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

In the Matter of the Accusation Against:
**ANAYM MELISSEN LUNA
7811 Sycamore Drive, Apt. B
Huntington Beach, CA 92647**
**Pharmacy Technician Registration No. TCH
135843**
Respondent.

Case No. 5366

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about September 3, 2015, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 5366 against Anaym Melissen Luna (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about October 16, 2013, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 135843 to Respondent. The Pharmacy Technician Registration expired on November 30, 2014, and has not been renewed.

3. On or about September 11, 2015, Respondent was served by Certified and First Class Mail copies of the Accusation No. 5366, Statement to Respondent, Notice of Defense, Request

1 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
2 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
3 section 4100, is required to be reported and maintained with the Board. Respondent's address of
4 record was and is: 7811 Sycamore Drive, Apt. B, Huntington Beach, CA 92647.

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. The aforementioned documents were not returned by the U.S. Postal Service.

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

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

15 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
16 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 5366.

17 8. California Government Code section 11520 states, in pertinent part:

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

22 9. Pursuant to its authority under Government Code section 11520, the Board finds
23 Respondent is in default. The Board will take action without further hearing and, based on the
24 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
25 taking official notice of all the investigatory reports, exhibits and statements contained therein on
26 file at the Board's offices regarding the allegations contained in Accusation No. 5366, finds that
27 the charges and allegations in Accusation No. 5366, are separately and severally, found to be true
28 and correct by clear and convincing evidence.

10 10. Taking official notice of its own internal records, pursuant to Business and
11 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
12 and Enforcement is \$1,165.00 as of December 7, 2015.

DETERMINATION OF ISSUES

1
2 1. Based on the foregoing findings of fact, Respondent Anaym Melissen Luna has
3 subjected her Pharmacy Technician Registration No. TCH 135843 to discipline.

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

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

8 a. Respondent subjected her pharmacy technician registration to discipline under
9 Business and Professions Code section 490 and 4301(l), in that on February 25, 2015,
10 Respondent was convicted of violating Health and Safety Code sections 11350(a), possession of a
11 controlled substance and 11351, possession for sale of a controlled substance, both crimes that are
12 substantially related to the qualifications, functions and duties of a pharmacy technician.

13 b. Respondent subjected her pharmacy technician registration to discipline under
14 Business and Professions code section 4301(j) in that she violated state laws regulating controlled
15 substances, including Health and Safety Code sections 11350(a) and 11351.

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ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 135843, heretofore issued to Respondent Anaym Melissen Luna, 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 January 29, 2016.

It is so ORDERED December 30, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____

Amy Gutierrez, Pharm.D.
Board President

81213040.DOC
DOJ Matter ID:SD2015700532

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

(ANAYM MELISSEN LUNA)

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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. 5366

12 **ANAYM MELISSEN LUNA**
13 **7811 Sycamore Drive, Apt. B**
14 **Huntington Beach, CA 92647**

ACCUSATION

15 **Pharmacy Technician Registration No. TCH**
16 **135843**

17 Respondent.

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 October 16, 2013, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 135843 to Anaym Melissen Luna (Respondent). The Pharmacy
24 Technician Registration expired on November 30, 2014, and has not been renewed.

25 **JURISDICTION**

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

1 4. Section 4300, subdivision (a), of the Code provides that every license issued by the
2 Board may be suspended or revoked.

3 5. Section 4300.1 of the Code states:

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

8 **STATUTORY PROVISIONS**

9 6. Section 482 of the Code states:

10 Each board under the provisions of this code shall develop criteria to
11 evaluate the rehabilitation of a person when:

- 12 (a) Considering the denial of a license by the board under Section 480; or
13 (b) Considering suspension or revocation of a license under Section 490.

14 Each board shall take into account all competent evidence of rehabilitation
15 furnished by the applicant or licensee.

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

20 8. Section 493 of the Code states:

21 Notwithstanding any other provision of law, successful completion of any
22 diversion program under the Penal Code, or successful completion of an alcohol
23 and drug problem assessment program under Article 5 (commencing with Section
24 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit
25 any agency established under Division 2 (commencing with Section 500) of this
26 code, or any initiative act referred to in that division, from taking disciplinary
27 action against a licensee or from denying a license for professional misconduct,
28 notwithstanding that evidence of that misconduct may be recorded in a record
pertaining to an arrest. This section shall not be construed to apply to any drug
diversion program operated by any agency established under Division 2
(commencing with Section 500) of this code, or any initiative act referred to in
that division.

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9. Section 4301 of the Code states:

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:

....

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

....

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of *nolo contendere* is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the 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. Health and Safety Code section 11350, subdivision (a), states:

Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b), (c), (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in a county jail for not more than one year, except that such person shall instead be punished pursuant to subdivision (h) of Section 1170 of the Penal Code if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code.

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11. Health and Safety Code section 11351 states:

Except as otherwise provided in this division, every person who possesses for sale or purchases for purposes of sale (1) any controlled substance specified in subdivision (b), (c), or (e) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, three, or four years.

REGULATORY PROVISIONS

12. 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.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) Evidence, if any, of rehabilitation submitted by the licensee.

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

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

DRUGS

14. Heroin is a Schedule I controlled substance pursuant to Health and Safety Code section 11054, subdivision (c).

1 COST RECOVERY

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

8 FIRST CAUSE FOR DISCIPLINE

9 **(February 25, 2015 Criminal Conviction for Possession of Heroin with the Intent to Sell)**

10 16. Respondent has subjected her pharmacy technician registration to discipline under
11 Code sections 490 and 4301, subdivision (l) in that she was convicted of a crime that is
12 substantially related to the qualifications, functions, and duties of a registered pharmacy
13 technician. The circumstances are as follows:

14 a. On February 25, 2015, in a criminal proceeding entitled *The People of the*
15 *State of California vs. Melissa Najera, AKA Anaym Melissen Luna, Melissa Luna, and Anaym*
16 *Melissa Luna*, in Orange County Superior Court Case Number 14CF2615, Respondent was
17 convicted on her plea of guilty to violating Health and Safety Code sections 11350(a), possession
18 of a controlled substance, a misdemeanor, and 11351, possession for sale of a controlled
19 substance, a felony.

20 b. As a result of the conviction, Respondent was sentenced to three years
21 formal probation, ordered to serve 20 days in custody with credit for 10 days served, ordered to
22 complete 10 days of Cal Trans service in lieu of 10 days in custody, required to pay fines and
23 fees, and ordered to use no unauthorized drugs, narcotics or controlled substances, among other
24 terms.

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SECOND CAUSE FOR DISCIPLINE

(Violation of Laws Regulating Controlled Substances)

17. Respondent has subjected her pharmacy technician registration to discipline under Code section 4301, subdivision (j) in that she violated state laws regulating controlled substances, including Health and Safety Code sections 11350(a) and 11351, as set forth in paragraph 16, above, which is incorporated herein by reference.

PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 135843, issued to Anaym Melissen Luna;
2. Ordering Anaym Melissen Luna 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: _____

9/3/15

Virginia Herold

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

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