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

In the Matter of the Accusation Against:
NIEKO ANTHONY RODRIGUEZ
7829 Hurst Ct.
Sacramento, CA 95829
Original Pharmacy Technician Registration
No. TCH 113517

Respondent.

Case No. 5561

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about October 16, 2015, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the California State Board of Pharmacy, filed Accusation No. 5561 against Nieko Anthony Rodriguez (Respondent) before the Board of Pharmacy.

(Accusation attached as Exhibit A.)

2. On or about July 28, 2011, the Board of Pharmacy (Board) issued Original Pharmacy Technician Registration No. TCH 113517 to Respondent. The Original Pharmacy Technician Registration expired on April 30, 2015, and has not been renewed.

3. On or about October 27, 2015, Respondent was served by Certified and First Class Mail copies of Accusation No. 5561, Statement to Respondent, Notice of Defense, Request for

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

5 7829 Hurst Ct.
6 Sacramento, CA 95829.

7 4. Service of the Accusation was effective as a matter of law under the provisions of
8 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
9 124.

10 5. The aforementioned Certified and First Class Mail documents were never returned by
11 the U.S. Postal Service.

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

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

18 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
19 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
20 5561.

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

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

26 9. Pursuant to its authority under Government Code section 11520, the Board finds
27 Respondent is in default. The Board will take action without further hearing and, based on the
28 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
taking official notice of all the investigatory reports, exhibits, and statements contained therein on
file at the Board's offices regarding the allegations contained in Accusation No. 5561, finds that

1 the charges and allegations in Accusation No. 5561, are separately and severally, found to be true
2 and correct by clear and convincing evidence.

3 10. Taking official notice of its own internal records, pursuant to Business and
4 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
5 and Enforcement are \$6,146.25 as of December 9, 2015.

6 DETERMINATION OF ISSUES

7 1. Based on the foregoing findings of fact, Respondent Nieko Anthony Rodriguez has
8 subjected his Original Pharmacy Technician Registration No. TCH 113517 to discipline.

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

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

13 a. Respondent violated Business and Professions Code section 4301(j), by and through
14 sections 11171 and 11173(a) of the Health and Safety Code, in that from in or about 2010 through
15 September 19, 2014, Respondent stole controlled substances from CVS Pharmacy. The facts and
16 circumstances are as follows:

17 i. From on or about July 28, 2011 through September 25, 2014, Respondent
18 worked as a Pharmacy Technician at CVS Pharmacy store number 4950, located in Rancho
19 Cordova, California, and CVS Pharmacy store number 9923, located in Folsom, California.

20 ii. On or about October 1, 2014, the Board received an e-mail notification from
21 CVS Pharmacy regarding Respondent's admission to stealing controlled substances for self-use.
22 The controlled substances were hydrocodone/APAP 10/325, hydrocodone/APAP 5/325,
23 alprazolam 1mg, alprazolam 2mg, and clonazepam 2mg. The controlled substance loss appeared
24 at CVS Pharmacy #4950. According to the notification, Respondent also admitted to stealing one
25 tablet of alprazolam from CVS Pharmacy store #9923.

26 iii. Attached to the October 1, 2014 e-mail was a DEA form 106 for CVS
27 Pharmacy #4950, dated October 1, 2014. The form indicated the date of theft/loss as September
28 2, 2014. The form indicated the following losses: (1) 2,007 tablets of Xanax 1mg; (2) 1,013

1 tablets of Xanax 2mg; (3) 121 tablets of Klonopin; (4) 1,698 tablets of hydrocodone/APAP 5-
2 325mg; (5) 4,881 tablets of hydrocodone/APAP 10-325mg; and (6) 111 tablets of Percocet.

3 iv. On or about September 19, 2014, Respondent was interviewed by S. R.
4 regarding his theft of controlled substances. During this interview, Respondent admitted that he
5 removed medication from the pharmacy without a valid prescription, and he admitted to taking
6 Norco, Xanax, and Klonopin. Respondent admitted to stealing approximately 100 tablets of
7 hydrocodone about once a week from the pharmacy. Respondent estimated he took about 2,240
8 tablets of hydrocodone/APAP 10-325mg and 560 tablets of hydrocodone/APAP 5-325mg from
9 the pharmacy. Respondent also admitted to stealing alprazolam 1mg (approximately 480 tablets),
10 alprazolam 2mg (approximately 1,920 tablets), and clonazepam 2mg (approximately 1,200
11 tablets). Respondent said he stole the medication because he became addicted to hydrocodone.
12 Respondent said he stole the medication when his valid prescription expired. Respondent
13 admitted to putting whole bottles of controlled substances in his pocket to conceal the removal of
14 the medication from the pharmacy.

15 v. On or about October 17, 2014, the Board received an e-mail from CVS
16 Pharmacy providing the DEA 106 form for CVS Pharmacy #9923. The DEA 106 form was
17 transmitted on October 17, 2014, with a date of loss of September 19, 2014. According to the
18 form, 461 tablets of Xanax were lost.

19 vi. On or about January 9, 2015, during an interview with Board Inspector D. P.,
20 Respondent admitted to stealing medication from CVS pharmacy #4950. Respondent said he
21 increased his stealing when he could no longer get a valid prescription for pain medication.
22 Respondent admitted that he knew what he was doing was wrong but he became addicted to pain
23 medication. Respondent said his addiction took over his mind and he made poor decisions and
24 lost integrity. Respondent said he realized there was something in him which made it easier to
25 become addicted to pain medication, and he realized he should not work with medication.
26 Respondent said if he was around medication, he may be tempted.

27 b. Respondent violated Business and Professions Code section 4301(j), by and through
28 Business and Professions Code section 4060, and sections 11171 and 11350 of the Health and

1 Safety Code, in that Respondent violated the statutes of this state regulating controlled substances
2 and dangerous drugs as follows:

3 i. From in or about 2010 through September 19, 2014, Respondent possessed
4 various controlled substances from CVS Pharmacy without possessing a current, valid
5 prescription, and these controlled substances were for self-administration.

6 ii. The facts and circumstances are described with more particularity in paragraph
7 3(a) and all of its subparts.

8 c. Respondent violated Business and Professions Code section 4301(h), by and through
9 sections 11170 and 11171 of the Health and Safety Code, in that Respondent administered to
10 himself controlled substances or dangerous drugs to the extent or in a manner as to be dangerous
11 or injurious to himself, any person of the public, or to the extent that the use impaired his ability
12 to conduct with safety to the public the practice authorized by his license as follows:

13 i. On or about January 9, 2015, Respondent admitted that he stole and consumed
14 controlled substances from CVS Pharmacy because he became addicted to pain medication, that
15 he stole the controlled substances when he did not have a current, valid prescription for pain
16 medication, and that he stole the controlled substances for self-administration.

17 ii. The facts and circumstances are set forth with more particularity in paragraph
18 3(a)(vi).

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ORDER

IT IS SO ORDERED that Original Pharmacy Technician Registration No. TCH 113517, heretofore issued to Respondent Nieko Anthony Rodriguez, 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

12056536.DOC
SA2015104783

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

(NIEKO ANTHONY RODRIGUEZ)

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2 KENT D. HARRIS
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7 E-mail: Phillip.Arthur@doj.ca.gov
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. 5561

12 **NIEKO ANTHONY RODRIGUEZ**
13 7829 Hurst Ct.
14 Sacramento, CA 95829

ACCUSATION

15 **Original Pharmacy Technician Registration**
16 **No. TCH 113517**

Respondent.

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18
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about July 28, 2011, the Board of Pharmacy issued Original Pharmacy
24 Technician Registration Number TCH 113517 to Nieko Anthony Rodriguez (Respondent). The
25 Pharmacy Technician Registration expired on April 30, 2015, and has not been renewed.

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1 subparagraph (A) of paragraph (5) of subdivision (a) of Section 4052. This section shall not
2 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
3 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
4 nurse midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
5 labeled with the name and address of the supplier or producer.

6 Nothing in this section authorizes a certified nurse midwife, a nurse practitioner, a
7 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and
8 devices."

9 8. Section 4301 of the Code states, in pertinent part:

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

13 "...

14 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous
15 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
16 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
17 to the extent that the use impairs the ability of the person to conduct with safety to the public the
18 practice authorized by the license.

19 "...

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

22 **HEALTH AND SAFETY CODE**

23 9. California Health and Safety Code section 11170 states, "No person shall prescribe,
24 administer, or furnish a controlled substance for himself."

25 10. California Health and Safety Code section 11171 states, "No person shall prescribe,
26 administer, or furnish a controlled substance except under the conditions and in the manner
27 provided by this division."

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1 11. California Health and Safety Code section 11173 states, in pertinent part:

2 "(a) No person shall obtain or attempt to obtain controlled substances, or procure or
3 attempt to procure the administration of or prescription for controlled substances, (1) by fraud,
4 deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact. . . ."

5 12. California Health and Safety Code section 11350 states, in pertinent part:

6 "(a) Except as otherwise provided in this division, every person who possesses (1) any
7 controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of
8 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or
9 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section
10 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic
11 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian
12 licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of
13 Section 1170 of the Penal Code. . . ."

14 COST RECOVERY

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

19 CONTROLLED SUBSTANCES

20 14. "Xanax," a trade name for Alprazolam, is a dangerous drug as defined in Code
21 section 4022, and a schedule IV controlled substance as defined by section 1308.14, subdivision
22 (c)(2) of Title 21 of the Code of Federal Regulations.

23 15. "Klonopin" (formerly known as Clonopin), a trade name for Clonazepam, an
24 anticonvulsant of the benzodiazepine class of drugs, is a dangerous drug as defined in Code
25 section 4022, and a schedule IV controlled substance as defined by section 11057, subdivision
26 (d)(17), of the Health and Safety Code.

27 16. "Hydrocodone w/APAP" or hydrocodone with acetaminophen tablets are produced
28 by several drug manufacturers. Hydrocodone bitartrate is semisynthetic narcotic analgesic, a

1 dangerous drug as defined in Code section 4022, a Schedule III controlled substance and narcotic
2 as defined by section 11056, subdivision (e) of the Health and Safety Code, and a Schedule III
3 controlled substance as defined by section 1308.13, subdivision (e) of Title 21 of the Code of
4 Federal Regulations. As of October 5, 2014 the substance was reclassified as a Schedule II drug.

5 17. "Percocet" is the trade name for the combined generic substance Oxycodone
6 Hydrochloride and Acetaminophen. It is a semisynthetic narcotic analgesic with multiple actions
7 qualitatively similar to those of morphine, and is a controlled substance as defined in Schedule II,
8 section 11055, subdivision (b)(1)(M) of the Health and Safety Code. Percocet is a dangerous
9 drug as defined in Code section 4022.

10 BACKGROUND

11 18. From on or about July 28, 2011 through September 25, 2014, Respondent worked as
12 a Pharmacy Technician at CVS Pharmacy store number 4950, located in Rancho Cordova,
13 California, and CVS Pharmacy store number 9923, located in Folsom, California.

14 19. On or about October 1, 2014, the Board received an e-mail notification from CVS
15 Pharmacy regarding Respondent's admission to stealing controlled substances for self-use. The
16 controlled substances were hydrocodone/APAP 10/325, hydrocodone/APAP 5/325, alprazolam
17 1mg, alprazolam 2mg, and clonazepam 2mg. The controlled substance loss appeared at CVS
18 Pharmacy #4950. According to the notification, Respondent also admitted to stealing one tablet
19 of alprazolam from CVS Pharmacy store #9923.

20 20. Attached to the October 1, 2014 e-mail was a DEA form 106 for CVS Pharmacy
21 #4950, dated October 1, 2014. The form indicated the date of theft/loss as September 2, 2014.
22 The form indicated the following losses: (1) 2,007 tablets of Xanax 1mg; (2) 1,013 tablets of
23 Xanax 2mg; (3) 121 tablets of Klonopin; (4) 1,698 tablets of hydrocodone/APAP 5-325mg;
24 (5) 4,881 tablets of hydrocodone/APAP 10-325mg; and (6) 111 tablets of Percocet.

25 21. On or about September 19, 2014, Respondent was interviewed by S. R. regarding his
26 theft of controlled substances. During this interview, Respondent admitted that he removed
27 medication from the pharmacy without a valid prescription, and he admitted to taking Norco,
28 Xanax, and Klonopin. Respondent admitted to stealing approximately 100 tablets of

1 hydrocodone about once a week from the pharmacy. Respondent estimated he took about 2,240
2 tablets of hydrocodone/APAP 10-325mg and 560 tablets of hydrocodone/APAP 5-325mg from
3 the pharmacy. Respondent also admitted to stealing alprazolam 1mg (approximately 480 tablets),
4 alprazolam 2mg (approximately 1,920 tablets), and clonazepam 2mg (approximately 1,200
5 tablets). Respondent said he stole the medication because he became addicted to hydrocodone.
6 Respondent said he stole the medication when his valid prescription expired. Respondent
7 admitted to putting whole bottles of controlled substances in his pocket to conceal the removal of
8 the medication from the pharmacy.

9 22. On or about October 17, 2014, the Board received an e-mail from CVS Pharmacy
10 providing the DEA 106 form for CVS Pharmacy #9923. The DEA 106 form was transmitted on
11 October 17, 2014, with a date of loss of September 19, 2014. According to the form, 461 tablets
12 of Xanax were lost.

13 23. On or about January 9, 2015, during an interview with Board Inspector D. P.,
14 Respondent admitted to stealing medication from CVS pharmacy #4950. Respondent said he
15 increased his stealing when he could no longer get a valid prescription for pain medication.
16 Respondent admitted that he knew what he was doing was wrong but he became addicted to pain
17 medication. Respondent said his addiction took over his mind and he made poor decisions and
18 lost integrity. Respondent said he realized there was something in him which made it easier to
19 become addicted to pain medication, and he realized he should not work with medication.
20 Respondent said if he was around medication, he may be tempted.

21 **FIRST CAUSE FOR DISCIPLINE**

22 **(Obtaining Controlled Substances by Fraud, Deceit, or Subterfuge)**

23 24. Respondent is subject to disciplinary action under section 4301(j) of the Code, by and
24 through sections 11171 and 11173, subdivision (a) of the Health and Safety Code, in that from in
25 or about 2010 through September 19, 2014, Respondent stole controlled substances from CVS
26 Pharmacy. The facts and circumstances are described with more particularity in paragraphs 18-
27 23.

28 *///*

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct—Unlawful Possession of Controlled Substances)**

3 25. Respondent is subject to disciplinary action under section 4301(j) of the Code, by and
4 through section 4060 of the Code, and sections 11171 and 11350 of the Health and Safety Code,
5 in that Respondent violated the statutes of this state regulating controlled substances and
6 dangerous drugs as follows:

7 a. From in or about 2010 through September 19, 2014, Respondent possessed various
8 controlled substances from CVS Pharmacy without possessing a current, valid prescription, and
9 these controlled substances were for self-administration:

10 b. The facts and circumstances are described with more particularity in paragraphs 18-
11 23.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Unprofessional Conduct—Unlawful Self-Administration of Controlled Substances)**

14 26. Respondent is subject to disciplinary action under section 4301(h) of the Code, by
15 and through sections 11170 and 11171 of the Health and Safety Code, in that Respondent
16 administered to himself controlled substances or dangerous drugs to the extent or in a manner as
17 to be dangerous or injurious to himself, any person of the public, or to the extent that the use
18 impaired his ability to conduct with safety to the public the practice authorized by his license as
19 follows:

20 a. On or about January 9, 2015, Respondent admitted that he stole and consumed
21 controlled substances from CVS Pharmacy because he became addicted to pain medication, that
22 he stole the controlled substances when he did not have a current, valid prescription for pain
23 medication, and that he stole the controlled substances for self-administration.

24 b. The facts and circumstances are set forth with more particularity in paragraphs 18-23.

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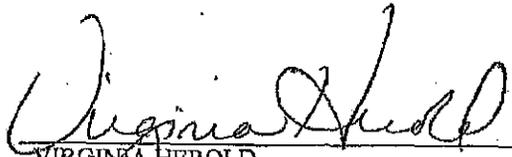
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PRAYER

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 Original Pharmacy Technician Registration Number TCH 113517, issued to Nieko Anthony Rodriguez;
2. Ordering Nieko Anthony Rodriguez 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; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 10/16/15 

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

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