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

In the Matter of the Accusation Against: CARLOS GERARDO CALOCA 32225 Rancho Vista Drive Cathedral City, CA 92234 Pharmacy Technician Registration No. TCH 65655 Respondent.	Case No. 4792 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about September 19, 2013, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4792 against Carlos Gerardo Caloca (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about November 4, 2005, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 65655 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 4792 and expired on October 31, 2011. This lapse in licensure, however, pursuant to Business and Professions Code section 118, subdivision (b), and Section 4300.1, does not deprive the Board of its authority to institute or continue this disciplinary proceeding.

3. On or about October 2, 2013, Respondent was served by Certified and First Class Mail copies of the Accusation No. 4792, Statement to Respondent, 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 section 4100, and California Code of Regulations, Title 16, Section 1704, is required to be reported and maintained with the Board. Respondent's address of record was and is: 32225 Rancho Vista Drive, Cathedral City, CA 92234.

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

5. Government Code section 11506 states, in pertinent part:

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

6. Respondent failed to file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 4792.

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

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

8. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the Board's offices regarding the allegations contained in Accusation No. 4792, finds that the charges and allegations in Accusation No. 4792, are separately and severally, found to be true and correct by clear and convincing evidence.

9. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement of this matter is $11,484.00 as of December 9, 2013.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Carlos Gerardo Caloca has subjected his Pharmacy Technician Registration No. TCH 65655 to discipline.

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

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

a. Conviction of Crime Substantially Related to the Qualifications, Functions and Duties of a Pharmacy Technician (Bus. & Prof. Code, § 4301, subd. (l) and § 490);

b. Violation of State Statutes Regulating Controlled Substances (Bus. & Prof. Code, § 4301, subd. (j));

c. Acts Involving Moral Turpitude, Dishonesty, Fraud and Deceit (Bus. & Prof. Code, § 4301, subd. (f));

d. Knowingly Making Documents Falsely Representing Facts (Bus. & Prof. Code, § 4301, subd. (g)); and

e. Furnishing Drugs to Oneself and Others Without Prescription (Bus. & Prof. Code, § 4301, subd. (o) and § 4059, subd. (a)).

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ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 65655, heretofore issued to Respondent Carlos Gerardo Caloca, 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 March 10, 2014.

It is so ORDERED ON February 7, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By _____
STAN C. WEISSER
Board President

default decision_LIC.rtf
DOJ Matter ID:SD2013705547

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

KAMALA D. HARRIS
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General
RON ESPINOZA
Deputy Attorney General
State Bar No. 176908
110 West "A" Street, Suite 1100
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2100
Facsimile: (619) 645-2061
Attorneys for Complainant

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

In the Matter of the Accusation Against: CARLOS GERARDO CALOCA 32225 Rancho Vista Drive Cathedral City, CA 92234 Pharmacy Technician Registration No. TCH 65655 Respondent.	Case No. 4792 **A C C U S A T I O N**

Complainant alleges:

PARTIES

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

2. On or about November 4, 2005, the Board of Pharmacy issued Pharmacy Technician Registration Number TCH 65655 to Carlos Gerardo Caloca (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and expired on October 31, 2011, and has not been renewed.

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JURISDICTION

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

4. Section 118, subdivision (b), of the Code provides 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.

5. Section 4300.1 of the Code states:

"The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license."

6. Section 4300 of the Code states:

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

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

"(1) Suspending judgment.

"(2) Placing him or her upon probation.

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

"(4) Revoking his or her license.

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

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STATUTORY PROVISIONS

7. 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.

"(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

". . . .

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

". . . .

"(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.

". . . ."

8. Section 4059, subdivision (a), of the Code states:

"A person may not furnish any dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7."

9. 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."

10. Section 482 of the Code states:

"Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

". . . .

"(b) Considering suspension or revocation of a license under Section 490.

"Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee."

11. Section 490 of the Code states:

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

"(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

"(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken 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 the provisions of Section 1203.4 of the Penal Code.

"(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in *Petropoulos* v. *Department of Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations

in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session do not constitute a change to, but rather are declaratory of, existing law."

12. Section 493 of the Code states:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

"As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'"

13. Health and Safety Code section 11350, subdivision (a), states:

"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 pursuant to subdivision (h) of Section 1170 of the Penal Code."

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14. Health and Safety Code section 11173, subdivision (a), states:

"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."

REGULATIONS

15. California Code of Regulations, title 16, section 1769, subdivision (b), 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).

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

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

16. 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."

COST RECOVERY

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

DRUGS AT ISSUE

18. "Norco," a brand name for hydrocodone with acetaminophen, is a Schedule III controlled substance as designated by Health and Safety Code section 11056, subdivision (e)(4), and is a dangerous drug pursuant to Business and Professions Code section 4022. Norco is a narcotic pain reliever.

19. "Xanax," a brand name for alprazolam, is a Schedule IV controlled substance as designated by Health and Safety Code section 11057, subdivision (d)(1), and is a dangerous drug pursuant to Business and Professions Code section 4022. Xanax is used for anxiety and panic disorders.

20. Phentermine is a Schedule IV controlled substance as designated by Health and Safety Code section 11057, subdivision (f)(4), and is a dangerous drug pursuant to Business and Professions Code section 4022. Phentermine is used for weight loss.

FACTS

21. On or about February 8, 2010, Respondent was working as a pharmacy technician at a Walgreens pharmacy in Palm Springs, California. Around this time, a co-employee discovered that someone at the pharmacy had created false, secondary prescription profiles for existing patients. Respondent admitted to Walgreen's investigator that he had created the fake, patient profiles in order to steal drugs from the pharmacy. Respondent admitted that he had diverted approximately 20,000 pills of hydrocodone, 8,000 pills of alprazolam, and 280 pills of phentermine. Respondent stated that he stole the drugs to pay off a gambling debt he owed, for his own personal use, or to give away to friends.

FIRST CAUSE FOR DISCIPLINE

(April 12, 2011, Criminal Conviction for Grand Theft)

22. Respondent is subject to disciplinary action under Code sections 490 and 4301, subdivision (l), in that he was convicted of a crime substantially related to the duties, functions, and qualifications of a pharmacy technician. The circumstances are as follows:

A. On or about April 12, 2011, in a criminal proceeding entitled *People v. Carlos Gerardo Caloca*, in Riverside County Superior Court, Case No. INF10000775, Respondent was

convicted by his plea of guilty to a violation of Penal Code section 487, subdivision (a) (Grand Theft over $400), a felony.

B. The circumstances of the crime are that in or around February 2010, Respondent stole over $400 in drugs from Walgreens pharmacy while working there as a pharmacy technician.

C. On or about April 12, 2011, Respondent was sentenced as follows: proceedings suspended and formal probation granted for 3 years. In addition, Respondent was sentenced by the Court to 90 days jail (to be served in the Work Release Program), to pay fines and fees, and to pay restitution to the victim in the amount of $1,094.35.

D. On or about November 30, 2011, Respondent admitted to the Court that he had violated his probation due to Weekend Program termination. Respondent was sentenced by the Court to additional 30 days jail (to be served in the Work Release Program) and his probation was reinstated.

SECOND CAUSE FOR DISCIPLINE

(Unlawful Possession of Controlled Substances)

23. Respondent is subject to disciplinary action under Code section 4301, subdivision (j), for unprofessional conduct, in that in or around February 2010, he unlawfully possessed the controlled substances Norco, Xanax and Phentermine, without prescription, in violation of Business and Professions Code section 4060, and Health and Safety Code section 11350, subdivision (a), as set forth in paragraph 21 above, which is hereby incorporated by reference.

THIRD CAUSE FOR DISCIPLINE

(Acts Involving Moral Turpitude, Dishonesty, Fraud and Deceit)

24. Respondent is subject to disciplinary action under Code section 4301, subdivision (f), for unprofessional conduct, in that in or around February 2010, he committed acts involving moral turpitude, dishonesty, fraud, and deceit, when he diverted Norco, Xanax and Phentermine pills from his employer, Walgreens pharmacy, while working there as a pharmacy technician, as set forth in paragraph 21 above, which is hereby incorporated by reference.

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FOURTH CAUSE FOR DISCIPLINE

(Knowingly Made Documents Falsely Representing Facts)

25. Respondent is subject to disciplinary action under Code section 4301, subdivision (g), in that in or around February 2010, Respondent knowingly made documents that falsely represented the existence of facts, namely, creating false, secondary prescription profiles for patients in order to divert the controlled substance Norco, Xanax and Phentermine from his employer, as set forth in paragraph 21 above, which is hereby incorporated by reference.

FIFTH CAUSE FOR DISCIPLINE

(Furnishing Drugs to Oneself and Others Without Prescription)

26. Respondent is subject to disciplinary action under Code section 4301, subdivision (o), in that in or around February 2010, he furnished himself, and others, with the controlled substances Norco, Xanax and Phentermine, without prescription, in violation of Business and Professions Code section 4059, subdivision (a), as set forth in paragraph 21 above, which is hereby incorporated by reference.

SIXTH CAUSE FOR DISCIPLINE

(Obtain Controlled Substances by Fraud, Deceit, Misrepresentation, or Subterfuge)

27. Respondent is subject to disciplinary action under Code section 4301, subdivision (j), for unprofessional conduct, in that in or around February 2010, he unlawfully obtained the controlled substances Norco, Xanax and Phentermine by fraud, deceit, misrepresentation, or subterfuge, by creating false, secondary prescription profiles for patients, in violation of Health and Safety Code section 11173, subdivision (a), as set forth in paragraph 21 above, which is hereby incorporated by reference.

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 65655, issued to Carlos Gerardo Caloca ;

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2. Ordering Carlos Gerardo Caloca 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: 9/19/13

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

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