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

In the Matter of the Accusation Against:

Case No. 5111

CHRISTINA MARIE LUCERO
1211 ½ Broadway
Santa Cruz, CA 95062
Pharmacy Technician Registration No. TCH
89797

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

Respondent.

FINDINGS OF FACT

1. On or about August 16, 2014, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 5111 against Christina Marie Lucero (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about April 23, 2009, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 89797 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 5111 and expired on May 31, 2014. This lapse in licensure, however, pursuant to Business and

1 Professions Code section 118(b), does not deprive the Board of its authority to institute or
2 continue this disciplinary proceeding.

3 3. On or about September 2, 2014, Respondent was served by Certified and First Class
4 Mail copies of Accusation No. 5111, Statement to Respondent, Notice of Defense, Request for
5 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
6 Respondent's address of record which, pursuant to Business and Professions Code section 4100,
7 is required to be reported and maintained with the Board. Respondent's address of record was
8 and is:

9 1211 1/2 Broadway
10 Santa Cruz, CA 95062

11 4. Service of the Accusation was effective as a matter of law under the provisions of
12 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
13 124.

14 5. On or about September 23, 2014, the aforementioned documents were returned by the
15 U.S. Postal Service marked "Unclaimed."

16 6. Government Code section 11506 states, in relevant part:

17 (c) The respondent shall be entitled to a hearing on the merits if the respondent
18 files a notice of defense, and the notice shall be deemed a specific denial of all parts
19 of the accusation not expressly admitted. Failure to file a notice of defense shall
20 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. 5111.

24 8. California Government Code section 11520 states, in relevant part:

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

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

1 taking official notice of all the investigatory reports, exhibits and statements contained therein on
2 file at the Board's offices regarding the allegations contained in Accusation No. 5111, finds that
3 the charges and allegations in Accusation No. 5111, are separately and severally, found to be true
4 and correct by clear and convincing evidence.

5 10. Taking official notice of its own internal records and the cost declaration from the
6 Attorney Generals Office, pursuant to Business and Professions Code section 125.3, it is hereby
7 determined that the reasonable costs for Investigation and Enforcement is \$3337.50 as of October
8 22, 2014.

9 DETERMINATION OF ISSUES

10 1. Based on the foregoing findings of fact, Respondent Christina Marie Lucero has
11 subjected her Pharmacy Technician Registration No. TCH 89797 to discipline.

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

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

16 a. Act of Dishonesty, Fraud, or Deceit (Bus & Prof. Code § 4301, subd. (f)).

17 b. Possession of Controlled Substance without a Prescription (Bus. & Prof. Code, §
18 4301, subd. (j)).

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

21 d. Self-Administration of Controlled Substance (Bus. & Prof. Code, § 4301, subd. (h)).

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ORDER

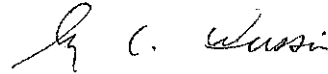
IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 89797, issued to Respondent Christina Marie Lucero, is revoked.

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 December 22, 2014.

It is so ORDERED on November 21, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____

STAN C. WEISSER
Board President

90447995.DOC
DOJ Matter ID:SF2014902160

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 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 In the Matter of the Accusation Against:

Case No. 5111

12 **CHRISTINA MARIE LUCERO**
13 **1211 1/2 Broadway**
14 **Santa Cruz, CA 95062**

ACCUSATION

15 **Pharmacy Technician Registration No. TCH**
89797

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 April 23, 2009, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 89797 to Christina Marie Lucero (Respondent). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought in
25 this Accusation and expired on May 31, 2014.

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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 unless otherwise indicated.

4. 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.

....

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

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

1 jurisdiction to commence or proceed with any investigation of, or action or disciplinary
2 proceeding against, the licensee or to render a decision suspending or revoking the license."

3 STATUTORY PROVISIONS

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

5 "The board shall take action against any holder of a license who is guilty of unprofessional
6 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

7 Unprofessional conduct shall include, but is not limited to, any of the following:

8 ...

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

12 ...

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

18 ...

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

21 ...

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

26 8. Section 4059 of the Code states, in relevant part, that a person may not furnish any
27 dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,
28 veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any

1 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist,
2 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

3 9. Section 4060 of the Code states:

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

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

17 10. Section 4022 of the Code states:

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

20 "(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without
21 prescription," "Rx only," or words of similar import.

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

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

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1 DRUG STATUTES

2 11. Hydrocodone/Acetaminophen is a Schedule III controlled substance as designated by
3 Health and Safety Code section 11056, subdivision (e)(4), and a dangerous drug as designated by
4 Business and Professions Code section 4022.

5 12. Flexeril is a brand name for cyclobenzaprine. Cyclobenzaprine is a dangerous drug as
6 designated by Business and Professions Code section 4022.

7 13. ProAir is a brand name for albuterol. Albuterol is a dangerous drug as designated by
8 Business and Professions Code section 4022.

9 COST RECOVERY

10 14. Section 125.3 of the Code provides, in relevant part, that the Board may request the
11 administrative law judge to direct a licentiate found to have committed a violation or violations of
12 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
13 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
14 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
15 included in a stipulated settlement.

16 FACTUAL BACKGROUND

17 15. Respondent worked as a pharmacy technician at a CVS pharmacy in Capitola,
18 California (Capitola CVS) from September 2012, until July 29, 2013. On or about June 21, 2013,
19 CVS loss prevention managers initiated an investigation at the Capitola CVS because they
20 discovered what appeared to be a loss of a large amount of hydrocodone/acetaminophen 10/325
21 mg from the pharmacy. As part of the investigation, CVS loss prevention managers conducted
22 behavioral analysis interviews of the employees at Capitola CVS. On July 29, 2013, during an
23 interview with CVS loss prevention managers, Respondent admitted to stealing
24 hydrocodone/acetaminophen 10/325 mg, Flexeril 5 mg, and a Pro-Air inhaler from Capitola CVS.
25 At that time, Respondent wrote and signed a statement where she admitted to stealing 7,200
26 tablets of hydrocodone/acetaminophen 10/325 mg over a period of ten months for her own use
27 and to give to her friends. In the statement, Respondent further admitted to stealing 40 tabs of
28 Flexeril which she used to help her with shoulder pain, and a ProAir inhaler to assist her with her.

1 asthma. Respondent explained that she took the pills from the pharmacy by placing them in her
2 sweater pocket. Capitola CVS Pharmacy terminated Respondent's employment.

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

6 16. Respondent has subjected her Pharmacy Technician Registration to disciplinary
7 action under Code section 4301, subdivision (f), in that she stole prescription drugs from Capitola
8 CVS, her employer. The circumstances are explained in paragraph 15, above.

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

12 17. Respondent has subjected her Pharmacy Technician Registration to disciplinary
13 action under Code section 4301, subdivision (j), in that she illegally possessed a controlled
14 substance (hydrocodone/acetaminophen 10/325 mg), without a prescription. By doing so, she
15 violated numerous state and federal statutes regarding controlled substances including Business
16 and Professions Code section 4060. The circumstances are explained in paragraph 15, above.

17 **THIRD CAUSE FOR DISCIPLINE**
18 **(Furnishing Dangerous Drugs without a Prescription)**
19 **(Bus. & Prof Code, §§ 4301, subd. (o), & 4059, subd. (a))**

20 18. Respondent has subjected her Pharmacy Technician Registration to disciplinary
21 action under Code section 4301, subdivision (o), in that she violated Code section 4059,
22 subdivision (a), when she furnished controlled substances and dangerous drugs to her friends,
23 without a prescription. The circumstances are explained in paragraphs 15, above.

24 **FOURTH CAUSE FOR DISCIPLINE**
25 **(Self-Administration of Controlled Substance)**
26 **(Bus. & Prof. Code, § 4301, subd. (h))**

27 19. Respondent has subjected her Pharmacy Technician Registration to disciplinary
28 action under Code section 4301, subdivision (h), in that she administered a controlled substance
(hydrocodone/acetaminophen 10/325 mg) to herself without a prescription on numerous occasions
between October 2012, and July 2013. The circumstances are explained in paragraph 15, above.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this Accusation, and that following the hearing, the Board of Pharmacy issue a decision:

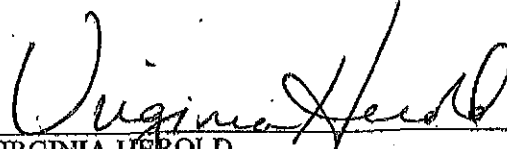
1. Revoking or suspending Pharmacy Technician Registration Number TCH 89797, issued to Christina Marie Lucero;

2. Ordering Christine Marie Lucero 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: _____

8/16/14



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

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