



California State Board of Pharmacy
 1625 N. Market Blvd, N219, Sacramento, CA 95834
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BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY
 DEPARTMENT OF CONSUMER AFFAIRS
 GOVERNOR EDMUND G. BROWN JR.

APPLICATION FOR VOLUNTARY SURRENDER OF PHARMACY TECHNICIAN LICENSE

PLEASE PRINT IN BLACK OR BLUE INK OR TYPE YOUR RESPONSES

Name: <u>GISELDA LOPEZ</u>	Case No. <u>AC 4799</u>
Address of Record: <u>604 N Market St #15</u> <u>INGWOOD CA 90302</u>	

Pursuant to the terms and conditions of my probation with the California State Board of Pharmacy (Board) in Case No. AC4799, I hereby request to surrender my pharmacy technician license, License No. ^{TC#} 97412. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, I will no longer be subject to the terms and conditions of probation. I understand that this surrender constitutes a record of discipline and shall become a part of my license history with the Board.

Upon the acceptance of the surrender, I shall relinquish my pharmacy technician license to the Board within ten (10) days of notification by the Board that the surrender is accepted. I understand that I may not reapply for any license, permit, or registration from the board for three (3) years from the effective date of the surrender. I further understand that I shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

PLEASE BE ADVISED THAT YOU ARE NOT RELIEVED OF THE REQUIREMENTS OF YOUR PROBATION UNLESS THE BOARD NOTIFIES YOU THAT YOUR REQUEST TO SURRENDER YOUR LICENSE HAS BEEN ACCEPTED.

Giselda Lopez
 Applicant's Signature

6/2/16
 Date

[Signature]
 Executive Officer's Approval

6/23/16
 Date

All items on this application are mandatory in accordance with your probationary order and the Board's Disciplinary Guidelines as authorized by Title 16, California Code of Regulations section 1760. Failure to provide any of the requested information or providing unreadable information will result in the application being rejected as incomplete. The information provided on this form will be used to determine eligibility for surrender. The official responsible for information maintenance is the Executive Officer, telephone (916) 574-7900, 1625 N. Market Blvd., Suite N-219, Sacramento, CA 95834. The information you provide may also be disclosed in the following circumstances: (1) in response to a Public Records Act request; (2) to another government agency as required by state or federal law; or, (3) in response to a court or administrative order, a subpoena, or a search warrant. Each individual has the right to review the files or records maintained on them by our agency, unless the records are identified as confidential information and exempted by Section 1798.40 of the Civil Code.

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

In the Matter of the Accusation Against:

GRISELDA LOPEZ
15820 Vanowen St. #9
Van Nuys, CA 91406
Pharmacy Technician Registration No.
TCH 97412

Respondent.

Case No. 4799

OAH No. 2014070435

DECISION AND ORDER

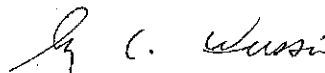
The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on February 2, 2015.

It is so ORDERED on January 2, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STAN C. WEISSER
Board President

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

In the Matter of the Accusation Against:

GRISELDA LOPEZ,

Pharmacy Technician Registration No.
TCH 97412

Respondent.

Case No. 4799

OAH No. 2014070435

PROPOSED DECISION

Administrative Law Judge Amy Yerkey, State of California, Office of Administrative Hearings, heard this matter on October 22, 2014, in Los Angeles, California.

Heather Vo, Deputy Attorney General, represented Virginia Herold (Complainant), Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

Griselda Lopez represented herself.

The matter was submitted for decision on October 22, 2014.

FACTUAL FINDINGS

1. Complainant filed the Accusation in her official capacity.
2. The Board issued Pharmacy Technician Registration number TCH 97412 to Respondent on March 11, 2010. The registration has been in force and effect since its issuance and will expire on September 30, 2015, unless renewed. It has not been previously disciplined.
3. On December 12, 2012, a Los Angeles Police Department officer arrested Respondent for violating Health and Safety Code section 11350, subdivision (a) (possession of a controlled substance). The Los Angeles County Superior Court, in case number LA072817, dismissed the charge pursuant to Penal Code section 1382 (failure to bring the case to trial or file information within time limits).

4. The facts and circumstances surrounding the arrest are that during a traffic stop, police discovered a crushed hydrocodone (also known as Norco) pill inside of Respondent's wallet. Respondent did not have a valid prescription for the medication.

5. Respondent's arrest for possession of a controlled substance without a valid prescription constitutes unprofessional conduct.

6. Respondent testified at the hearing. She was sincerely remorseful for her conduct. She acknowledged her mistake and was forthcoming about the circumstances. She explained that her ex-boyfriend gave her the pill about two weeks prior to her arrest, and she forgot that it was in her wallet. Respondent recognized that she succumbed to peer pressure and should not have accepted the pill. She is no longer dating the person who gave her the pill, and would not ever again involve herself with anyone that would jeopardize her career or negatively impact her life. There was no evidence that Respondent had a drug or alcohol addiction. Respondent has never stolen from any of the pharmacies where she worked, and there is no evidence that this would be a concern going forward.

7. Respondent is 27 years old and lives with her parents and sister. She started working at CVS when she was 18, and worked her way to become a pharmacy technician. Her colleagues at CVS were so supportive of her career advancement that the pharmacist paid for her registration as a pharmacy technician. She is the first person in her family to graduate high school. She has been working as a pharmacy technician for nine years. Respondent is currently employed at Omnicare Pharmacy since April 2011, as a triage technician. Respondent's employment is a primary source of income for her family. She strongly desires to retain her registration and is willing to have it placed on probation.

8. The Board has incurred \$3,462 in actual costs investigating and prosecuting this matter.

9. Respondent submitted evidence regarding her finances in support of her argument that she is unable to pay the costs of investigation and prosecution. Her estimated net monthly income is approximately \$1,600. After she pays rent and other living expenses, she has approximately \$100 per month remaining.

LEGAL CONCLUSIONS

1. Cause exists under Business and Professions Code sections 4300, 4301 and 4060 to suspend or revoke Respondent's registration in that she unlawfully possessed a controlled substance, by reason of factual finding numbers 4 through 6.

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2. Cause exists under Business and Professions Code section 4301, to suspend or revoke Respondent's registration in that she committed acts of unprofessional conduct, by reason of factual finding numbers 4 through 6.

3. Cause exists pursuant to section 125.3 to order Respondent to pay the Board's costs of investigating and prosecuting this matter, by reason of factual finding numbers 4 through 6 and legal conclusion numbers 1 and 2.

In *Zuckerman v. State Board of Chiropractic Examiners*, 29 Cal.4th 32 (2002), the Supreme Court rejected a constitutional challenge to a cost regulation similar to section 125.3. In so doing, however, the Court directed the administrative law judge and the agency to evaluate several factors to ensure that the cost provision did not deter individuals from exercising their right to a hearing. Thus, the board must not assess the full costs where it would unfairly penalize a respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty; the board must consider a Respondent's subjective good faith belief in the merits of his or her position and whether the Respondent has raised a colorable challenge; the board must consider a Respondent's ability to pay; and the board may not assess disproportionately large investigation and prosecution costs when it has conducted a disproportionately large investigation to prove that a Respondent engaged in relatively innocuous misconduct. (*Id.* at 45.)

In this case, after giving due consideration to the factors enumerated in *Zuckerman*, including Respondent's ability to pay, the actual costs will be reduced to \$2,400, and she will be allowed to make monthly payments of \$66.66 during the period of probation.

4. All evidence submitted in mitigation or rehabilitation has been considered. The evidence did not establish that Respondent has a drug or alcohol addiction; rather she had one transgression that was due in part to youth. Respondent has learned valuable life lessons and assured the Board that her conduct will not recur. The order that follows is adequate and necessary for the protection of the public.

ORDER

Pharmacy technician registration number TCH 97412, issued to Respondent Griselda Lopez is revoked; however, the revocation is stayed and Respondent is placed on probation for three years upon the following terms and conditions:

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1. Certification Prior to Resuming Work

Respondent shall be automatically suspended from working as a pharmacy technician until he or she is certified as defined by Business and Professions Code section 4202(a)(4) and provides satisfactory proof of certification to the board. Respondent shall not resume working as a pharmacy technician until notified by the board. Failure to achieve certification within one (1) year shall be considered a violation of probation. Respondent shall not resume working as a pharmacy technician until notified by the board.

During suspension, Respondent shall not enter any pharmacy area or any portion of any other board licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall Respondent manage, administer, or assist any licensee of the board. Respondent shall not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances. Respondent shall not resume work until notified by the board.

Subject to the above restrictions, Respondent may continue to own or hold an interest in any licensed premises by the board in which he or she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

2. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the board, in writing, within seventy-two (72) hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- discipline, citation, or other administrative action filed by any state or federal agency which involves Respondent's pharmacy technician registration or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

Failure to timely report any such occurrence shall be considered a violation of probation.

3. Report to the Board

Respondent shall report to the board quarterly, on a schedule as directed by the board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, Respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the board.

4. Interview with the Board

Upon receipt of reasonable prior notice, Respondent shall appear in person for interviews with the board or its designee, at such intervals and locations as are determined by the board or its designee. Failure to appear for any scheduled interview without prior notification to board staff, or failure to appear at two (2) or more scheduled interviews with the board or its designee during the period of probation, shall be considered a violation of probation.

5. Cooperate with Board Staff

Respondent shall cooperate with the board's inspection program and with the board's monitoring and investigation of Respondent's compliance with the terms and conditions of his or her probation. Failure to cooperate shall be considered a violation of probation.

6. Notice to Employers

During the period of probation, Respondent shall notify all present and prospective employers of the decision in case number 4799 and the terms, conditions and restrictions imposed on Respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of Respondent undertaking any new employment, Respondent shall cause his or her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent's tenure of employment) and owner to report to the board in writing acknowledging

that the listed individual(s) has/have read the decision in case number 4799 and the terms and conditions imposed thereby. It shall be Respondent's responsibility to ensure that his or her employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the board.

If Respondent works for or is employed by or through a pharmacy employment service, Respondent must notify his or her direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the decision in case number 4799 in advance of the Respondent commencing work at each pharmacy. A record of this notification must be provided to the board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of Respondent undertaking any new employment by or through a pharmacy employment service, Respondent shall cause his or her direct supervisor with the pharmacy employment service to report to the board in writing acknowledging that he or she has read the decision in case number 4799 and the terms and conditions imposed thereby. It shall be Respondent's responsibility to ensure that his or her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

Failure to timely notify present or prospective employer(s) or to cause that/those employer(s) to submit timely acknowledgements to the board shall be considered a violation of probation.

"Employment" within the meaning of this provision shall include any full-time, part-time, temporary or relief service or pharmacy management service as a pharmacy technician or in any position for which a pharmacy technician license is a requirement or criterion for employment, whether the Respondent is considered an employee, independent contractor or volunteer.

7. Reimbursement of Board Costs

As a condition precedent to successful completion of probation, Respondent shall pay to the board its costs of investigation and prosecution in the amount of \$2,400. Respondent shall make said payments as follows: \$66.66 per month. There shall be no deviation from this schedule absent prior written approval by the board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

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8. Probation Monitoring Costs

Respondent shall pay any costs associated with probation monitoring as determined by the board each and every year of probation. Such costs shall be payable to the board on a schedule as directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

9. Status of License

Respondent shall, at all times while on probation, maintain an active, current pharmacy technician license with the board, including any period during which suspension or probation is tolled. Failure to maintain an active, current license shall be considered a violation of probation.

If Respondent's pharmacy technician license expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof due to tolling or otherwise, upon renewal or reapplication Respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

10. License Surrender While on Probation/Suspension

Following the effective date of this decision, should Respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, Respondent may tender her pharmacy technician license to the board for surrender. The board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, Respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the Respondent's license history with the board.

Upon acceptance of the surrender, Respondent shall relinquish her pharmacy technician license to the board within ten (10) days of notification by the board that the surrender is accepted. Respondent may not reapply for any license, permit, or registration from the board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board.

11. Notification of a Change in Name, Residence Address, Mailing Address or Employment

Respondent shall notify the board in writing within ten (10) days of any change of employment. Said notification shall include the reasons for leaving, the address of the new

employer, the name of the supervisor and owner, and the work schedule if known. Respondent shall further notify the board in writing within ten (10) days of a change in name, residence address and mailing address, or phone number.

Failure to timely notify the board of any change in employer(s), name(s), address(es), or phone number(s) shall be considered a violation of probation.

12. Tolling of Probation

Except during periods of suspension, Respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of 40 hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, Respondent must nonetheless comply with all terms and conditions of probation.

Should Respondent, regardless of residency, for any reason (including vacation) cease working as a pharmacy technician for a minimum of 40 hours per calendar month in California, Respondent must notify the board in writing within ten (10) days of cessation of work and must further notify the board in writing within ten (10) days of the resumption of the work. Any failure to provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for Respondent's probation to remain tolled pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding thirty-six (36) months.

"Cessation of work" means calendar month during which Respondent is not working for at least 40 hours as a pharmacy technician, as defined in Business and Professions Code section 4115. "Resumption of work" means any calendar month during which Respondent is working as a pharmacy technician for at least 40 hours as a pharmacy technician as defined by Business and Professions Code section 4115.

13. Violation of Probation

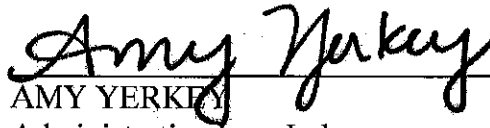
If Respondent has not complied with any term or condition of probation, the board shall have continuing jurisdiction over Respondent, and probation shall automatically be extended, until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

If Respondent violates probation in any respect, the board, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed against Respondent during probation, the board shall have continuing jurisdiction, and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

14. Completion of Probation

Upon written notice by the board indicating successful completion of probation, Respondent's pharmacy technician license will be fully restored.

Dated: November 20, 2014


AMY YERKEY
Administrative Law Judge
Office of Administrative Hearings

1 KAMALA D. HARRIS
Attorney General of California
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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:

Case No. 4799

12 **GRISELDA LOPEZ**
15820 Vanowen St. #9
13 Van Nuys, CA 91406

ACCUSATION

14 Pharmacy Technician Registration
15 No. TCH 97412

16 Respondent.

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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 March 11, 2010, the Board of Pharmacy (Board) issued Pharmacy
23 Technician Registration No. TCH 97412 to Griselda Lopez (Respondent). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought
25 herein and will expire on September 30, 2015, unless renewed.

26 **JURISDICTION**

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

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2 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
3 violation of or conspiring to violate any provision or term of this chapter or of the applicable
4 federal and state laws and regulations governing pharmacy, including regulations established by
5 the board or by any other state or federal regulatory agency."

6 **REGULATORY PROVISIONS**

7 8. California Code of Regulations, title 16, section 1770, states:

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

14 **COST RECOVERY**

15 9. Section 125.3 provides, in pertinent part, that the Board may request the
16 administrative law judge to direct a licentiate found to have committed a violation or violations of
17 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
18 enforcement of the case, with failure of the licentiate to comply subjecting the license to not
19 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs
20 may be included in a stipulated settlement.

21 10. **CONTROLLED SUBSTANCES/DANGEROUS DRUGS**

22 "Norco," is a Schedule III controlled substance pursuant to Health and Safety Code section
23 11056(e) and is categorized as a dangerous drug pursuant to section 4022.

24 **FIRST CAUSE FOR DISCIPLINE**

25 **(Illegal Possession of a Controlled Substance)**

26 11. Respondent is subject to disciplinary action under sections 4300 and 4301,
27 subdivision (j) for violating section 4060, on the grounds of unprofessional conduct, in that
28 Respondent was found to be in illegal possession of a controlled substance, as follows:

1 a. On or about December 12, 2012, during a traffic enforcement stop by the Los
2 Angeles Police Department, Respondent was contacted. Respondent was asked to exit her
3 vehicle and provide her driver's license. During a consent search of her purse, the officer found a
4 piece of white paper folded several times. The officer unfolded the paper and observed a white
5 powder like substance, resembling cocaine. Respondent was subsequently arrested for violating
6 Health and Safety Code section 11350, subdivision (a) [possession of a controlled substance].
7 During the booking procedure, Respondent admitted to officers that the white powder was not
8 cocaine; but, rather it was a crushed and grinded up Norco pill. The powder was confirmed by
9 the police department to be Norco.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Unprofessional Conduct/ Violation of Licensing Chapter)**

12 12. Respondent is subject to disciplinary action under section 4301, (o), in that
13 Respondent committed acts of unprofessional conduct and/ or violated provisions of the licensing
14 chapter. Complainant refers to, and by this reference incorporates, the allegations set forth above
15 in paragraph 11, subparagraph (a), as though set forth fully.

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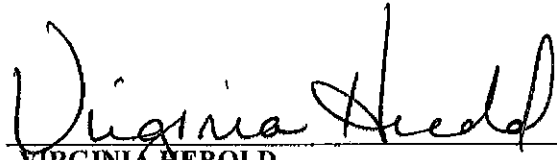
PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration No. TCH 97412, issued to Respondent Griselda Lopez;
2. Ordering Respondent Griselda Lopez to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: _____

5/3/14



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

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