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

In the Matter of the Accusation Against:
ANGEL M. AYALA
2555 Wabash Ave.
Los Angeles, CA 90033
Registration Number No. TCH 68230

Respondent.

Case No. 4483
DEFAULT DECISION AND ORDER
[Gov. Code, §11520.]

FINDINGS OF FACT

1. On May 9, 2015, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4483 against Respondent Angel M. Ayala before the Board of Pharmacy. The Accusation is attached as Exhibit A.
2. On April 6, 2006, the Board issued Registration Number No. TCH 68230 to Respondent. The registration was in full force and effect at all times relevant to the charges brought in Accusation No. 4483 and will expire on August 31, 2016, unless it is renewed.
3. On May 26, 2015, Respondent was served by Certified Mail copies of the Accusation No. 4483, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery

1 Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of
2 record which, pursuant to Business and Professions Code section 4100, is required to be reported
3 and maintained with the Board. Respondent's address of record was and is:

4 2555 Wabash Ave.
5 Los Angeles, CA 90033.

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 Business & Professions Code section 124.

8 5. On or about June 23, 2015, the documents described in paragraph 3 were returned by
9 the United States Postal Service marked "Unclaimed." The address on the documents was the
10 same as the address on file with the Board. Respondent failed to maintain an updated address with
11 the Board and the Board has made attempts to serve the Respondent at the address on file.
12 Respondent has not made himself available for service and therefore, has not availed himself of
13 his right to file a notice of defense and appear at hearing.

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

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

20 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
21 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
22 4483.

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

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

28 9. Pursuant to its authority under Government Code section 11520, the Board finds
Respondent is in default. The Board will take action without further hearing. The Board takes
official notice of all relevant investigatory reports, exhibits and statements on file with the Board.

1 Based on the officially noticed materials and the evidence in the Default Decision Evidence
2 Packet, the Board finds by clear and convincing evidence that allegations in Accusation Number
3 4483 are separately and severally true and correct.

4 **DETERMINATION OF ISSUES**

5 1. Based on the foregoing findings of fact, Respondent Angel M. Ayala has subjected
6 his Registration Number No. TCH 68230 to discipline.

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

8 3. The Board of Pharmacy is authorized to revoke Respondent's Registration Number
9 based upon the following violations alleged in the Accusation which are supported by the
10 evidence contained in the Default Decision Evidence Packet in this case.

11 4. Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit or
12 corruption. In particular, between September 1 and November 27, 2011, Respondent diverted six
13 syringes of hydromorphone, a controlled substance and dangerous drug, from Huntington
14 Memorial Hospital's Pyxis MedStation machines. Respondent attempted to conceal his theft by
15 replacing the depleted volume of hydromorphone with saline solution and then realigning the
16 tamper seals. (Bus. & Prof. Code, § 4301, subd. (f); Cal. Code Regs., tit. 16, § 1770.)

17 5. Respondent violated the following statutes regulating controlled substances and
18 dangerous drugs. (Bus. & Prof. Code, § 4301, subd. (j); Cal. Code Regs., tit. 16, § 1770.)

19 a. **Bus. & Prof. Code, § 4060:** Code section 4060, in relevant part, prohibits the
20 possession of a controlled substance except with a valid prescription. Respondent violated Code
21 section 4060 by possessing hydromorphone without a valid prescription or lawful purpose
22 between September 1 and November 27, 2011.

23 b. **Health & Saf. Code, § 11173:** Health and Safety Code section 11173
24 criminalizes obtaining or attempting to obtain a controlled substance by fraud, deceit,
25 misrepresentation, or subterfuge. Respondent violated Health and Safety code section 11173 by
26 obtaining hydromorphone, a controlled substance and dangerous drug, between September 1 and
27 November 27, 2011, by means of fraud, deceit, misrepresentation and subterfuge.

28 ///

1 c. **Health & Saf. Code, § 11350:** Health and Safety Code section 11350
2 criminalizes possession of a controlled substance unless upon the written prescription of a
3 physician, dentist, podiatrist, or veterinarian. Respondent violated Health and Safety Code section
4 11350 by possessing hydromorphone without a valid prescription or lawful purpose between
5 September 1 and November 27, 2011.

6 6. Respondent committed unprofessional conduct because he violated provisions of the
7 Pharmacy Law (Bus. & Prof. Code, §§ 2700, *et seq.*). (Bus. & Prof. Code, § 4301, subd. (o); Cal.
8 Code Regs., tit. 16, § 1770.)

9 7. Respondent committed conduct that would have warranted denial of licensure. (Bus.
10 & Prof. Code, § 4301, subd. (p); Cal. Code Regs., tit. 16, § 1770.)

11 **ORDER**

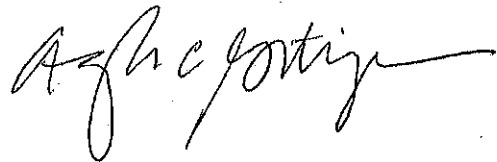
12 IT IS SO ORDERED that Registration Number No. TCH 68230, heretofore issued to
13 Respondent Angel M. Ayala, is revoked.

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 days after service of the Decision on Respondent. The agency in its discretion may vacate
17 the Decision and grant a hearing on a showing of good cause, as defined in the statute.

18 This Decision shall become effective on September 8, 2015.

19 It is so ORDERED August 7, 2015.

20 BOARD OF PHARMACY
21 DEPARTMENT OF CONSUMER AFFAIRS
22 STATE OF CALIFORNIA

23 

24
25 By _____
26 Amy Gutierrez, Pharm.D.
27 Board President

28 Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

Default Decision and Order in the Accusation Against Angel Ayala (No. 4483)

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2 ARMANDO ZAMBRANO
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6 (213) 897-7446

7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:
12 **ANGEL M. AYALA**
2555 Wabash Ave.
13 Los Angeles, CA 90033
14 **Pharmacy Technician Registration No.**
TCH 62830
15
16 Respondent.

Case No. 4483
ACCUSATION
(Gov. Code, § 11503.)

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 April 6, 2006, the Board issued Pharmacy Technician Registration Number
23 TCH 68230 to Respondent Angel M. Ayala. The registration was in full force and effect at all
24 times relevant to the charges brought herein, and will expire on August 31, 2015 unless it is
25 renewed.
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1 JURISDICTION

2 3. This Accusation is brought before the Board under the authority of the following
3 laws. All section references are to the Business and Professions Code (Code) unless otherwise
4 indicated.

5 4. Code section 4300 provides that every license issued by the Board may be revoked or
6 suspended and that proceedings to discipline a license are to be conducted according to the
7 Administrative Procedure Act (Gov. Code, §§ 11370, *et seq.*).

8 5. Code sections 118 and 4300.1 provide that the suspension, expiration, forfeiture,
9 cancellation or surrender of a license will not deprive the Board of jurisdiction to institute or
10 continue a disciplinary proceeding against a licensee.

11 STATUTES

12 6. Section 4301 of the Code states, in relevant part:

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

16 ...

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

19 ...

20 (j) The violation of any of the statutes of this state, or any other state, or of the
21 United States regulating controlled substances and dangerous drugs.

21 ...

22 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
23 abetting the violation of or conspiring to violate any provision or term of this chapter
24 or of the applicable federal and state laws and regulations governing pharmacy,
25 including regulations established by the board or by any other state or federal
26 regulatory agency.

25 (p) Actions or conduct that would have warranted denial of a license.

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DRUG STATUTES

7. Section 4060 of the Code states:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices.

8. Health and Safety Code section 11173 states, in relevant part:

(a) 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...

9. Health and Safety Code section 11350 states, in relevant part:

(a) Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b), (c), (e), 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 a county jail for not more than one year, except that such person shall instead be punished pursuant to subdivision (h) of Section 1170 of the Penal Code if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code.

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REGULATIONS

10. 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 his license or registration in a manner consistent with the public health, safety, or welfare.

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COST RECOVERY

11. Section 125.3 of the Code provides, in relevant 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 the reasonable costs of the investigation and enforcement of the case.

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DRUG CLASSIFICATIONS

12. Hydromorphone is an opioid pain medication. It is a Schedule II controlled substance and a dangerous drug. (Health & Saf. Code, § 11055, subd. (b)(1)(J); Bus. & Prof. Code, § 4022.)

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STATEMENT OF FACTS

13. Pasadena-based Huntington Memorial Hospital employed Respondent in its pharmacy as a Pharmacy Technician from February 2008 to December 8, 2011.

14. At first, the pharmacy assigned Respondent to the night shift and tasked him with restocking the hospital's Pyxis MedStation machines. A Pyxis MedStation machine is an automated drug-dispensing system that stores dangerous drugs and controlled substances to be administered to patients. It logs each access attempt, and hospital employees are required to use a unique, employee-specific access code to gain entry.

15. Respondent transferred to the daytime shift in July of 2010 and the pharmacy re-assigned him to its sterile intravenous drug compounding area. It also reduced his Pyxis-restocking duties.

16. In June of 2011, the pharmacy assigned Respondent to perform tasks that did not require him to access a Pyxis machine. Respondent's user identification code and password, however, remained active, allowing him continued access.

1 17. Between September 1 and November 27, 2011, Respondent entered Pyxis machine
2 cabinets that stocked hydromorphone syringes in concentrations of thirty milligram per milliliter
3 and sixty milligram per milliliter. He did this 369 times over three months. On 43 occasions, he
4 accessed or attempted to access a Pyxis machine on a day that he was not scheduled to work; he
5 did this on October 20, November 1, 3, 8, 10, 15, 17, 22, 23, and 28, 2011.

6 18. Between September 1 and November 27, 2011, Respondent removed hydromorphone
7 syringes by using the Pyxis machines' expire and refill functions. Forty-four hydromorphone
8 PCA syringes in Pyxis Machine cabinets that Respondent accessed were found with broken
9 tamper seals. The seals were aligned in an effort to make the seals appear intact. Six of the
10 tampered-with syringes were tested and all were found to contain less than the expected amount
11 of hydromorphone. Respondent replaced the depleted hydromorphone content with saline
12 solution.

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(Moral Turpitude, Dishonesty, Deceit)**

15 19. Respondent is subject to disciplinary action under Code section 4301, subdivision (f),
16 in conjunction with California Code of Regulations, title 16, section 1770, for unprofessional
17 conduct because he committed an act involving moral turpitude, dishonesty, fraud, deceit or
18 corruption. In particular, between September 1 and November 27, 2011, Respondent diverted six
19 syringes of hydromorphone, a controlled substance and dangerous drug, from Huntington
20 Memorial Hospital's Pyxis MedStation machines. Respondent attempted to conceal his theft by
21 replacing the depleted volume of hydromorphone with saline solution and then realigning the
22 tamper seals. Complainant realleges paragraphs 12-18.

23 **SECOND CAUSE FOR DISCIPLINE**

24 **(Violate Statutes Regulating Controlled Substances and Dangerous Drugs)**

25 20. Respondent is subject to disciplinary action under Code section 4301, subdivision (j),
26 in conjunction with California Code of Regulations, title 16, section 1770, for unprofessional
27 conduct because Respondent violated the following statutes regulating controlled substances and
28 dangerous drugs:

1 a. **Bus. & Prof. Code, § 4060:** Code section 4060, in relevant part, prohibits the
2 possession of a controlled substance except with a valid prescription. Respondent violated Code
3 section 4060 by possessing hydromorphone without a valid prescription or lawful purpose
4 between September 1 and November 27, 2011. Complainant realleges paragraphs 12--18.

5 b. **Health & Saf. Code, § 11173:** Health and Safety Code section 11173 criminalizes
6 obtaining or attempting to obtain a controlled substance by fraud, deceit, misrepresentation, or
7 subterfuge. Respondent violated Health and Safety code section 11173 by obtaining
8 hydromorphone, a controlled substance and dangerous drug, between September 1 and November
9 27, 2011, by means of fraud, deceit, misrepresentation and subterfuge. Complainant realleges
10 paragraphs 12--18.

11 c. **Health & Saf. Code, § 11350:** Health and Safety Code section 11350 criminalizes
12 possession of a controlled substance unless upon the written prescription of a physician, dentist,
13 podiatrist, or veterinarian. Respondent violated Health and Safety Code section 11350 by
14 possessing hydromorphone without a valid prescription or lawful purpose between September 1
15 and November 27, 2011. Complainant realleges paragraphs 12--18.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Violate Pharmacy Law)**

18 21. Respondent is subject to disciplinary action under Code section 4301, subdivision (o),
19 in conjunction with California Code of Regulations, title 16, section 1770, for unprofessional
20 conduct because he violated provisions of the Pharmacy Law (Bus. & Prof. Code, §§ 2700, *et*
21 *seq.*). Complainant realleges paragraphs 12--20.

22 **FOURTH CAUSE FOR DISCIPLINE**

23 **(Conduct that Would Have Warranted License Denial)**

24 22. Respondent is subject to disciplinary action under Code section 4301, subdivision (p),
25 in conjunction with California Code of Regulations, title 16, section 1770, for unprofessional
26 conduct because he committed acts that would have warranted denial of a license. Complainant
27 realleges paragraphs 12--21.

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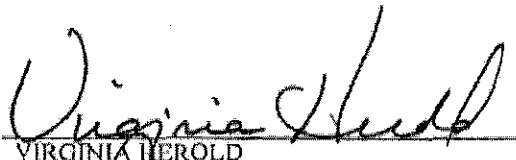
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PRAYER

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 Registration Number TCH 62830, issued to Respondent Angel M. Ayala;
2. Ordering Respondent Angel M. Ayala 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: 5/9/15


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

LA2013508523