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

Case No. 5045

In the Matter of the Accusation Against:

**ALEX VASQUEZ
11930 Banner Drive #8
Garden Grove, CA 92843**

DEFAULT DECISION AND ORDER

**Pharmacy Technician Registration No. TCH
93066**

[Gov. Code, §11520]

Respondent.

FINDINGS OF FACT

1. On or about April 5, 2014, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 5045 against Alex Vasquez (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about August 4, 2009, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 93066 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 5045 and will expire on August 31, 2015, unless renewed.

3. On or about April 16, 2014, Respondent was served by Certified and First Class Mail copies of the Accusation No. 5045, Statement to Respondent, Notice of Defense, Request for

1 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
2 Respondent's address of record which, pursuant to Business and Professions Code section 4100,
3 is required to be reported and maintained with the Board. Respondent's address of record was
4 and is: 11930 Banner Drive #8, Garden Grove, CA 92843.

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

8 5. As of May 7, 2014, the aforementioned documents have not been returned by the U.S.
9 Postal Service.

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

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

16 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
17 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
18 5045.

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. 5045, finds that
the charges and allegations in Accusation No. 5045, are separately and severally, found to be true
and correct by clear and convincing evidence.

1 ORDER

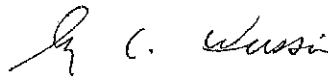
2 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 93066, heretofore
3 issued to Respondent Alex Vasquez, is revoked.

4 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
5 written motion requesting that the Decision be vacated and stating the grounds relied on within
6 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
7 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

8 This Decision shall become effective on July 11, 2014.

9 It is so ORDERED June 11, 2014.

10 BOARD OF PHARMACY
11 DEPARTMENT OF CONSUMER AFFAIRS
12 STATE OF CALIFORNIA

13 By 
14 STAN C. WEISSER
15 Board President

15 70869068.DOC
DOJ Matter ID:SD2013706459

16 Attachment:
17 Exhibit A: Accusation

Exhibit A

Accusation

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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. 5045

12 **ALEX VASQUEZ**
13 **11930 Banner Drive #8**
14 **Garden Grove, CA 92843**

A C C U S A T I O N

15 **Pharmacy Technician Registration No. TCH**
93066

16 Respondent.

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18
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about August 4, 2009, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 93066 to Alex Vasquez (Respondent). The Pharmacy Technician
25 Registration was in full force and effect at all times relevant to the charges brought herein and
26 will expire on August 31, 2015, unless renewed.

1 **JURISDICTION**

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

5 4. Section 4300, subdivision (a) of the Code states "Every license issued may be
6 suspended or revoked."

7 5. Section 4300.1 of the Code states:

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

12 **STATUTORY PROVISIONS**

13 6. Section 4301 of the Code states:

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

17

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

20

21 (h) The administering to oneself, of any controlled substance, or the use of
22 any dangerous drug or of alcoholic beverages to the extent or in a manner as to be
23 dangerous or injurious to oneself, to a person holding a license under this chapter,
24 or to any other person or to the public, or to the extent that the use impairs the
25 ability of the person to conduct with safety to the public the practice authorized by
26 the license.

25

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

28

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

6

7 7. Section 4059 of the Code states:

8 (a) A person may not furnish any dangerous drug, except upon the
9 prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or
10 naturopathic doctor pursuant to Section 3640.7. A person may not furnish any
11 dangerous device, except upon the prescription of a physician, dentist, podiatrist,
12 optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

13

14 8. Section 4060 of the Code states:

15 No person shall possess any controlled substance, except that furnished to a
16 person upon the prescription of a physician, dentist, podiatrist, optometrist,
17 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
18 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
19 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant
20 pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a
21 pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv)
22 of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This
23 section shall not apply to the possession of any controlled substance by a
24 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
25 optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
26 practitioner, or physician assistant, when in stock in containers correctly labeled
27 with the name and address of the supplier or producer.

28 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.

9. Health and Safety Code section 11170 states that no person shall prescribe,
administer, or furnish a controlled substance for himself.

COST RECOVERY

10. Section 125.3 of the Code provides, 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.

1 **DRUGS**

2 11. Phenergan/Codeine, the brand name for Promethazine with Codeine Syrup is a
3 Schedule V controlled substance under Health and Safety Code section 11058 and is a dangerous
4 drug pursuant to Business and Professions Code section 4022.

5 12. Xanax, is a brand name for alprazolam (a benzodiazepine), a Schedule IV controlled
6 substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous
7 drug pursuant to Business and Professions Code section 4022.

8 **FACTUAL ALLEGATIONS**

9 13. Respondent was employed as a pharmacy technician at CVS/Caremark store
10 #5841 (hereinafter "CVS"). In or around November 2012, the loss prevention manager at CVS
11 received a report regarding CVS's inventory of promethazine with codeine. The loss prevention
12 manager contacted the pharmacy supervisor to obtain counts so that an audit could be performed.
13 The audit demonstrated a loss of 12,320 mls of promethazine with codeine.

14 14. On January 18, 2013, the pharmacy supervisor and loss prevention manager
15 conducted interviews of pharmacy staff at CVS. During the first interview with Respondent,
16 Respondent denied taking any promethazine with codeine and stated that he had smelled
17 promethazine with codeine syrup on another technician M.C. and that he witnessed her running
18 over to the area where the promethazine with codeine was kept when the pharmacist left for break
19 or bathroom. The pharmacy supervisor and loss prevention manager then interviewed M.C.
20 M.C. admitted that for the past few months, she had been drinking promethazine with codeine
21 directly from the stock bottle and that she did not have a prescription for it. M.C. also told her
22 supervisors that Respondent was taking and consuming promethazine with codeine syrup from
23 CVS. Following the interview with M.C., supervisors re-interviewed Respondent. During the
24 second interview, Respondent admitted that he drank 30 ml promethazine with codeine syrup
25 directly from the bottle on at least one occasion.

1 admissions that he took promethazine with codeine from CVS, as detailed in paragraphs 13 and
2 14, above, and which are incorporated herein by reference.

3 **PRAYER**

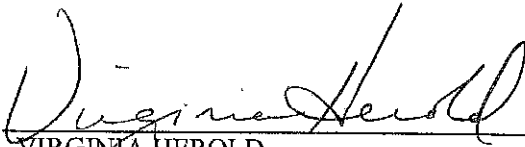
4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
5 and that following the hearing, the Board of Pharmacy issue a decision:

6 1. Revoking or suspending Pharmacy Technician Registration Number TCH 93066,
7 issued to Alex Vasquez;

8 2. Ordering Alex Vasquez to pay the Board of Pharmacy the reasonable costs of the
9 investigation and enforcement of this case, pursuant to Business and Professions Code section
10 125.3;

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

12
13
14 DATED: 4/5/14



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

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