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

In the Matter of the Accusation Against:
MARCO ANTONIO LUNA
18393 Hinton Street
Hesperia, CA 92345
and
21690 Laguna Road
Apple Valley, CA 92308
Pharmacy Technician Registration No. TCH
126138

Respondent.

Case No. 5453

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about July 8, 2016, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 5453 against Marco Antonio Luna (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)
2. On or about September 14, 2012, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 126138 to Respondent. The Pharmacy Technician Registration expired on June 1, 2014, and has not been renewed.

1 3. On or about July 20, 2016, Respondent was served by Certified and First Class Mail
2 copies of the Accusation No. 5453, 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 18393 Hinton Street
8 Hesperia, CA 92345
9 and
10 21690 Laguna Road
11 Apple Valley, CA 92308.

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

15 5. On or about July 23, 2016, the aforementioned documents mailed to 21690 Laguna
16 Road, Apple Valley, CA 92308, were signed as received and the U.S. Postal Service returned a
17 signed Certified Mail Return Receipt.

18 6. On or about August 5, 2016, the aforementioned documents mailed to 18393 Hinton
19 Street, Hesperia, CA 92345, were returned by the U.S. Postal Service marked "Refused."

20 7. Government Code section 11506(c) states, in pertinent part:

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

26 8. Respondent failed to file a Notice of Defense within 15 days after service upon him
27 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation
28 No. 5453.

 9. California Government Code section 11520(a) states, in pertinent part:

 (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 respondent

1 unprofessional conduct.

2 ORDER

3 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 126138, heretofore
4 issued to Respondent Marco Antonio Luna, is revoked.

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

9 This Decision shall become effective on January 11, 2017.

10 It is so ORDERED on December 12, 2016.

11
12 BOARD OF PHARMACY
13 DEPARTMENT OF CONSUMER AFFAIRS
14 STATE OF CALIFORNIA

15 

16
17 By _____
18 Amy Gutierrez, Pharm.D.
19 Board President

20 52268106.DOC
DOJ Matter ID:LA2015500816

21 Attachment:
22 Exhibit A: Accusation

23
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25
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27
28

Exhibit A

Accusation, Case No. 5453

(MARCO ANTONIO LUNA)

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2 LINDA K. SCHNEIDER
Senior Assistant Attorney General
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Attorneys for Complainant
7

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

10 In the Matter of the Accusation Against:

Case No. 5453

11 **MARCO ANTONIO LUNA**
12 18393 Hinton Street
Hesperia, CA 92345
13 and
21690 Laguna Road
14 Apple Valley, CA 92308

ACCUSATION

15 Pharmacy Technician Registration No. TCH
126138

16 Respondent.

17
18
19 Complainant alleges:

20 **PARTIES**

- 21 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity as
22 the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board).
23 2. On or about September 14, 2012, the Board issued Pharmacy Technician Registration
24 No. TCH 126138 to Marco Antonio Luna (Respondent). The Pharmacy Technician Registration
25 expired on February 28, 2014, and canceled on June 1, 2014.

26 **JURISDICTION**

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

1 STATUTORY PROVISIONS

2 4. Section 490 provides that a board may suspend or revoke a license on the ground that
3 the licensee has been convicted of a crime substantially related to the qualifications, functions, or
4 duties of the business or profession for which the license was issued.

5 5. Section 493 states:

6 "Notwithstanding any other provision of law, in a proceeding conducted by a board within
7 the department pursuant to law to deny an application for a license or to suspend or revoke a
8 license or otherwise take disciplinary action against a person who holds a license, upon the ground
9 that the applicant or the licensee has been convicted of a crime substantially related to the
10 qualifications, functions, and duties of the licensee in question, the record of conviction of the
11 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
12 and the board may inquire into the circumstances surrounding the commission of the crime in order
13 to fix the degree of discipline or to determine if the conviction is substantially related to the
14 qualifications, functions, and duties of the licensee in question.

15 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'"

16 6. Section 4300, subdivision (a), states that "[e]very license issued may be suspended or
17 revoked."

18 7. Section 4300.1 states:

19 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation
20 of law or by order or decision of the board or a court of law, the placement of a license on a
21 retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of
22 jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding
23 against, the licensee or to render a decision suspending or revoking the license."

24 8. Section 4301 states, in pertinent part:

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

28

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

4

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

7

8 "(l) The conviction of a crime substantially related to the qualifications, functions, and
9 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
10 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
11 substances or of a violation of the statutes of this state regulating controlled substances or
12 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
13 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
14 The board may inquire into the circumstances surrounding the commission of the crime, in order to
15 fix the degree of discipline or, in the case of a conviction not involving controlled substances or
16 dangerous drugs, to determine if the conviction is of an offense substantially related to the
17 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
18 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
19 of this provision. The board may take action when the time for appeal has elapsed, or the
20 judgment of conviction has been affirmed on appeal or when an order granting probation is made
21 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
22 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
23 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
24 indictment.

25

26 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
27 violation of or conspiring to violate any provision or term of this chapter or of the applicable
28 federal and state laws and regulations governing pharmacy, including regulations established by the

1 board or by any other state or federal regulatory agency. . . . "

2 **PHARMACY LAW**

3 9. Section 4060 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 apply
11 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
17 devices."

18 **DRUG STATUTES**

19 10. Health and Safety Code section 11007 states:

20 " "Controlled substance," unless otherwise specified, means a drug, substance, or immediate
21 precursor which is listed in any schedule in Section 11054, 11055, 11056, 11057, or 11058."

22 11. Health and Safety Code section 11173, subdivision (a), provides that it is illegal to
23 possess a controlled substance without a valid prescription.

24 12. United States Code Service, title 21, section 844 states, in pertinent part:

25 "(a) Unlawful acts; penalties. It shall be unlawful for any person knowingly or intentionally
26 to possess a controlled substance unless such substance was obtained directly, or pursuant to a
27 valid prescription . . .

28 "(c) "Drug, narcotic, or chemical offense" defined. As used in this section, the term " drug,

1 narcotic, or chemical offense" means any offense which proscribes the possession, distribution,
2 manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute,
3 manufacture, cultivate, sell or transfer any substance the possession of which is prohibited under
4 this title."

5 REGULATORY PROVISION

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

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

13 COST RECOVERY

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

18 CONTROLLED SUBSTANCE / DANGEROUS DRUG

19 15. Alprazolam is a generic name for brand names: Xanax. It is a Schedule IV controlled
20 substance pursuant to Health and Safety Code section 11057(d)(1) and a dangerous drug pursuant
21 to section 4022.

22 16. Hydrocodone is a Schedule II controlled substance pursuant to Health and Safety
23 Code section 11055(b)(1)(I), and a dangerous drug pursuant to section 4022. At the time of the
24 incident below, Hydrocodone was a Schedule III controlled substance pursuant to Health and
25 Safety Code section 11056(e)(4).

26 17. Suboxone, the brand name of buprenorphine and naloxone, is classified as a
27 Schedule V controlled substance pursuant to Health and Safety Code section 11058(d), a Schedule
28 III controlled substance pursuant to Code of Federal Regulations, title 21, section 1308.13, and a

1 dangerous drug pursuant to section 4022.

2 18. Tramadol is a Schedule IV controlled substance pursuant to Health and Safety Code
3 section 11057(c)(d) and a dangerous drug pursuant to section 4022.

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Conviction of a Substantially Related Crime)**

6 19. Respondent is subject to disciplinary action under sections 490, 4300, and 4301,
7 subdivision (I), in conjunction with California Code of Regulations, title 16, section 1770, on the
8 grounds of unprofessional conduct, in that Respondent was convicted of a crime substantially
9 related to the qualifications, functions or duties of a registered pharmacy technician, as follows:

10 a. On or about October 28, 2014, after pleading nolo contendere, Respondent was
11 convicted of one felony count of violating Penal Code section 508 [embezzlement by an agent] in
12 the criminal proceeding entitled *The People of the State of California v. Marco Antonio Luna*
13 (Super. Ct. San Bernardino County, 2014, No. FVII400314). The Court sentenced Respondent
14 to 180 days in jail, and placed him on 36 months probation.

15 b. The circumstances underlying the conviction are that on or between September 2013
16 and December 23, 2013, during an investigation, Respondent admitted to stealing and selling
17 thousands of controlled substances and dangerous drugs from his employer Target Store
18 pharmacy. On or about November 22, 2013, November 27, 2013, November 29, 2013, December
19 4, 2013, and December 23, 2013, Respondent was observed on video surveillance cameras stealing
20 controlled substances and dangerous drugs. On or about December 23, 2013, Respondent was
21 found in possession of 24.5 Suboxone 8 mg, 128 Tramadol 50 mg, 55.5 Alprazolam 2 mg, 43
22 Hydrocodone/APAP 10/300 mg, and 500 Hydrocodone/APAP 10/325mg. Target Store pharmacy
23 filed a DEA Report of Theft or Loss of Controlled Substances: 971 Hydrocodone-APAP 5-500
24 mg, 18,563 Hydrocodone-APAP 10-325 mg, 684 Hydrocodone-Acetaminophen 10/300 mg,
25 25 Suboxone 8mg-2mg, and 56 Alprazolam 2mg tablets.

26 **SECOND CAUSE FOR DISCIPLINE**

27 **(Possession of Controlled Substances/Dangerous Drugs)**

28 20. Respondent is subject to disciplinary action under sections 4300, and 4301,

1 subdivision (o), on the grounds of unprofessional conduct, for violating section 4060, in that on
2 and between September 2013 and December 23, 2013, Respondent violated or attempted to
3 violate the Pharmacy law when he was in possession of controlled substances and dangerous
4 drugs, without valid prescriptions. The crimes or acts are substantially related to the
5 qualifications, functions, or duties of a registered pharmacy technician. Complainant refers to and
6 by this reference incorporates the allegations set forth above in paragraph 19, inclusive, as though
7 set forth fully.

8 **THIRD CAUSE FOR DISCIPLINE**

9 **(Violating Drug Statutes)**

10 21. Respondent is subject to disciplinary action under sections 4300, 4301, subdivision (j),
11 on the grounds of unprofessional conduct, in that on and between September 2013 and December
12 23, 2013, Respondent violated Health and Safety Code section 11173, subdivision (a), and United
13 States Code Service, title 21, section 844, when he was in possession of controlled
14 substances and dangerous drugs, without valid prescriptions, and while on-duty as a pharmacy
15 technician. Complainant refers to and by this reference incorporates the allegations set forth above
16 in paragraphs 19 through 20, inclusive, as though set forth fully.

17 **FOURTH CAUSE FOR DISCIPLINE**

18 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

19 22. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision
20 (f), on the grounds of unprofessional conduct, in that on and between September 2013 and
21 December 23, 2013, Respondent committed acts involving moral turpitude, dishonesty, fraud,
22 deceit, or corruption when he diverted controlled substances and dangerous drugs from his
23 employer's pharmacy inventory. Complainant refers to and by this reference incorporates the
24 allegations set forth above in paragraphs 19 through 21, inclusive, as though set forth fully.

25 **DISCIPLINE CONSIDERATIONS**

26 23. To determine the degree of discipline, Complainant alleges that:

27 a. On or about June 29, 2004, after pleading guilty, Respondent was convicted of one
28 misdemeanor count of violating Labor Code section 3700.5 [doing business as an uninsured

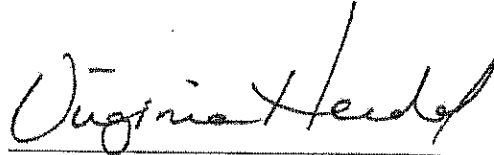
1 employer, on or about April 27, 2004] in the criminal proceeding entitled *The People of the State*
2 *of California v. Marco Antonio Luna dba M&M Truss* (Super. Ct. San Bernardino County, 2004,
3 No. MVI040534). The Court placed Respondent on 36 months probation, and ordered him to
4 maintain workers compensation insurance.

5 **PRAYER**

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

- 8 1. Revoking or suspending Pharmacy Technician Registration No. TCH 126138, issued
9 to Marco Antonio Luna;
- 10 2. Ordering Marco Antonio Luna to pay the Board the reasonable costs of the
11 investigation and enforcement of this case, pursuant to section 125.3; and
- 12 3. Taking such other and further action as deemed necessary and proper.

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16 DATED: 7/18/16



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

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