

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

In the Matter of the Accusation Against:

Case No. 3199

ROBERT MICHAEL LOPEZ
263 Murano Street
Los Banos, CA 93635

Original Pharmacy Technician
Registration No. RPH 37861

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 April 8, 2010.

It is so ORDERED on March 9, 2010.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

Benneth H. Schell

KENNETH H. SCHELL
Board President

1 EDMUND G. BROWN JR.
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9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 3199

12 **ROBERT MICHAEL LOPEZ**
13 **263 Murano Street**
14 **Los Banos, CA 93635**
Original Pharmacist License No. RPH 37861

OAH No. 2009090235

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

15 Respondent.

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18 IT IS STIPULATED AND AGREED by and between the parties in this proceeding that
19 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 Edmund
23 G. Brown Jr., Attorney General of the State of California, by Brian S. Turner, Deputy Attorney
24 General.

25 2. Robert Michael Lopez (Respondent) is represented in this proceeding by attorney
26 Jonathan Klein, whose address is Kelly, Hockel & Klein One Sansome Street, Suite 1800
27 San Francisco, CA 94104-4602.2. On or about August 31, 1983, the Board of Pharmacy (Board)
28 issued Original Pharmacist License No. RPH 37861 to Robert Michael Lopez (Respondent). The

1 license was in full force and effect at all times relevant to the charges brought in Accusation No.
2 3199 and will expire on January 31, 2011, unless renewed.

3 **JURISDICTION**

4 3. Accusation No. 3199 was filed before the Board , Department of Consumer Affairs,
5 and is currently pending against Respondent. The Accusation and all other statutorily required
6 documents were properly served on Respondent on October 28, 2008. Respondent timely filed
7 his Notice of Defense contesting the Accusation. A First Amended Accusation was filed and
8 served on November 8, 2009. A copy of the First Amended Accusation No. 3199 is attached as
9 exhibit A and incorporated herein by reference.

10 **ADVISEMENT AND WAIVERS**

11 4. Respondent has carefully read, fully discussed with counsel, and understands the
12 charges and allegations in First Amended Accusation No. 3199. Respondent also has carefully
13 read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of
14 License and Order.

15 5. Respondent is fully aware of his legal rights in this matter, including the right to a
16 hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at
17 his own expense; the right to confront and cross-examine the witnesses against him; the right to
18 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
19 the attendance of witnesses and the production of documents; the right to reconsideration and
20 court review of an adverse decision; and all other rights accorded by the California
21 Administrative Procedure Act and other applicable laws.

22 6. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
23 every right set forth above.

24 **CULPABILITY**

25 7. Respondent admits the truth of each and every charge and allegation in the First
26 Amended Accusation No. 3199, agrees that cause exists for discipline and hereby surrenders his
27 Original Pharmacist License No. RPH 37861 for the Board's formal acceptance.

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ORDER

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2 IT IS ORDERED that Original Pharmacist License No. RPH 37861, issued to Respondent
3 Robert Michael Lopez is surrendered and accepted by the Board.

4 14. The surrender of Respondent's Original Pharmacist License and the acceptance of the
5 surrendered license by the Board shall constitute the imposition of discipline against Respondent.
6 This stipulation constitutes a record of the discipline and shall become a part of Respondent's
7 license history with the Board.

8 15. Respondent shall lose all rights and privileges as a Pharmacist in California as of the
9 effective date of the Board's Decision and Order.

10 16. Respondent shall cause to be delivered to the Board both his wall license certificate
11 and, if one was issued, pocket license on or before the effective date of the Decision and Order.

12 17. Respondent fully understands and agrees that he shall not file an application for
13 licensure in the State of California for a minimum of three (3) years from the effective date of the
14 Board's Order. The Board shall treat the application as an application for a new license.
15 Respondent must comply with all the laws, regulations and procedures for licensure in effect at
16 the time the application is filed. All of the charges and allegations contained in Accusation No.
17 3199 shall be deemed to be true, correct and admitted by Respondent when the Board determines
18 whether to grant or deny the application.

19 18. Should Respondent ever apply or reapply for a new license or certification, or petition
20 for reinstatement of a license, by any other health care licensing agency in the State of California,
21 all of the charges and allegations contained in Accusation, No. 3199 shall be deemed to be true,
22 correct, and admitted by Respondent for the purpose of any Statement of Issues or any other
23 proceeding seeking to deny or restrict licensure.

24 19. Respondent shall pay the Board its costs of investigation and enforcement in the
25 amount of \$10,610.00 prior to issuance of a new license.

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Exhibit A

Accusation No. 3199

1 EDMUND G. BROWN JR.
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2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 BRIAN S. TURNER
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8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the First Amended Accusation Against:

13 **ROBERT MICHAEL LOPEZ**
263 Murano Street
Los Banos, CA 93635

14 **Original Pharmacist License No. RPH 37861**

15 Respondent.

Case No. 3199

OAH No. 2009090235

**FIRST AMENDED
ACCUSATION**

16 Complainant alleges:

17 **PARTIES**

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

20 2. On or about August 31, 1983, the Board of Pharmacy issued Original
21 Pharmacist License Number RPH 37861 to Robert Michael Lopez (Respondent). The Original
22 Pharmacist License was in full force and effect at all times relevant to the charges brought herein
23 and will expire on January 31, 2011, unless renewed.

24 **JURISDICTION**

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

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1. Section 101.1(b) of the Code states:

“(1) In the event that any board, as defined in section 477, becomes inoperative or is repealed in accordance with the act that added this section, or by subsequent acts, the Department of Consumer Affairs shall succeed to and is vested with all the duties, powers, purposes, responsibilities and jurisdiction not otherwise repealed or made inoperative of that board and its executive officer.”

2. Section 118 of the Code states:

“(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

“(c) As used in this section, ‘board’ includes an individual who is authorized by any provision of this code to issue, suspend, or revoke a license, and ‘license’ includes ‘certificate,’ ‘registration,’ and ‘permit.’”

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

4. Section 22 of the Code states:

“(a) ‘Board’ as used in any provisions of this Code, refers to the board in which the administration of the provision is vested, and unless otherwise expressly provided, shall include ‘bureau,’ ‘commission,’ ‘committee,’ ‘department,’ ‘division,’ ‘examining committee,’ ‘program,’ and ‘agency.’”

5. Section 490 of the Code states:

“A board may suspend or revoke a license on the ground that the licensee has been

1 convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties
2 of the business or profession for which the license was issued. A conviction within the meaning
3 of this section means a plea or verdict of guilty or a conviction following a plea of nolo
4 contendere. Any action which a board is permitted to take following the establishment of a
5 conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has
6 been affirmed on appeal, or when an order granting probation is made suspending the imposition
7 of sentence, irrespective of a subsequent order under the provisions of section 1203.4 of the Penal
8 Code.”

9 6. Section 493 of the Code states:

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

19 “As used in this section, ‘license’ includes ‘certificate,’ ‘permit,’ ‘authority,’ and
20 ‘registration.’”

21 7. Section 4301 provides in relevant part:

22 “The board shall take action against any holder of a license who is guilty of
23 unprofessional conduct . . . Unprofessional conduct shall include, but is not limited to, any of the
24 following:

- 25 (a) Gross immorality.
26 (b) Incompetence.
27 (c) Gross negligence.
28 (f) The commission of any act involving moral turpitude, dishonesty, fraud,

1 deceit, or corruption, whether the act is committed in the course of relations as a licensee or
2 otherwise, and whether the act is a felony or misdemeanor or not.

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

5 (l) The conviction of a crime substantially related to the qualifications,
6 functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction
7 following a plea of nolo contendere is deemed to be a conviction within the meaning of this
8 provision.

9 (o) Violating or attempting to violate, directly or indirectly any provision or
10 term of this chapter or of the applicable federal and state laws and regulations governing the
11 pharmacy, including regulations established by the board.

12 (p) Actions or conduct that would have warranted denial of a license.”

13 **FIRST CAUSE FOR DISCIPLINE**

14 (Unprofessional Conduct)

15 4. Respondent is subject to disciplinary action under section 4301(f) for
16 committing act involving moral turpitude, dishonesty, fraud, deceit, or corruption. Respondent
17 while pharmacist-in-charge diverted, embezzled or otherwise misappropriated money belonging
18 to Memorial Hospital Los Banos.

19 5. On or about October 2003 through June 2007, while pharmacist-in-charge
20 at Memorial Hospital Los Banos Pharmacy (hereinafter Hospital Pharmacy), Respondent
21 misappropriated hospital funds by diverting checks intended for the hospital to his personal bank
22 account for personal use. Respondent diverted the money by endorsing checks payable to and
23 intended for the Hospital and then depositing the checks in his personal account. Total amount
24 diverted was approximately \$289,000.00.

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1 SECOND CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct)

3 6. Respondent is subject to disciplinary action under section 4301(l) in that
4 Respondent was convicted of crimes substantially related to the qualifications, functions and
5 duties of a licensee.

6 7. Between October 2003, to June 2007, while the pharmacist-in- charge at
7 the Hospital Pharmacy, Respondent misappropriated, diverted, embezzled or otherwise
8 committed theft of money by depositing checks intended for the Hospital into Respondent's
9 personal account for use by Respondent. Respondent accomplished the diversion by endorsing
10 the checks payable to the Hospital with his name and thereafter depositing the checks in
11 Respondent's personal account. At the time of these acts, Respondent was the pharmacist-in-
12 charge of the Hospital Pharmacy and held a fiduciary position and obligation to handle the funds
13 of Memorial Hospital for the use and benefit of the Hospital but diverted the funds for his
14 personal use.

15 8. On or about July 31, 2009 respondent pled no contest to violation of Penal
16 Code sections 503/487.3, Grand Theft by Embezzlement with an enhancement pursuant to
17 12022.6(a)(2), theft of an amount in excess of \$200,000.00.

18 THIRD CAUSE FOR DISCIPLINE

19 (Unprofessional Conduct)

20 9. Respondent is subject to disciplinary action under sections 4301(j) and (o)
21 for violating Code of Federal Regulations, Title 21 Section 1305.09, as mandated by
22 section 4113(b). Respondent in his capacity as pharmacist-in-charge of the Hospital Pharmacy
23 from approximately October 2005, to October 2007, failed to maintain or cause to be maintained
24 records of purchase and inventory of dangerous drugs and schedule II drugs.

25 10. Respondent's duties in his position as the pharmacist-in-charge for the
26 Hospital Pharmacy included following all laws and regulations including but not limited to
27 federal statutes and regulations pertaining to purchase, storage and sale of dangerous drugs and
28 schedule II drugs as those terms are defined in the statutes and regulations. In particular the

1 pharmacist-in-charge must timely and fully complete Drug Enforcement Administration
2 Form 222 delineating the dates of purchase, inventory and other relevant information pertaining
3 to dangerous drugs and Schedule II drugs. Respondent in the two (2) years preceding October 11,
4 2007, failed or omitted on numerous occasions to properly complete DEA 222 forms in violation
5 of federal and state law.

6 **FOURTH CAUSE FOR DISCIPLINE**

7 (Unprofessional Conduct)

8 11. Respondent is subject to disciplinary action under sections 4301(j) and (o)
9 for violating section 4113(b) and Health and Safety Code section 11165(d). In his capacity as
10 pharmacist- in-charge at the Hospital Pharmacy, Respondent was responsible to insure the
11 pharmacy complied with all federal and state statutes governing pharmacies.

12 12. From approximately January 2004, through and including October 2007,
13 the pharmacy was required pursuant to section 4113(b), and Health and Safety Code section
14 11165(d), to provide data and information to the California Department of Justice for every
15 Schedule II to Schedule IV controlled substances dispensed from the pharmacy for the electronic
16 monitoring of prescription and dispensing of the controlled substances. Respondent failed during
17 this time to supply the required information in violation of the reporting statutes.

18 **FIFTH CAUSE FOR DISCIPLINE**

19 (Unprofessional Conduct)

20 13. Respondent is subject to disciplinary action under sections 4301(j) and (o)
21 for violating sections 4076, 4077, and 4113(b). From approximately January 19, 1996, through
22 July 26, 2007, Respondent was the pharmacist-in-charge of the Hospital Pharmacy and
23 responsible for the pharmacy's compliance with and obedience of all laws.

24 14. During the time Respondent was pharmacist-in-charge, Respondent filled
25 and dispensed prescriptions without the physical description of the dispensed medication on the
26 prescription label or on an auxiliary label affixed to the prescription container. Respondent on
27 numerous occasions omitted the physical description of dispensed medication on the prescription
28 label and/or auxiliary label prior to filling all in violation of sections 4076, 4077, and 4113(b).

