

1 EDMUND G. BROWN JR.
Attorney General of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 MICHAEL BROWN
Deputy Attorney General
4 State Bar No. 231237
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2095
6 Facsimile: (213) 897-2804
E-mail: MichaelB.Brown@doj.ca.gov
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. 3559

13 **ARMANDO DANIEL PADUA, II**
14 **1815 E. Workman Ave. #D**
15 **W. Covina, CA 91791**
16 **Pharmacy Technician Registration No. TCH**
17 **76317**

A C C U S A T I O N

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 June 5, 2007, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 76317 to Armando Daniel Padua, II (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 November 30, 2010, unless renewed.

26 **JURISDICTION**

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

1 4. Section 118, subdivision (b), of the Code provides that the
2 suspension/expiration/surrender/cancellation of a license shall not deprive the
3 Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period
4 within which the license may be renewed, restored, reissued or reinstated.

5 5. Section 477 of the Code states:

6 As used in this division:

7 "(a) 'Board' includes 'bureau,' 'commission,' 'committee,' 'department,' 'division,'
8 'examining committee,' 'program,' and 'agency.'

9 "(b) 'License' includes certificate, registration or other means to engage in a
10 business or profession regulated by this code."

11 6. Section 482 of the Code states:

12 "Each board under the provisions of this code shall develop criteria to evaluate the
13 rehabilitation of a person when:

14 "(a) Considering the denial of a license by the board under Section 480; or

15 "(b) Considering suspension or revocation of a license under Section 490.

16 "Each board shall take into account all competent evidence of rehabilitation furnished by
17 the applicant or licensee."

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

22 8. Section 493 of the Code states:

23 "Notwithstanding any other provision of law, in a proceeding conducted by a board within
24 the department pursuant to law to deny an application for a license or to suspend or revoke a
25 license or otherwise take disciplinary action against a person who holds a license, upon the
26 ground that the applicant or the licensee has been convicted of a crime substantially related to the
27 qualifications, functions, and duties of the licensee in question, the record of conviction of the
28 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,

1 and the board may inquire into the circumstances surrounding the commission of the crime in
2 order to fix the degree of discipline or to determine if the conviction is substantially related to the
3 qualifications, functions, and duties of the licensee in question.

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

6 9. Section 4301 of the Code states:

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

10 . . .

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

14 . . .

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

17 . . .

18 "(l) The conviction of a crime substantially related to the qualifications, functions, and
19 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
20 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
21 substances or of a violation of the statutes of this state regulating controlled substances or
22 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
23 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
24 The board may inquire into the circumstances surrounding the commission of the crime, in order
25 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
26 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
27 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
28 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning

1 of this provision. The board may take action when the time for appeal has elapsed, or the
2 judgment of conviction has been affirmed on appeal or when an order granting probation is made
3 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
4 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
5 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
6 indictment.”

7 10. Section 4059 of the Code states:

8 “(a) A person may not furnish any dangerous drug, except upon the prescription of a
9 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
10 3640.7.”

11 11. Section 4060 of the Code states:

12 “No person shall possess any controlled substance, except that furnished to a person upon
13 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
14 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
15 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
16 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
17 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
18 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
19 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
20 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
21 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
22 labeled with the name and address of the supplier or producer.”

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

24 “For the purpose of denial, suspension, or revocation of a personal or facility license
25 pursuant to Division 1.5 (commencing with Section 475) of the business and Professions Code, a
26 crime or act shall be considered substantially related to the qualifications, function or duties of a
27 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
28

1 licensee or registrant to perform the functions authorized by this license or registration in a
2 manner consistent with the public health, safety, or welfare.”

3 13. Health and Safety Code section 11173 states, in pertinent part:

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

8 14. California Health and Safety Code section 11350 states, in pertinent part:

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

17 COST RECOVERY

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

22 DRUGS

23 16. Hydrocodone is a narcotic Schedule III controlled substance, pursuant to Health and
24 Safety Code section 11056(e)(4).

25 17. Promethazine with Codeine, is a Schedule V controlled substance as designated by
26 Health and Safety Code section 11058(c)(1) and is categorized as a dangerous drug pursuant to
27 Business and Professions Code section 4022.

28 FIRST CAUSE FOR DISCIPLINE

(Conviction of a Crime)

18. Respondent is subject to disciplinary action under section 490, 493 and 4301,
subdivisions (f) of the Code on the grounds of unprofessional conduct as defined in Title 16,
California Code of Regulations, section 1770, in that he was convicted of a crime substantially

1 related to the qualifications, duties and functions of a Pharmacy Technician. The circumstances
2 are as follows:

3 a. On January 21, 2010, in the Superior Court, County of Los Angeles, California, in the
4 matter entitled *People vs. Armando Daniel Padua II* (2010), Case No. KA088126, Respondent
5 was convicted by the court following his plea of guilty to a violation of Penal Code 459
6 (burglary), a felony.

7 b. The facts that lead to the conviction were that on August 21, 2009, during an
8 investigation by Loss Prevention officers at CVS Pharmacy, Respondent admitted to his employer
9 that he had been stealing bottles of hydrocodone and promethazine codeine syrup from December
10 1, 2008 to August 21, 2009.

11 **SECOND CAUSE FOR DISCIPLINE**

12 (Obtained Controlled Substances by Fraud, Deceit, and Subterfuge)

13 19. Respondent is subject to disciplinary action for unprofessional conduct under Code
14 section 4301 (f) in that on or about December 1, 2008 to August 21, 2009, while working as a
15 pharmacy technician at CVS Pharmacy, Respondent obtained by fraud, deceit, and subterfuge,
16 4,500 tablets of hydrocodone (500 count bottle), 4,300 tablets of hydrocodone (100 count bottle)
17 a controlled substance under Health and Safety Code section 11056(e)(4) and 73 bottles of
18 promethazine codeine syrup, a controlled substance under Health and Safety Code section
19 11058(c)(1), in violation of Health and Safety Code section 11173 (a), as set forth in paragraph
20 18, above.

21 **THIRD CAUSE FOR DISCIPLINE**

22 (Possession of a Controlled Substance Without a Prescription)

23 20. Respondent is subject to disciplinary action for unprofessional conduct under Code
24 section 4301 (j) in that on or about December 1, 2008 to August 21, 2009, while working as a
25 pharmacy technician at CVS Pharmacy, Respondent possessed and took 4,500 tablets of
26 hydrocodone (500 count bottle), 4,300 tablets of hydrocodone (100 count bottle) a controlled
27 substance under Health and Safety Code section 11056(e)(4) and 73 bottles of promethazine
28 codeine syrup, a controlled substance under Health and Safety Code section 11058(c)(1), in

1 violation of Code section 4060 and Health and Safety Code section 11350 (a), as set forth in
2 paragraph 18, above.

3 **PRAYER**

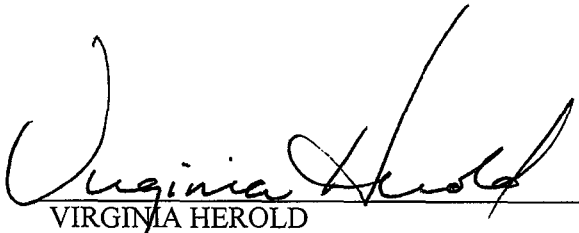
4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
5 and that following the hearing, the Board of Pharmacy issue a decision:

6 1. Revoking or suspending Pharmacy Technician Registration Number TCH 76317,
7 issued to Armando Daniel Padua, II;

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

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

12
13
14 DATED: 9/29/10


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

15
16
17
18
19 LA2009604618
20 60522097.doc
21
22
23
24
25
26
27
28