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4 **BEFORE THE**
5 **BOARD OF PHARMACY**
6 **DEPARTMENT OF CONSUMER AFFAIRS**
7 **STATE OF CALIFORNIA**

8 In the Matter of the Accusation Against:

Case No. 5166

9 **HECTOR OMAR GONZALEZ**
10 **4810 W. McFadden Avenue, #27**
11 **Santa Ana, CA 92704**
12 **Pharmacy Technician Registration No. TCH**
13 **107898**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

Respondent.

14 FINDINGS OF FACT

15 1. On July 26, 2014, Complainant Virginia Herold, in her official capacity as the
16 Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, filed
17 Accusation No. 5166 against Hector Omar Gonzalez (Respondent) before the Board. (Accusation
18 attached as Exhibit A.)

19 2. On November 1, 2010, the Board issued Pharmacy Technician Registration No. TCH
20 107898 to Respondent. The Pharmacy Technician Registration was in full force and effect at all
21 times relevant to the charges brought in Accusation No. 5166 and will expire on November 30,
22 2014, unless renewed.

23 3. On August 4, 2014, Respondent was served by Certified and First Class Mail copies
24 of the Accusation No. 5166, Statement to Respondent, Notice of Defense, Request for Discovery,
25 and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
26 Respondent's address of record which, pursuant to Business and Professions Code (Code) section
27 4100, is required to be reported and maintained with the Board. Respondent's address of record
28 was and is 4810 W. McFadden Avenue, #27, Santa Ana, CA 92704.

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

1 a. Respondent has subjected his registration to disciplinary action under Code section
2 4301, subdivision (f), in that he engaged in acts involving moral turpitude, dishonesty, fraud,
3 deceit or corruption by diverting from CVS' Santa Ana pharmacy approximately 15,000 tablets of
4 Hydrocodone/APAP 10/325mg, 700 tablets of Alprazolam 2mg, 60-80 tablets of Zolpidem 10mg,
5 30 tablets of Carisoprodol 350mg, 90 filmtabs of Suboxone 2-8mg, and 8 tablets of amphetamine
6 salts 20mg.

7 b. Respondent has subjected his registration to disciplinary action under Code section
8 4301, subdivisions (j) and (o), in that he unlawfully self-prescribed and possessed controlled
9 substances and dangerous drugs without a valid prescription, in violation of Code section 4060
10 and Health & Safety (H&S) Code section 11350, as detailed above in paragraph 3(a).

11 c. Respondent has subjected his registration to disciplinary action under Code section
12 4301, subdivision (h), in that he unlawfully and fraudulently self-prescribed and then self-
13 administered controlled substances without a valid prescription, in violation of Code section
14 4059, and in violation of H&S Code sections 11170 and 11350(a), as detailed above in paragraph
15 3(a).

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ORDER

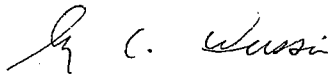
IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 107898, heretofore issued to Respondent Hector Omar Gonzalez, is revoked.

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 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 October 20, 2014.

It is so ORDERED September 19, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By 

STAN C. WEISSER
Board President

Attachment: Exhibit A: Accusation
70932516.DOC
SD2014707000

Exhibit A

Accusation No. 5166

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Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 5166

12 **HECTOR OMAR GONZALEZ**
13 **4810 W. McFadden Avenue, #27**
Santa Ana, CA 92704

A C C U S A T I O N

14 **Pharmacy Technician Registration No. TCH**
15 **107898**

Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

21 2. On November 1, 2010, the Board issued Pharmacy Technician Registration Number
22 TCH 107898 to Respondent Hector Omar Gonzalez. The Pharmacy Technician Registration was
23 in full force and effect at all times relevant to the charges brought herein and will expire on
24 November 30, 2014, unless renewed.

25 **JURISDICTION**

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

1 4. Section 4202, subdivision (d), provides that the Board may suspend or revoke any
2 pharmacy technician registration issued on any ground specified in Section 4301.

3 5. Section 4300 states:

4 (a) Every license issued may be suspended or revoked.

5 (b) The board shall discipline the holder of any license issued by the
6 board, whose default has been entered or whose case has been heard by the
7 board and found guilty, by any of the following methods:

8 (1) Suspending judgment.

9 (2) Placing him or her upon probation.

10 (3) Suspending his or her right to practice for a period not exceeding one
11 year.

12 (4) Revoking his or her license.

13 (5) Taking any other action in relation to disciplining him or her as the
14 board in its discretion may deem proper.

15 6. Section 4300.1 states:

16 The expiration, cancellation, forfeiture, or suspension of a board-issued
17 license by operation of law or by order or decision of the board or a court of law, the
18 placement of a license on a retired status, or the voluntary surrender of a license by
19 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.

20 **STATUTORY PROVISIONS**

21 7. Section 4022 states

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

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

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

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

8. Section 4059, subdivision (a) states:

(a) A person may not furnish any dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian. A person may not furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian.

9. Section 4060 states:

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

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.

10. Section 4301 states in pertinent part:

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.

....

(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic 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

1 impairs the ability of the person to conduct with safety to the public the practice
2 authorized by the license.

3

4 (j) The violation of any of the statutes of this state or of the United States
5 regulating controlled substances.

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7 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
8 abetting the violation of or conspiring to violate any provision or term of this
9 chapter or of the applicable federal and state laws and regulations governing
10 pharmacy, including regulations established by the board or by any other state
11 or federal regulatory agency.

12

13 11. Section 11170 of the Health and Safety (H&S) Code states that "No person shall
14 prescribe, or furnish a controlled substance for himself."

15 12. Section 11350, subdivision (a) of the H&S Code states:

16 (a) Except as otherwise provided in this division, every person who
17 possesses (a) any controlled substance specified in subdivision (b) or (c), or
18 paragraph (f) of Section 11054, specified in paragraph (14), (15), or (20), of
19 subdivision (d) of Section 11054, or specified in subdivision (h) of Section
20 11056, or (2) any controlled substance classified in Schedule III, IV, or V
21 which is a narcotic drug, unless upon written prescription of a physician,
22 dentist, podiatrist, or veterinarian licensed to practice in this state, shall be
23 punished by imprisonment in the state prison.

24 COST RECOVERY

25 13. Section 125.3 states, in pertinent part, that the Board may request the administrative
26 law judge to direct a licentiate found to have committed a violation or violations of the licensing
27 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
28 case. If a case settles, recovery of investigation and enforcement costs may be included in a
stipulated settlement.

CONTROLLED SUBSTANCES

14 14. Hydrocodone/APAP, sold under the trade name Norco, is a Schedule III controlled
15 substance as designated by H&S Code section 11056(e), and is a dangerous drug pursuant to
16 Code section 4022. Norco is a narcotic pain reliever.

17 15. Alprazolam, sold under the trade name Xanax, is a Schedule IV controlled substance

1 as designated by H&S Code section 11057(d)(1), and is a dangerous drug pursuant to Code
2 section 4022. Xanax is used to treat anxiety.

3 16. Buprenorphine/naloxone, sold under the trade name Suboxone, is a Schedule III
4 controlled substance as designated by H&S Code section 11056, and is a dangerous drug pursuant
5 to Code section 4022. Suboxone is used to treat opiate addiction.

6 17. Zolpedim, sold under the trade name Ambien, is a Schedule IV controlled substance
7 as designated by H&S Code section 11057(d)(32), and is a dangerous drug pursuant to Code
8 section 4022. Ambien is used to treat insomnia.

9 18. Carisoprodol, sold under the trade name Soma 350, is a Schedule IV controlled
10 substance as designated by H&S Code section 11057(d), and is a dangerous drug pursuant to
11 Code section 4022. Soma is used to treat pain and muscle spasm.

12 19. Amphetamine salts, sold under the trade name Adderal, is a Schedule II controlled
13 substance as designated by H&S Code sections 11055(d)(1) and 11055(d)(2), and is a dangerous
14 drug pursuant to Code section 4022. Adderal is used to treat attention deficit disorder.

15 **FACTS**

16 20. At all times mentioned herein, Respondent was employed as a pharmacy technician
17 at a CVS pharmacy located at 1750 N. Grand Avenue, in Santa Ana, California. On or about
18 January 3, 2013, the pharmacy discovered a loss of controlled substances of the types listed
19 above. When interviewed on January 8, 2013, Respondent admitted to diverting approximately
20 15,000 tablets of Hydrocodone/APAP 10/325mg, 700 tablets of Alprazolam 2mg, 60-80 tablets of
21 Zolpidem 10mg, 30 tablets of Carisoprodol 350mg, 90 filmtabs of Suboxone 2-8mg, and 8 tablets
22 of amphetamine salts 20mg. Respondent also admitted that he had become addicted to controlled
23 substances after taking Hydrocodone/APAP for ingrown toenail pain, that he diverted 60-80
24 tablets of Zolpidem 10mg to help him sleep, and that he had given his brother 700 tablets of
25 Alprazolam for his anxiety. When interviewed, Respondent also had 11 tablets of Hydrocodone/
26 APAP in his possession that he handed to investigators, and brought back to the store on that date
27 125 tablets of Hydrocodone/APAP 10/325 that he had diverted.

28

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Dishonest or Fraudulent Acts)**

3 21. Respondent is subject to disciplinary action under section 4301, subdivisions (f), in
4 that he engaged in acts involving moral turpitude, dishonesty, fraud, deceit or corruption by
5 taking controlled substances from CVS' Santa Ana pharmacy for himself, as detailed above in
6 paragraph 20.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Unlawful Possession of Controlled Substances)**

9 22. Respondent is subject to disciplinary action under section 4301, subdivisions (j) and
10 (o), in that he unlawfully self-prescribed and possessed controlled substances and dangerous
11 drugs without a valid prescription, in violation of Code section 4060 and H&S Code section
12 11350, as detailed above in paragraph 20.

13 **THIRD CAUSE FOR DISCIPLINE**

14 **(Unlawful Self Furnishing and Administering Controlled Substances)**

15 23. Respondent is subject to disciplinary action under Code section 4301, subdivision (h),
16 in that he unlawfully and fraudulently self-prescribed and then self-administered controlled
17 substances without a valid prescription, in violation of Code section 4059, and in violation of
18 H&S Code sections 11170 and 11350 (a), as detailed above in paragraph 20.

19 **PRAYER**

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

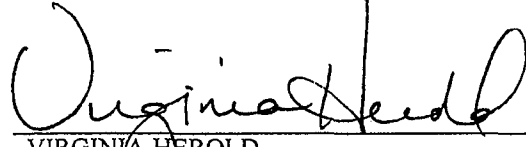
22 1. Revoking or suspending Pharmacy Technician Registration Number TCH 107898,
23 issued to Hector Omar Gonzalez

24 2. Ordering Hector Omar Gonzalez to pay the Board of Pharmacy the reasonable costs
25 of the investigation and enforcement of this case, pursuant to Business and Professions Code
26 section 125.3;

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

DATED: 7/26/14



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

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