating Penal Code
25 section 368, subdivision (e), caretaker embezzlement from an elderly person, a felony. As a
26 result of Respondent's plea bargain, the court dismissed additional felony counts of grand theft
27 (Pen. Code, § 487, subd. (a)) and intent to defraud (Pen. Code, § 484g, Subd. (a)).

28 b. As a result of the conviction, on or about November 8, 2011, Respondent was
granted 36 months formal probation, and sentenced to serve 180 days in the custody of the
Riverside County Sheriff's work release program, with credit for one day. Respondent was
further ordered to pay restitution to the victim in the amount of \$17,700. Respondent's probation

1 required she submit to a Fourth Amendment Waiver, participate in and complete a counseling or
2 treatment program, to stay away from her victim, and not work as a caregiver.

3 c. The facts that led to the conviction are that on or about July 2, 2011, "Grace,"
4 an 82-year-old woman with Parkinson's Disease, reported to the Palm Springs Police Department
5 that she was the victim of theft. Respondent, who was one of Grace's caretakers, did not show up
6 for work on June 26, 2011. The next day, Grace could not locate her ATM card. She called
7 Wells Fargo to report her card missing and learned that it had been used to withdraw \$1,500 in
8 cash, and purchases totaling \$172.37. Grace immediately canceled her card. She told the officer
9 that she believed Respondent was responsible for the theft of her ATM card and the unauthorized
10 withdrawals.

11 d. On July 14, 2011, an investigator went to Wells Fargo and obtained
12 photographs taken at ATM machines at the time the card was used. Grace identified the woman
13 in the photographs as Respondent. The investigator traced Respondent to an address provided by
14 her former employer. On July 18, 2011, Respondent was interviewed by investigators.
15 Respondent stated that she had been taking care of Grace off and on for the last couple of years.
16 She initially denied stealing the ATM card, but when she was confronted with the photographs
17 taken at the ATM machines, Respondent admitted she was the person in the photographs.
18 Respondent further admitted stealing 3-5 items of jewelry from Grace, including a Cartier watch,
19 and pawning them for cash which she spent on items for herself and to "have fun."

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit & Corruption)**

22 14. Respondent is subject to disciplinary action under section 4301, subdivision (f) of the
23 Code in that while employed as a caretaker for an elderly disabled woman, as described in
24 paragraph 13, above, Respondent entered the woman's residence and intentionally stole multiple
25 pieces of personal property, and approximately \$1,600 from the woman's bank account, acts
26 involving moral turpitude, dishonesty, fraud, deceit and corruption.

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PRAYER

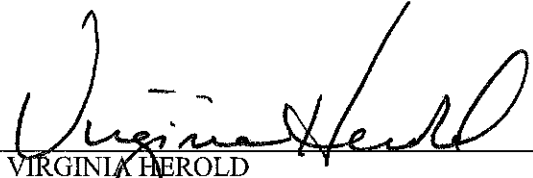
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Pharmacy Technician Registration Number TCH 87325, issued to Amandalina Marie Padilla;

2. Ordering Amandalina Marie Padilla 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;

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

DATED: 5/4/12



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

SD2011801852