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8		RE THE PHARMACY		
9	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA			
10				
11	In the Matter of the Accusation Against:	Case No. 5109		
12	In the Matter of the Accusation Against.	Case 140, 5109		
13	JANETH J. BALIAN-MACHAIN	DEFAULT DECISION AND ORDER		
14				
15	184 Palm Avenue, # 108 Marina, CA 93933	[Gov. Code, §11520]		
16	Pharmacy Technician Registration No. TCH 66212			
17				
18	Respondent.			
19				
20				
21		<u>S OF FACT</u>		
22		hant Virginia K. Herold, in her official capacity		
23	as the Executive Officer of the Board of Pharmac			
24	Accusation No. 5109 against Janeth J. Balian-Ma	achain (Respondent) before the Board of		
25	Pharmacy. (Accusation attached as Exhibit A)			
26		Board of Pharmacy (Board) issued Pharmacy		
27	Technician Registration No. TCH 66212 to Resp			
28	expired on March 31, 2013, and has not been ren	· · · ·		
		l DEFAULT DECISION & ORDER		

1	3. On or about June 5, 2015, Respondent was served by Certified and First Class Mail	
2	copies of Accusation No. 5109, Statement to Respondent, Notice of Defense, Request for	
3	Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at	
4	Respondent's address of record which, pursuant to Business and Professions Code section 4100,	
5	is required to be reported and maintained with the Board. Respondent's address of record was	
6	and is:	
7 8	184 Palm Avenue, # 108 Marina, CA 93933.	
9	4. Service of the Accusation was effective as a matter of law under the provisions of	
10	Government Code section 11505, subdivision (c), and/or Business & Professions Code section	
11	124.	
12	5. On or about June 25, 2015, the aforementioned documents were returned by the U.S.	
13	Postal Service marked "Unable to Forward" and "Unclaimed." The address on the documents	
14	was the same as the address on file with the Board. Respondent failed to maintain an updated	
15	address with the Board and the Board has made attempts to serve the Respondent at the address	
16	on file. Respondent has not made herself available for service and therefore, has not availed	
17	herself of her right to file a notice of defense and appear at hearing.	
18	6. Government Code section 11506 states, in pertinent part:	
19	(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	
20	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	
21	may nevertheless grant a hearing.	
22	7. Respondent failed to file a Notice of Defense within 15 days after service upon her of	
23	the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 5109.	
24	8. California Government Code section 11520 states, in relevant part:	
25 26	(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	
27	respondent.	
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	DEFAULT DECISION & ORDER	

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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 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. 5109, finds that the charges and allegations in Accusation No. 5109, are separately and severally, found to be true and correct by clear and convincing evidence.

10. Taking official notice of its own internal records, pursuant to Business and 8 9 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement is \$3,227.00 as of August 3, 2015. 10

DETERMINATION OF ISSUES

Based on the foregoing findings of fact, Respondent Janeth J. Balian-Machain has 12 1. subjected her Pharmacy Technician Registration No. TCH 66212 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 15 Registration based upon the following violations alleged in the Accusation which are supported 16 by the evidence contained in the Default Decision Evidence Packet in this case.: 17

Unprofessional Conduct-Act of Dishonesty, Fraud, or Deceit (Bus. & Prof. Code, § 18 a. 4301, subd. (f)); 19

b., Possession of Controlled Substance without a Prescription (Bus. & Prof. Code, § 20 4301, subd. (j)); 21

Furnishing Dangerous Drugs without a Prescription (Bus. & Prof. Code, §§ 4301, 22 c. 23 subd. (o), & 4059, subd. (a));

d. Self-Administration of Controlled Substance (Bus. & Prof. Code, § 4301, subd. (h)); 24 Working as a Pharmacy Technician without a License (Bus. & Prof. Code, §§ 4301, e. 25 subd. (o), & 4115, subd. (e)). 26

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DEFAULT DECISION & ORDER

1	ORDER		
2	IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 66212, issued to		
3	Respondent Janeth J. Balian-Machain, 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 September 25, 2015.		
9	It is so ORDERED August 26, 2015.		
10	BOARD OF PHARMACY		
11	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
12			
13	Aquemmy		
14			
15	ByAmy Gutierrez, Pharm.D.		
16	Board President		
17	90 54 9168.DOC		
18	DOJ Matter ID:SF2014902161		
19	Attachment: Exhibit A: Accusation		
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	DEFAULT DECISION & ORDEI		

DEFAULT DECISION & ORDER

Exhibit A

•	1	Kamala D. Harris
	2	Attorney General of California DIANN SOKOLOFF
•	3	Supervising Deputy Attorney General TIMOTHY J. MCDONOUGH
		Deputy Attorney General
	4	State Bar No. 235850 1515 Clay Street, 20th Floor
	5	P.O. Box 70550 Oakland, CA 94612-0550
	6	Telephone: (510) 622-2134 Facsimile: (510) 622-2270
•	7	E-mail: Tim.McDonough@doj.ca.gov Attorneys for Complainant
	8	
	9	BEFORE THE BOARD OF PHARMACY
	10	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA
,	11	
	12	In the Matter of the Accusation Against: Case No. 5109
		JANETH J. BALJAN-MACHAIN
	13	184 Palm Avenue, # 108 Marina, CA 93933 A C C U S A T I O N
	14	Pharmacy Technician Registration No. TCH
	15	66212
	16	Respondent.
	17	
	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 December 19, 2005, the Board of Pharmacy issued Pharmacy Technician
	23	Registration Number TCH 66212 to Janeth J. Balian-Machain (Respondent). The Pharmacy
2	24	Technician Registration expired on March 31, 2013, and has not been renewed.
. 2	25	JURISDICTION
. 2	26	3. This Accusation is brought before the Board of Pharmacy (Board), Department of
. 2	27	Consumer Affairs, under the authority of the following laws. All section references are to the
2	. H	Business and Professions Code unless otherwise indicated.
		1
		Accusation
	i.	

Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
 Act [Health & Safety Code, § 11000 et seq.].

5. Section 4300 of the Code states, in relevant part:

"(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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16 il'(e) The proceedings under this article shall be conducted in accordance with Chapter 5
17 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board
18 shall have all the powers granted therein. The action shall be final, except that the propriety of the
19 action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil
20 Procedure."

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6. 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."
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STATUTORY PROVISIONS

Section 4301 of the Code states, in relevant part: 7.

"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.

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

"(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.

"(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."

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Section 4059 of the Code states, in relevant part; 8.

"(a) A person may not furnish any dangerous drug, except upon the prescription of a $\mathbf{24}$ physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 253640.7. A person may not furnish any dangerous device, except upon the prescription of a 26 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 28 3640.7."

1	9. Section 4060 of the Code states:	
2	"No person shall possess any controlled substance, except that furnished to a person upon	
3	the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor	
4	pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified	
5	nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a	
6	physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,	
7	or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of	
8	subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not	
ġ	apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,	
10	pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified	
11	nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly	
12	labeled with the name and address of the supplier or producer.	
13	E."Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a	
14	physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and	
15	devices;"	
16	10. Section 4115, subdivision (e), of the Code states:	
17°	"(e) No person shall act as a pharmacy technician without fist being licensed by the board as	
18	a pharmacy technician."	
19	11. Section 4022 of the Code states	
20	"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in	
21	humans or animals, and includes the following:	
22	"(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without	
23	prescription," "Rx only," or words of similar import.	
24	"(b) Any device that bears the statement: "Caution: federal law restricts this device to sale	
25	by or on the order of a," "Rx only," or words of similar import, the blank to be filled	
26	in with the designation of the practitioner licensed to use or order use of the device.	
27	"(c) Any other drug or device that by federal or state law can be lawfully dispensed only on	
28	prescription or furnished pursuant to Section 4006."	
	4	
. []	Accusation	

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DRUG STATUTES

12. Hydrocodone/Acetaminophen is a Schedule III controlled substance as designated by Health and Safety Code section 11056, subdivision (e)(4), and a dangerous drug as designated by Business and Professions Code section 4022. Hydrocodone is a pain medication and is combined with Acetaminophen. Norco is a brand name of the controlled substance, Hydrocodone.

COST RECOVERY

13. 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 or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

FACTUAL BACKGROUND

. 14. Respondent worked as a pharmacy technician at various Safeway Pharmacies from on or about October 1, 2012, until on or about May 20, 2013. On May 3, 2013, Respondent stole 58 dosage units of hydrocodone/acetaminophen 10/325 mg from Safeway Pharmacy # 761 in Pacific Grove, California while she was working as a pharmacy technician.

15. On or about May 7, 2013, Pacific Grove Safeway Pharmacy conducted an annual audit of controlled inventory. The audit revealed 58 dosages of hydrocodone/acetaminophen 10/325 mg were missing. A review of security video taken on May 3, 2014 at the pharmacy led Safeway officials to suspect that Respondent took the missing pills. On May 14, 2013, a Safeway loss prevention investigator and another Safeway employee interviewed Respondent at a Safeway Pharmacy in Santa Cruz' regarding the missing drugs. At that time, Respondent admitted to stealing an unknown amount of generic Norco 10/325 mg from a bottle at the Safeway pharmacy in Pacific Grove. Respondent wrote and signed a statement in which she admitted to taking the pills and explained that she took the pills because she suffered an injury while working a second

¹ Respondent was working at the Safeway Pharmacy in Santa Cruz on May 14, 2013.

job and did not have medical insurance. In the statement, she further explained she used the pills for her injury and for her father who is suffering from kidney failure and Hepatitis C. Respondent also signed a promissory note on May 14, 2013, in which she promised to pay Safeway \$36.49, the costs of the missing medication. Respondent paid the \$36.49 that same day. Respondent was terminated from Safeway on May 20, 2013.

FIRST CAUSE FOR DISCIPLINE (Unprofessional Conduct--Act of Dishonesty, Fraud, or Deceit) (Bus & Prof. Code § 4301, subd. (f))

16. Respondent has subjected her Pharmacy Technician Registration to disciplinary action under Code section 4301, subdivision (f), in that she stole prescription drugs from Safeway Pharmacy, her employer. The circumstances are explained more fully in paragraphs 14 and 15, above.

SECOND CAUSE FOR DISCIPLINE (Possession of Controlled Substance without a Prescription) (Bus. & Prof. Code, §§ 4301, subd. (j))

(Bus. & Prol. Code, 89 4301, subd. (j))

17. Respondent has subjected her Pharmacy Technician Registration to disciplinary action under Code section 4301, subdivision (j), in that she illegally possessed a controlled

substance without a prescription. By doing so, she violated numerous state and federal statutes

17 || regarding controlled substances including Business and Professions Code section 4060. The

18 || circumstances are explained more fully in paragraphs 14 and 15, above.

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THIRD CAUSE FOR DISCIPLINE (Furnishing Dangerous Drugs without a Prescription) (Bus. & Prof Code, §§ 4301, subd. (0), & 4059, subd. (a))

18. Respondent has subjected her Pharmacy Technician Registration to disciplinary

action under Code section 4301, subdivision (o), in that she violated section 4059, subdivision

(a), when she furnished controlled substances and dangerous drugs to a person, her father, without

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a prescription. The circumstances are explained in paragraphs 14 and 15, above.

		,
1	FOURTH CAUSE FOR DISCIPLINE (Self-Administration of Controlled Substance) (Bus. & Prof. Code, § 4301, subd. (h))	
3	19. Respondent has subjected her Pharmacy Technician Registration to disciplinary	
4	action under Code section 4301, subdivision (h), in that she administered a controlled substance	
. 5	to herself without a prescription in May of 2013. The circumstances are explained in paragraphs	
6	14 and 15, above.	
. 7	FIFTH CAUSE FOR DISCIPLINE (Working as a Pharmacy Technician without a License) (Bus. & Prof. Code, §§ 4301, subd. (0), & 4115, subd. (e))	
9	20. Respondent has subjected her Pharmacy Technician Registration to disciplinary	
10	action under Code section 4301, subdivision (0), in that she violated section 4115, subdivision	
11	(e), when she worked as a pharmacy technician at various Safeway Pharmacies from April 1,	<u> </u>
. 12	2013, to May 14, 2013. Respondent's pharmacy technician registration expired on March 31,	
13	2013.	
14	PRAYER	
15	WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this	
16	Accusation, and that following the hearing, the Board of Pharmacy issue a decision:	
. 17	1. Revoking or suspending Pharmacy Technician Registration Number TCH 66212,	
. 18	issued to Janeth J. Balian-Machain;	
19	2. Ordering Janeth J. Balian-Machain to pay the Board of Pharmacy the reasonable costs	•
20	of the investigation and enforcement of this case, pursuant to Business and Professions Code	•
21	section 125.3;	
22	3. Taking such other and further action as deemed necessary and proper.	
23	DATED: 5/21/15 ()ingining Heedd	
24	YIRGINIA HEROLD	
25	Executive Officer Board of Pharmacy Department of Consumer Affairs	
26	State of California Complainant	
· 27	SF2014902161	
28	90396884.doc	
	7 Accounting	
	Accusation	
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