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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. 4562

11 **AMADO MERCHAN**
12 **180 Flora Avenue**
13 **Walnut Creek, CA 94595**

A C C U S A T I O N

14 **Pharmacy Technician License No. TCH 69567**

15 Respondent.

16 Complainant alleges:

17 PARTIES

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

20 2. On or about September 11, 2006, the Board of Pharmacy issued Pharmacy
21 Technician License Number TCH 69567 to Amado Merchan (Respondent). The Pharmacy
22 Technician License expired on or about September 30, 2012, and has not been renewed. The
23 License was cancelled based on delinquency on or about January 6, 2013.

24
25 JURISDICTION

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

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

5 8. Section 490 of the Code provides, in pertinent part, that the Board may suspend or
6 revoke a license when it finds that the licensee has been convicted of a crime substantially related
7 to the qualifications, functions or duties of the license.

8 9. California Code of Regulations, title 16, section 1770, states:

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

15 10. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous
16 drug or dangerous device except upon the prescription of an authorized prescriber.

17 11. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
18 controlled substance, except that furnished upon a valid prescription/drug order.

19 12. Health and Safety Code section 11170 provides that no person shall prescribe,
20 administer, or furnish a controlled substance for himself or herself.

21 13. Health and Safety Code section 11173, subdivision (a), provides that no person shall
22 obtain or attempt to obtain controlled substances, or procure or attempt to procure the
23 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,
24 or subterfuge; or (2) by the concealment of a material fact.

25 14. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess
26 any controlled substance listed in Schedule II (Health and Safety Code section 11055),
27 subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

28 ///

1 c. On or about May 22, 2012, Respondent was interviewed by pharmacy staff or
2 supervisors, and by the Pleasanton Police Department, and admitted to diverting/stealing around
3 500-1,000 tablets of **Hydrocodone with APAP 10/325** (generic **Norco**), approximately six (6)
4 bottles (2,880 mls) of **Promethazine with Codeine**, and approximately 20 tablets of **Xanax**.

5 d. An audit of controlled substance inventories subsequently performed by Rite
6 Aid for the period from May 1, 2011 to June 1, 2012 identified total losses of 2,176 tablets of
7 **Hydrocodone with APAP 10/325** (generic **Norco**), 11,173 mls of **Promethazine with Codeine**,
8 and 222 tablets of varying strengths of **alprazolam** (generic **Xanax**). There were also other
9 shortages of controlled substances in the pharmacy inventory.

10
11 FIRST CAUSE FOR DISCIPLINE

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

13 25. Respondent is subject to discipline under section 4301(f) of the Code, in that
14 Respondent, as described in paragraphs 21 to 23 above, committed acts involving moral turpitude,
15 dishonesty, fraud, deceit, or corruption.

16
17 SECOND CAUSE FOR DISCIPLINE

18 (Self-Administration of Controlled Substance(s))

19 26. Respondent is subject to discipline under section 4301(h) of the Code, and/or Health
20 and Safety Code section 11170, in that Respondent, as described in paragraphs 21 to 23 above,
21 self-administered a controlled substance, and/or conspired and/or assisted or abetted this conduct.

22
23 THIRD CAUSE FOR DISCIPLINE

24 (Furnishing of Controlled Substance(s))

25 27. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
26 4059 of the Code, and/or Health and Safety Code section 11170, in that Respondent, as described
27 in paragraphs 21 to 23 above, furnished to himself a controlled substance without a valid
28 prescription, and/or conspired and/or assisted or abetted this conduct.

1 FOURTH CAUSE FOR DISCIPLINE

2 (Possession of Controlled Substance(s))

3 28. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
4 4060 of the Code, and/or Health and Safety Code section 11350 and/or 11377, in that
5 Respondent, as described in paragraphs 21 to 23 above, possessed, conspired to possess, and/or
6 assisted in or abetted possession of, a controlled substance, without a prescription.

7
8 FIFTH CAUSE FOR DISCIPLINE

9 (Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

10 29. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
11 and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs
12 21 to 23 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a
13 controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

14
15 SIXTH CAUSE FOR DISCIPLINE

16 (Conviction of Substantially Related Crime(s))

17 30. Respondent is subject to discipline under section 4301(l) and/or section 490 of the
18 Code, by reference to California Code of Regulations, title 16, section 1770, in that on or about
19 March 24, 2014, in the criminal case *People v. Amado Merchan*, Case No. H55047 in Alameda
20 County Superior Court, Respondent was convicted of violating Penal Code section 487,
21 subdivision (a) (Grand Theft of Personal Property > \$950), a felony, as follows:

22 a. On or about May 22, 2012, based on the conduct described in paragraphs 21 to
23 23 above, Respondent was arrested on suspicion of violating Penal Code section 459 (Burglary)
24 and Penal Code section 503 (Embezzlement), both felonies.

25 b. On or about June 18, 2012 and/or November 25, 2013, Respondent was charged
26 in Case No. H55047 in Alameda County Superior Court with violating (1) Penal Code section
27 487, subdivision (a) (Grand Theft of Personal Property > \$950.00), a felony, and (2) Penal Code
28 section 503 (Embezzlement > \$950.00), a felony.

1 c. On or about March 24, 2014, Respondent pleaded no contest to Count 1 and
2 was convicted. Count 2 was dismissed pursuant to the plea. Imposition of sentence was
3 suspended and Respondent was placed on formal probation for a period of five (5) years, on terms
4 and conditions including time served of two (2) days, NA/AA attendance, and fines and fees.

5
6 SEVENTH CAUSE FOR DISCIPLINE

7 (Unprofessional Conduct)

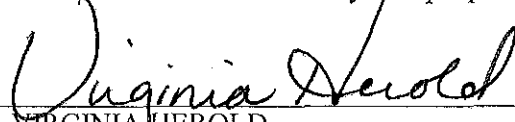
8 31. Respondent is subject to discipline under section 4301 of the Code in that
9 Respondent, as described in paragraphs 21 to 30 above, engaged in unprofessional conduct.

10
11 PRAYER

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

- 14 1. Revoking or suspending Pharmacy Technician License Number TCH 69567, issued to
15 Amado Merchan (Respondent);
- 16 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
17 enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 18 3. Taking such other and further action as is deemed necessary and proper.

19 DATED: 6/9/14

20 
21 VIRGINIA HEROLD
22 Executive Officer
23 Board of Pharmacy
24 Department of Consumer Affairs
25 State of California
26 Complainant

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