

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

In the Matter of the Accusation Against:

MARIA T. FIERRO
723 Estancia
Irvine, CA 92602

Pharmacy Technician Registration No.
TCH 36961

Respondent.

Case No. 5103

OAH No. 2016020172

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on October 28, 2016.

It is so ORDERED on September 28, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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Attorneys for Complainant

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

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12 In the Matter of the Accusation Against:

Case No. 5103

13 **MARIA T. FIERRO**
14 **723 Estancia**
Irvine, CA 92602

OAH No. 2016020172

15 **Pharmacy Technician Registration No.**
16 **TCH 36961**

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

17
18 Respondent.

19
20 In the interest of a prompt and speedy settlement of this matter, consistent with the public
21 interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs,
22 the parties hereby agree to the following Stipulated Surrender and Disciplinary Order which will
23 be submitted to the Board for approval and adoption as the final disposition of the Accusation.

24 PARTIES

25 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
26 She brought this action solely in her official capacity and is represented in this matter by Kamala
27 D. Harris, Attorney General of the State of California, by Ron Espinoza, Deputy Attorney
28 General.

1 2. Maria T. Fierro (Respondent) is represented in this proceeding by attorney Ivan
2 Petrzelka, Esq., whose address is CALIFORNIA PHARMACY LAWYERS, 2855 Michelle
3 Drive, Ste. 180, Irvine, CA 92606.

4 3. On or about May 2, 2001, the Board of Pharmacy issued Pharmacy Technician
5 Registration No. TCH 36961 to Maria T. Fierro. The Pharmacy Technician Registration was in
6 full force and effect at all times relevant to the charges brought in Accusation No. 5103. The
7 license expired on November 30, 2014, and has not been renewed.

8 JURISDICTION

9 4. Accusation No. 5103 was filed before the Board of Pharmacy (Board), Department of
10 Consumer Affairs, and is currently pending against Respondent. The Accusation and all other
11 statutorily required documents were properly served on Respondent on December 15, 2015.
12 Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation
13 No. 5103 is attached as Exhibit A and incorporated by reference.

14 ADVISEMENT AND WAIVERS

15 5. Respondent has carefully read, fully discussed with counsel, and understands the
16 charges and allegations in Accusation No. 5103. Respondent also has carefully read, fully
17 discussed with counsel, and understands the effects of this Stipulated Surrender of License and
18 Order.

19 6. Respondent is fully aware of her legal rights in this matter, including the right to a
20 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
21 the witnesses against her; the right to present evidence and to testify on her own behalf; the right
22 to the issuance of subpoenas to compel the attendance of witnesses and the production of
23 documents; the right to reconsideration and court review of an adverse decision; and all other
24 rights accorded by the California Administrative Procedure Act and other applicable laws.

25 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
26 every right set forth above.

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1 CULPABILITY

2 8. Respondent admits the truth of each and every charge and allegation in Accusation
3 No. 5103, agrees that cause exists for discipline and hereby surrenders her Pharmacy Technician
4 Registration No. TCH 36961 for the Board's formal acceptance.

5 9. Respondent understands that by signing this stipulation she enables the Board to issue
6 an order accepting the surrender of her Pharmacy Technician Registration without further
7 process.

8 RESERVATION

9 10. The admissions made by Respondent herein are only for the purposes of this
10 proceeding, or any other proceedings in which the Board of Pharmacy or other professional
11 licensing agency is involved, and shall not be admissible in any other criminal or civil
12 proceeding.

13 CONTINGENCY

14 11. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent
15 understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may
16 communicate directly with the Board regarding this stipulation and surrender, without notice to or
17 participation by Respondent or her counsel. By signing the stipulation, Respondent understands
18 and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the
19 time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its
20 Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or
21 effect, except for this paragraph, it shall be inadmissible in any legal action between the parties,
22 and the Board shall not be disqualified from further action by having considered this matter.

23 12. The parties understand and agree that Portable Document Format (PDF) and facsimile
24 copies of this Stipulated Surrender of License and Order, including Portable Document Format
25 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

26 13. This Stipulated Surrender of License and Order is intended by the parties to be an
27 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
28 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,

1 negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order
2 may not be altered, amended, modified, supplemented, or otherwise changed except by a writing
3 executed by an authorized representative of each of the parties.

4 14. In consideration of the foregoing admissions and stipulations, the parties agree that
5 the Board may, without further notice or formal proceeding, issue and enter the following Order:

6 **ORDER**

7 IT IS HEREBY ORDERED that Pharmacy Technician Registration No. TCH 36961, issued
8 to Respondent Maria T. Fierro, is surrendered and accepted by the Board of Pharmacy.

9 1. The surrender of Respondent's Pharmacy Technician Registration and the acceptance
10 of the surrendered license by the Board shall constitute the imposition of discipline against
11 Respondent. This stipulation constitutes a record of the discipline and shall become a part of
12 Respondent's license history with the Board of Pharmacy.

13 2. Respondent shall lose all rights and privileges as a pharmacy technician in California
14 as of the effective date of the Board's Decision and Order.

15 3. Respondent shall cause to be delivered to the Board her pocket license and, if one was
16 issued, her wall certificate on or before the effective date of the Decision and Order.

17 4. If Respondent ever applies for licensure or petitions for reinstatement in the State of
18 California with the Board, the Board shall treat it as a new application for licensure. Respondent
19 stipulates that should she apply for any license or registration from the Board on or after the
20 effective date of this Decision, all the allegations set forth in Accusation No. 5103 shall be
21 deemed to be true, correct and admitted by Respondent when the Board determines whether to
22 grant or deny the application. Respondent shall satisfy all requirements applicable to that license
23 or registration as of the date the application is submitted to the Board, including, but not limited
24 to, certification by a nationally recognized body, prior to the issuance of a new license or
25 registration. Respondent is required to report this surrender as disciplinary action.

26 5. Respondent shall pay the Board its costs of investigation and enforcement of this
27 matter in the amount of \$8,866.55 only prior to issuance of a new or reinstated license or
28 registration from the Board.

Exhibit A

Accusation No. 5103

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 RON ESPINOZA
Deputy Attorney General
4 State Bar No. 176908
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7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

12 In the Matter of the Accusation Against:
13 **MARIA T. FIERRO**
723 Estancia
14 Irvine, CA 92602.
15 **Pharmacy Technician Registration No.**
TCH 36961
16
17 Respondent,

Case No. 5103
A C C U S A T I O N

18
19 Complainant alleges:

20 **PARTIES**

- 21 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity as
22 the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
23 2. On or about May 2, 2001, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 36961 to Maria T. Fierro (Respondent). The Pharmacy Technician
25 Registration was in full force and effect at all times relevant to the charges brought herein. The
26 license expired on November 30, 2014, 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 4300, subdivision (a) of the Code states: "Every license issued may be suspended or revoked."

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.

STATUTORY PROVISIONS

6. 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:

(a) Considering the denial of a license by the board under Section 480; or

(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.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. 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

1 discipline or to determine if the conviction is substantially related to the qualifications,
2 functions, and duties of the licensee in question.

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

5 9. Section 4301 of the Code states:

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

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

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

15 (l) The conviction of a crime substantially related to the qualifications, functions,
16 and duties of a licensee under this chapter. The record of conviction of a violation of
17 Chapter 13 (commencing with Section 801) of Title 21 of the United States Code
18 regulating controlled substances or of a violation of the statutes of this state regulating
19 controlled substances or dangerous drugs shall be conclusive evidence of unprofessional
20 conduct. In all other cases, the record of conviction shall be conclusive evidence only of
21 the fact that the conviction occurred. The board may inquire into the circumstances
22 surrounding the commission of the crime, in order to fix the degree of discipline or, in the
23 case of a conviction not involving controlled substances or dangerous drugs, to determine
24 if the conviction is of an offense substantially related to the qualifications, functions, and
25 duties of a licensee under this chapter. A plea or verdict of guilty or a conviction
26 following a plea of nolo contendere is deemed to be a conviction within the meaning of
27 this provision. The board may take action when the time for appeal has elapsed, or the
28 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.

10. Section 4022 of the Code states

Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use
in humans or animals, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing

1 without prescription, "Rx only," or words of similar import.

2 (b) Any device that bears the statement: "Caution: federal law restricts this
3 device to sale by or on the order of a _____," "Rx only," or words of similar
4 import, the blank to be filled in with the designation of the practitioner licensed to use
5 or order use of the device.

6 (c) Any other drug or device that by federal or state law can be lawfully
7 dispensed only on prescription or furnished pursuant to Section 4006.

8 11. Section 4060 of the Code states:

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

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

25 12. United States Code, title 21, section 843 states, in pertinent part:

26 (a) It shall be unlawful for any person knowingly or intentionally -

27

28 (3) to acquire or obtain possession of a controlled substance by
misrepresentation, fraud, forgery, deception, or subterfuge;

. . . .

REGULATORY PROVISIONS

13. 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.

1 (3) The time that has elapsed since commission of the act(s) or offense(s).

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

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

5 14. California Code of Regulations, title 16, section 1770, states:

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

12 COSTS

13 15. Section 125.3 of the Code provides, 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, with failure of the licentiate to comply subjecting the license to not being
17 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
18 included in a stipulated settlement.

19 DRUG

20 16. Hydrocodone bitartate/acetaminophen (APAP), sold under the brand name Norco,
21 is a Schedule III controlled substance as designated by Health and Safety Code section 11056,
22 subdivision (e)(4), and is a dangerous drug pursuant to Business and Professions Code section
23 4022.

24 FIRST CAUSE FOR DISCIPLINE

25 (May 1, 2015 Criminal Conviction for Prescription Drug Fraud)

26 17. Respondent has subjected her registration to discipline under sections 490 and 4301,
27 subdivision (I) of the Code in that she was convicted of a crime that is substantially related to the
28 qualifications, duties, and functions of a Pharmacy Technician. The circumstances are as follows:

a. On or about May 1, 2015, in a criminal proceeding entitled *People of the State of
California v. Maria Fierro*, in Riverside County Superior Court, case number RIM1309748,

1 Respondent was convicted on her plea of guilty to violating Health and Safety Code section
2 11173, subdivision (a), obtain and attempt to obtain, and procure and attempt to procure, the
3 administration of and prescription for a controlled substance, to wit: Hydrocodone. After a bench
4 warrant for failure to appear on or about April 9, 2015, Respondent entered into a plea agreement
5 whereby the court dismissed the additional count of Penal Code section 1320, subdivision (a) for
6 failing to appear.

7 b. As a result of the conviction, Respondent was granted summary probation for 36
8 months. She was further ordered to be committed to the custody of the Riverside County Sheriff
9 for 10 days, serve an additional 10 day in the work release program, pay fees, fines and restitution,
10 and comply with the terms of probation, which included submission to immediate search.

11 c. The facts and circumstances surrounding the conviction are as follows:

12 Respondent, while employed at Rite Aid as a Pharmacy Technician, diverted
13 hydrocodone/APAP 10-325 from her employer, on or between September 2012 and January 2013.
14 Respondent willfully and unlawfully obtained and attempted to obtain, and procured and attempted
15 to procure the administration of and prescription for the controlled substance hydrocodone, by
16 fraud, deceit, misrepresentation, and subterfuge, and by the concealment of a material fact.

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Commission of Acts Involving Dishonesty, Fraud and Deceit)**

19 18. Respondent has subjected her registration to discipline under section 4301, subdivision
20 (f) of the Code for unprofessional conduct, in that on or between September 2012 and January
21 2013, Respondent committed acts involving dishonesty, fraud, and deceit, when she stole
22 hydrocodone pills from her employer, Rite Aide Pharmacy, while employed as a pharmacy
23 technician, as set forth in paragraph 17 above, which is hereby incorporated by reference.

24 **PRAYER**

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

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1 1. Revoking or suspending Pharmacy Technician Registration Number TCH 36961,
2 issued to Maria T. Fierro;

3 2. Ordering Maria T. Fierro to pay the Board of Pharmacy the reasonable costs of the
4 investigation and enforcement of this case, pursuant to Business and Professions Code section
5 125.3;

6 3. Taking such other and further action as deemed necessary and proper.
7
8

9
10 DATED: _____

11 11/30/15

Virginia Herold

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

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