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

In the Matter of the Accusation Against:
MELISSA ACOSTA
8625 Alburdis Ave.
Whittier, CA 90606
Pharmacy Technician Registration No. TCH
121953
Respondent.

Case No. 5387

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about May 28, 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. 5387 against Melissa Acosta (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about March 15, 2012, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 121953 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 5387 and will expire on March 31, 2016, unless renewed.

3. On or about June 18, 2015, Respondent was served by Certified and First Class Mail

1 copies of the Accusation No. 5387, Statement to Respondent, Notice of Defense, Request for
2 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
3 Respondent's address of record which, pursuant to Business and Professions Code section 4100,
4 is required to be reported and maintained with the Board. Respondent's address of record was
5 and is: 8625 Alburdis Ave., Whittier, CA 90606.

6 4. Service of the Accusation was effective as a matter of law under the provisions of
7 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
8 124.

9 5. As of November 17, 2015, none of the aforementioned documents were returned due
10 to an outdated address of record.

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

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

17 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
18 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 5387.

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

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

24 9. Pursuant to its authority under Government Code section 11520, the Board finds
25 Respondent is in default. The Board will take action without further hearing and, based on the
26 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
27 taking official notice of all the investigatory reports, exhibits and statements contained therein on
28 file at the Board's offices regarding the allegations contained in Accusation No. 5387, finds that
the charges and allegations in Accusation No. 5387, are separately and severally, found to be true
and correct by clear and convincing evidence.

10 10. Taking official notice of its own internal records, pursuant to Business and

1 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
2 and Enforcement is \$5,093.00 as of November 16, 2015.

3 **DETERMINATION OF ISSUES**

4 1. Based on the foregoing findings of fact, Respondent Melissa Acosta has subjected her
5 Pharmacy Technician Registration No. TCH 121953 to discipline.

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

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

10 a. Respondent is subject to disciplinary action under Code section 4301, subdivision (f)
11 on the grounds of unprofessional conduct in that Respondent committed acts of moral turpitude,
12 dishonesty, fraud, deceit, or corruption in that between June 2013 and March 2014, Respondent
13 conspired with an employee who worked at the medical office of Dr. F.B. to obtain prescriptions
14 for Phenergan/promethazine with codeine and Xanax that were not authorized by the physician.
15 Specifically, CVS Pharmacy hired Respondent on September 7, 2013 as a pharmacy technician
16 and assigned her to work at CVS store #9735. On or about March 10, 2014, "Nancy" from Dr.
17 F.B.'s office allegedly telephoned in a prescription for Respondent for Phenergan with codeine to
18 CVS store #9852. On or about March 13, 2014, the pharmacist at CVS store #9852 was in the
19 midst of processing the prescription when he became suspicious of the prescription and called Dr.
20 F.B.'s office to confirm the validity of the prescription. The pharmacist learned that the
21 prescription was not legitimate: Respondent was not currently under Dr. F.B.'s care and "Nancy"
22 had not worked at Dr. F.B.'s office for several years. Further investigation revealed that
23 Respondent had filled or attempted to fill other prescriptions for Phenergan/promethazine with
24 codeine and Xanax alleged prescribed by Dr. F.B. "Candy," a friend of Respondent's who
25 worked at Dr. F.B.'s office, had allegedly authorized the prescriptions. However Respondent had
26 not seen Dr. F.B. for any evaluation and/or treatment. Respondent was terminated from her
27 employment with CVS on March 21, 2014. The prescriptions identified as fraudulent are as
28 follows:

Drug	Date	RX#	Authorized By	CVS Store #
Promethazine with Codeine	3/13/2014 (not filled)	606326	Nancy	9852
Promethazine with Codeine	2/18/2014	603356	Electronic refill request allegedly electronically signed by Dr. F.B.	9852
Alprazolam 2 mg	2/12/2014 (never picked up)	315656	Telephone prescription authorized by Candy	9735
Promethazine with Codeine	1/24/2014	582476	Refill verbally authorized by Candy	9852
Promethazine with Codeine	12/16/2013	582476	Refill verbally authorized by Candy	9852
Promethazine with Codeine	8/18/2013	576866	Refill verbally authorized by Candy	9852
Promethazine with Codeine	6/24/2013	569114	Original RX allegedly signed by Dr. F.B.	9852
Promethazine with Codeine	6/10/2013	569114	Original RX allegedly signed by Dr. F.B.	9852

b. Respondent is subject to disciplinary action under Code section 4301, subdivision (j), in conjunction with Health and Safety Code section 11173, on the grounds of unprofessional conduct in that between June 2013 and March 2014, Respondent obtained and/or attempted to obtain controlled substances, and/or procured or attempted to procure prescriptions for controlled substances by fraud, deceit, misrepresentation, subterfuge, or the concealment of material facts.

c. Respondent is subject to disciplinary action under Code section 4301, subdivision (o), in conjunction with Code section 4323, on the grounds of unprofessional conduct in that between June 2013 and March 2014, Respondent aided and abetted and conspired with her friend "Candy" to obtain controlled substances by falsely representing, in a telephone or electronic communication with a pharmacist, that they were acting on behalf of a person (Dr. F.B.) who can lawfully prescribe controlled substances.

d. Respondent is subject to disciplinary action under Code section 4301, subdivision (o), in conjunction with Code section 4324, on the grounds of unprofessional conduct in that between June 2013 and March 2014, Respondent aided and abetted and conspired with her friend "Candy" to obtain controlled substances by forging, publishing, passing, or attempting to pass as genuine

1 false prescriptions for controlled substances, to wit: Phenergan/promethazine with codeine and
2 Xanax.

3 e. Respondent is subject to disciplinary action under Code section 4301, subdivision (o),
4 in conjunction with Code section 4060, on the grounds of unprofessional conduct in that between
5 June 2013 and March 2014, Respondent unlawfully possessed a controlled substance, to wit:
6 promethazine with codeine.

7 **ORDER**

8 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 121953, heretofore
9 issued to Respondent Melissa Acosta, is revoked.

10 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
11 written motion requesting that the Decision be vacated and stating the grounds relied on within
12 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
13 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

14 This Decision shall become effective on January 27, 2016.

15 It is so ORDERED December 28, 2015.

16 BOARD OF PHARMACY
17 DEPARTMENT OF CONSUMER AFFAIRS
18 STATE OF CALIFORNIA

19 

20
21 By _____

22 Amy Gutierrez, Pharm.D.
23 Board President

24 61747761.DOC
DOJ Matter ID:LA2015500478

25 Attachment:
26 Exhibit A: Accusation

Exhibit A

Accusation

(MELISSA ACOSTA)

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2 MARC D. GREENBAUM
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6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 5387

13 **MELISSA ACOSTA**
8625 Alburdis Ave.
Whittier, CA 90606

A C C U S A T I O N

14 Pharmacy Technician Registration
15 No. TCH 121953

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 March 15, 2012, the Board of Pharmacy ("Board") issued Pharmacy
23 Technician Registration Number TCH 121953 to Melissa Acosta ("Respondent"). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought
25 herein and will expire on March 31, 2016, unless renewed.

26 **JURISDICTION**

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

1 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
2 labeled with the name and address of the supplier or producer."

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

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

7

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

11

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

14

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

19 8. Section 4323 of the Code states:

20 "Every person who, in order to obtain any drug, falsely represents himself or herself to be a
21 physician or other person who can lawfully prescribe the drug, or falsely represents that he or she
22 is acting on behalf of a person who can lawfully prescribe the drug, in a telephone or electronic
23 communication with a pharmacist, shall be punished by imprisonment in the county jail for not
24 more than one year."

25 9. Section 4324, subdivision (a) of the Code states: "(a) Every person who signs the
26 name of another, or of a fictitious person, or falsely makes, alters, forges, utters, publishes, passes,
27 or attempts to pass, as genuine, any prescription for any drugs is guilty of forgery and upon
28

1 conviction thereof shall be punished by imprisonment in the state prison, or by imprisonment in the
2 county jail for not more than one year."

3 10. Health and Safety Code section 11173, subdivision (a) states, "No person shall obtain
4 or attempt to obtain controlled substances, or procure or attempt to procure the administration of
5 or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or
6 (2) by the concealment of a material fact."

7 **COST RECOVERY**

8 11. Section 125.3 of the Code states, in pertinent part, that the Board may request the
9 administrative law judge to direct a licentiate found to have committed a violation or violations of
10 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
11 enforcement of the case.

12 **CONTROLLED SUBSTANCES**

13 12. Phenergan with codeine, the brand name for promethazine with codeine, is a Schedule
14 V controlled substance pursuant to Health and Safety Code section 11058, subdivision (c)(1) and
15 is a dangerous drug pursuant to Code section 4022.

16 13. Xanax, the brand name for alprazolam, is a Schedule IV controlled substance pursuant
17 to Health and Safety Code section 11057, subdivision (d)(1) and is a dangerous drug pursuant to
18 Code section 4022.

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(Unprofessional Conduct: Dishonest/Fraudulent Acts)**

21 14. Respondent is subject to disciplinary action under Code section 4301, subdivision (f)
22 on the grounds of unprofessional conduct in that Respondent committed acts of moral turpitude,
23 dishonesty, fraud, deceit, or corruption in that between June 2013 and March 2014, Respondent
24 conspired with an employee who worked at the medical office of Dr. F.B. to obtain prescriptions
25 for Phenergan/promethazine with codeine and Xanax that were not authorized by the physician.
26 The circumstances are as follows:

27 15. CVS Pharmacy hired Respondent on September 7, 2013 as a pharmacy technician and
28 assigned her to work at CVS store #9735.

1 obtain controlled substances, and/or procured or attempted to procure prescriptions for controlled
2 substances by fraud, deceit, misrepresentation, subterfuge, or the concealment of material facts.
3 Complainant incorporates by reference Paragraphs 15 through 18, inclusive, as though fully set
4 forth herein.

5 **THIRD CAUSE FOR DISCIPLINE**

6 **(Unprofessional Conduct: Conspiring to Obtain Drugs by Representing Oneself as Acting**
7 **on Behalf of an Authorized Prescriber)**

8 20. Respondent is subject to disciplinary action under Code section 4301, subdivision (o),
9 in conjunction with Code section 4323, on the grounds of unprofessional conduct in that between
10 June 2013 and March 2014, Respondent aided and abetted and conspired with her friend "Candy"
11 to obtain controlled substances by falsely representing, in a telephone or electronic communication
12 with a pharmacist, that they were acting on behalf of a person (Dr. F.B.) who can lawfully
13 prescribe controlled substances. Complainant incorporates by reference Paragraphs 15 through
14 18, inclusive, as though fully set forth herein.

15 **FOURTH CAUSE FOR DISCIPLINE**

16 **(Unprofessional Conduct: Obtaining Drugs Through Forged Prescriptions)**

17 21. Respondent is subject to disciplinary action under Code section 4301, subdivision (o),
18 in conjunction with Code section 4324, on the grounds of unprofessional conduct in that between
19 June 2013 and March 2014, Respondent aided and abetted and conspired with her friend "Candy"
20 to obtain controlled substances by forging, publishing, passing, or attempting to pass as genuine
21 false prescriptions for controlled substances, to wit: Phenergan/promethazine with codeine and
22 Xanax. Complainant incorporates by reference Paragraphs 15 through 18, inclusive, as though
23 fully set forth herein.

24 **FIFTH CAUSE FOR DISCIPLINE**

25 **(Unprofessional Conduct: Unlawful Possession of a Controlled Substance)**

26 22. Respondent is subject to disciplinary action under Code section 4301, subdivision (o),
27 in conjunction with Code section 4060, on the grounds of unprofessional conduct in that between
28 June 2013 and March 2014, Respondent unlawfully possessed a controlled substance, to wit:

1 promethazine with codeine. Complainant incorporates by reference Paragraphs 15 through 18,
2 inclusive, as though fully set forth herein.

3 **PRAYER**

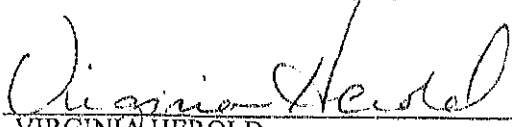
4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
5 and that following the hearing, the Board of Pharmacy issue a decision:

6 1. Revoking or suspending Pharmacy Technician Registration Number TCH 121953,
7 issued to Melissa Acosta;

8 2. Ordering Melissa Acosta to pay the Board of Pharmacy the reasonable costs of the
9 investigation and enforcement of this case, pursuant to Business and Professions Code section
10 125.3; and

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

12
13 DATED: 5/28/15


14 VIRGINIA HEROLD
15 Executive Officer
16 Board of Pharmacy
17 Department of Consumer Affairs
18 State of California
19 Complainant

20 LA2015500478
21 51719577.doc