

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

In the Matter of the Accusation Against:

Case No. 5543

GABRIEL ALONSO HERNANDEZ
10242 Karmont Avenue
South Gate, CA 90280

**Pharmacy Technician Registration No. TCH
126133**

Respondent.

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on January 22, 2016.

It is so ORDERED on December 23, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

1 KAMALA D. HARRIS
Attorney General of California
2 ARMANDO ZAMBRANO
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Attorneys for Complainant
7

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10 **STATE OF CALIFORNIA**

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13 South Gate, CA 90280
14 **Pharmacy Technician Registration No. TCH**
126133
15
16 Respondent.

Case No. 5543

STIPULATED SURRENDER OF
LICENSE AND ORDER

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 **PARTIES**

21 1. Virginia Herold ("Complainant") is the Executive Officer of the Board of Pharmacy.
22 She brought this action solely in her official capacity and is represented in this matter by Kamala
23 D. Harris, Attorney General of the State of California, by Elyse M. Davidson, Deputy Attorney
24 General.

25 2. Gabriel Alonso Hernandez ("Respondent") is represented in this proceeding by
26 attorney Mark Lowerre, whose address is 1220 Highland Avenue, P.O. Box 3642, Manhattan
27 Beach, CA 90266.

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ORDER

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2 IT IS HEREBY ORDERED that Pharmacy Technician Registration No. TCH 126133,
3 issued to Respondent Gabriel Alonso Hernandez, is surrendered and accepted by the Board of
4 Pharmacy.

5 1. The surrender of Respondent's Pharmacy Technician Registration and the acceptance
6 of the surrendered license by the Board shall constitute the imposition of discipline against
7 Respondent. This stipulation constitutes a record of the discipline and shall become a part of
8 Respondent's license history with the Board of Pharmacy.

9 2. Respondent shall lose all rights and privileges as a registered pharmacy technician in
10 California as of the effective date of the Board's Decision and Order. Respondent shall relinquish
11 his pharmacy technician license to the Board within ten (10) of the effective date of the Decision
12 and Order.

13 3. If Respondent ever files an application for licensure or a petition for reinstatement in
14 the State of California, the Board shall treat it as a new application for licensure. Respondent
15 may not apply for any license, permit or registration from the Board for three (3) years from the
16 effective date of this Decision and Order. Respondent stipulates that should he apply for any
17 license from the Board on or after the effective date of this Decision and Order, all allegations
18 contained in Accusation No. 5543 shall be deemed to be true, correct, and admitted by
19 Respondent when the Board determines whether to grant or deny the application. Respondent
20 shall satisfy all requirements applicable to that license as of the date that the application is
21 submitted to the Board, including, but not limited to certification by a nationally recognized body
22 prior to the issuance of a new license. Respondent is required to report this surrender as a
23 disciplinary action.

24 4. Respondent shall pay the agency its costs of investigation and enforcement in the
25 amount of \$5,456.50 prior to issuance of a new or reinstated license.

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ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated:

11/03/2015

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
ARMANDO ZAMBRANO
Supervising Deputy Attorney General



ELYSE M. DAVIDSON
Deputy Attorney General
Attorneys for Complainant

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Exhibit A
Accusation No. 5543

1 KAMALA D. HARRIS
Attorney General of California
2 ARMANDO ZAMBRANO
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3 ELYSE M. DAVIDSON
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Case No. 5543

13 **GABRIEL ALONSO HERNANDEZ**
10242 Karmont Avenue
South Gate, CA 90280

ACCUSATION

14 **Pharmacy Technician Registration No. TCH**
15 **126133**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Virginia K. Herold ("Complainant") brings this Accusation solely in her official
21 capacity as the Executive Officer of the California State Board of Pharmacy.

22 2. On or about September 6, 2012, the Board of Pharmacy ("Board") issued Pharmacy
23 Technician Registration Number TCH 126133 to Gabriel Alonso Hernandez ("Respondent").
24 The Pharmacy Technician Registration was in full force and effect at all times relevant to the
25 charges brought herein and will expire on January 31, 2016, unless renewed.

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JURISDICTION

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

4 4. Section 490 of the Code states:

5 "(a) In addition to any other action that a board is permitted to take against a licensee, a
6 board may suspend or revoke a license on the ground that the licensee has been convicted of a
7 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
8 or profession for which the license was issued.

9 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
10 discipline a licensee for conviction of a crime that is independent of the authority granted under
11 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
12 of the business or profession for which the licensee's license was issued.

13 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
14 conviction following a plea of nolo contendere. Any action that a board is permitted to take
15 following the establishment of a conviction may be taken when the time for appeal has elapsed,
16 or the judgment of conviction has been affirmed on appeal, or when an order granting probation
17 is made suspending the imposition of sentence, irrespective of a subsequent order under the
18 provisions of Section 1203.4 of the Penal Code. ..."

19 5. Section 4300 of the Code provides in pertinent part, that every license issued by the
20 Board is subject to discipline, including suspension or revocation.

21 6. Section 4300.1 states:

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

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1 "(i) Except as otherwise authorized by law, knowingly selling, furnishing, giving away, or
2 administering or offering to sell, furnish, give away, or administer any controlled substance to an
3 addict.

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

6 ...

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

24 ...

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

1 9. Health and Safety Code section 11375, subdivision (b)(1), states, in pertinent part:
2 "Every person who possesses for sale, or who sells, any substance specified in subdivision
3 (c) shall be punished by imprisonment in the county jail for a period of not more than one year or
4 state prison."

5 **REGULATORY PROVISIONS**

6 10. 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
12 manner consistent with the public health, safety, or welfare."

13 **COST RECOVERY**

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

18 **CONTROLLED SUBSTANCES / DANGEROUS DRUGS**

19 12. Section 4021 of the Code states, in pertinent part:
20 "Controlled substances: means any substance listed in Chapter 2 (commencing with Section
21 11053) of Division 10 of the Health and Safety Code."

22 13. Section 4022 of the Code states:
23 "Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in
24 humans or animals, and includes the following:

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

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1 one stock bottle of 100 tablets of Alprazolam 2 mg from the shelf and proceeded to walk to the
2 back aisle in the Pharmacy. Respondent was observed concealing the stock bottle in his right
3 sock. Respondent was then approached and questioned about the concealed stock bottle and
4 asked to proceed to the Store Manager's office for an interview.

5 20. During the interview, Respondent admitted to theft of approximately 650 tablets of
6 Alprazolam 2 mg and 1,413 ml of Promethazine with Codeine while employed at the Pharmacy
7 in Santa Monica. Respondent further admitted to theft of approximately 5,000 tablets of
8 Alprazolam 2 mg and 4,730 ml of Promethazine with Codeine while employed at the Pharmacy
9 in Bell.

10 21. Respondent admitted to that he began stealing the controlled substances from the
11 Pharmacy in Bell at the end of February to the beginning of March 2015 and that he began
12 stealing from the Pharmacy in Santa Monica at the end of November 2014.

13 22. Respondent also admitted that after he stole the controlled substances, he would sell
14 them for cash and would use some of the Alprazolam 2 mg for personal consumption.

15 23. At the conclusion of the interview with the Pharmacy Regional Diversion Manager,
16 the Bell Police Department was called to respond to the scene.

17 24. Respondent admitted to the police officer that he stole bottles of Alprazolam 2 mg
18 from the Pharmacy and that he sold each bottle to various people for approximately \$100-\$150.
19 He further admitted to the police officer that he stole bottles of Promethazine Codeine and sold
20 them for \$100 per bottle.

21 **FIRST CAUSE FOR DISCIPLINE**

22 **(Conviction of Substantially Related Crime)**

23 25. Respondent is subject to disciplinary action under sections 490, and 4301,
24 subdivision (I), in conjunction with California Code of Regulations, title 16, section 1770, on the
25 grounds of unprofessional conduct, in that Respondent was convicted of crimes substantially
26 related to the qualifications, functions, and duties of a pharmacy technician, as follows:

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1 a. On or about May 27, 2015, after pleading nolo contendere, Respondent was convicted
2 of one misdemeanor county of violating Health and Safety Code section 11375(b)(1) [possesses
3 for sell of controlled substance], in the criminal proceeding entitled *The People of the State of*
4 *California v. Gabriel Alonso Hernandez* (Super. Ct. Los Angeles County, 2015, No. 5DY03198).

5 b. The circumstances surrounding the conviction are that on or about April 9, 2015, and
6 from approximately November 2014 through April 2015, Respondent admittedly stole controlled
7 substances from his employer with the intent to sell and did sell them for cash.

8 c. Complainant refers to, and by reference incorporates, the allegations set forth above
9 in paragraphs 16 through 24, inclusive, as though set forth fully.

10 **SECOND CAUSE FOR DISCIPLINE**

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

12 26. Respondent is subject to disciplinary action under section 4301, subdivision (f), in
13 that Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, or
14 corruption with the intent to substantially benefit himself, or substantially injure another in that
15 on or about and between November 2014 through April 2015, Respondent admitted to theft of
16 controlled substances from his employer, the Pharmacy with the intent to sell.

17 a. Complainant refers to, and by reference incorporates, the allegations set forth above
18 in paragraphs 16 through 25, inclusive, as though set forth fully.

19 **THIRD CAUSE FOR DISCIPLINE**

20 **(Dangerous Use of Controlled Substance: Alprazolam)**

21 27. Respondent is subject to disciplinary action under section 4301, subdivision (h), on the
22 grounds of unprofessional conduct in that Respondent admittedly used alprazolam, a controlled
23 substance, to the extent or in a manner as to be dangerous or injurious to oneself in that on or
24 about and between November 2014 through April 2015, Respondent admitted to personal
25 consumption of Alprazolam 2 mg for which Respondent did not have a valid prescription.

26 a. Complainant refers to, and by reference incorporates, the allegations set forth above
27 in paragraphs 16 through 25, inclusive, as though set forth fully.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Unlawful Possession of Controlled Substance: Alprazolam)**

3 28. Respondent is subject to disciplinary action under section 4301, subdivision (j), on
4 the grounds of unprofessional conduct, for violating Code section 4060 and Health and Safety
5 Code section 11375, subdivision (b)(1), in that on or about and between November 2014 through
6 April 2015, Respondent admittedly removed from the Pharmacy, and possessed more than 5,650
7 tablets of Alprazolam 2 mg without a valid prescription.

8 a. Complainant refers to, and by reference incorporates, the allegations set forth above
9 in paragraphs 16 through 25, inclusive, as though set forth fully.

10 **FIFTH CAUSE FOR DISCIPLINE**

11 **(Unlawful Possession of Controlled Substance: Promethazine-Codeine Syrup)**

12 29. Respondent is subject to disciplinary action under section 4301, subdivision (j), on
13 the grounds of unprofessional conduct, for violating Code section 4060 and Health and Safety
14 Code section 11375, subdivision (b)(1), on or about and between November 2014 through April
15 2015, Respondent admittedly removed from the Pharmacy, and possessed and more than 6,143
16 ml of Promethazine-Codeine Syrup without a valid prescription.

17 a. Complainant refers to, and by reference incorporates, the allegations set forth above
18 in paragraphs 16 through 25, inclusive, as though set forth fully.

19 **SIXTH CAUSE FOR DISCIPLINE**

20 **(Unprofessional Conduct / Violation of Licensing Chapter)**

21 Respondent is subject to disciplinary action under section 4301, subdivision (o), in that
22 Respondent committed acts of unprofessional conduct and / or violated provisions of the
23 licensing chapter. Complainant refers to, and by this reference incorporates, the allegations set
24 forth above in paragraphs 16 through 25, inclusive, as though set forth fully.

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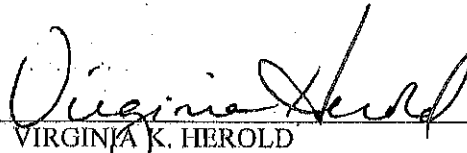
PRAYER

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 126133, issued to Gabriel Alonso Hernandez;
2. Ordering Gabriel Alonso Hernandez to pay the Board 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:

8/27/15



VIRGINIA K. HEROLD
Executive Officer
California State Board of Pharmacy
State of California
Complainant

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