

1 EDMUND G. BROWN JR.
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 MARICHELE S. TAHIMIC
Deputy Attorney General
4 State Bar No. 147392
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-3154
7 Facsimile: (619) 645-2061
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. 3320

12
13 **JOSEPH A. GONZALEZ**

DEFAULT DECISION AND ORDER

14
15 Respondent.

[Gov. Code, §11520]

16
17
18 FINDINGS OF FACT

19 1. On or about July 14, 2009, Complainant Virginia Herold, in her official capacity as
20 the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed
21 Accusation No. 3320 against Joseph A. Gonzalez (Respondent) before the Board of Pharmacy.

22 2. On or about March 10, 2004, the Board of Pharmacy (Board) issued Pharmacy
23 Technician Registration No. TCH 55572 to Respondent. The Pharmacy Technician Registration
24 was in full force and effect at all times relevant to the charges brought herein and will expire on
25 March 31, 2010, unless renewed.

26 3. On or about July 20, 2009, Rosita Donovan, an employee of the Department of
27 Justice, served by Certified and First Class Mail a copy of the Accusation No. 3320, Statement to
28 Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5,

1 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is 708
2 South Ohio Street, Anaheim, CA 92805 and also to federal prison at Fed. ID # 45408-112 FCI
3 Victorville Medium II, P.O. Box 5300, Adelanto, CA 92301.

4 A copy of the Accusation is attached as exhibit A, and is incorporated herein by reference.

5 4. Service of the Accusation was effective as a matter of law under the provisions of
6 Government Code section 11505, subdivision (c).

7 5. Government Code section 11506 states, in pertinent part:

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

12 Respondent failed to file a Notice of Defense within 15 days after service upon him of the
13 Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 3320.

14 6. California Government Code section 11520 states, in pertinent part:

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

18 7. Pursuant to its authority under Government Code section 11520, the Board finds
19 Respondent is in default. The Board will take action without further hearing and, based on the
20 evidence on file herein, finds that the allegations in Accusation No. 3320 are true.

21 8. The total cost for investigation and enforcement in connection with the Accusation
22 are \$4,204.50 as of September 15, 2009.

23 DETERMINATION OF ISSUES

24 1. Based on the foregoing findings of fact, Respondent Joseph A. Gonzalez has
25 subjected his Pharmacy Technician Registration No. TCH 55572 to discipline.

26 2. A copy of the Accusation is attached.

27 3. The agency has jurisdiction to adjudicate this case by default.

28

1 4. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
2 Registration based upon the following violations alleged in the Accusation:

3 a. Business and Professions Code section 4301, subdivision (l), in that Respondent was
4 convicted of a crime that is substantially related to his qualifications, functions and duties as a
5 pharmacy technician when he was convicted of violating of Health and Safety Code section
6 11357, illegal possession of marijuana for personal use;

7 b. Business and Professions Code section 4301, subdivision (j), for unprofessional
8 conduct in that Respondent illegally possessed marijuana for personal use;

9 c. Business and Professions Code section 4301, subdivision (f), for unprofessional
10 conduct in engaging in dishonest acts in that Respondent concealed eight pounds of illegally
11 possessed marijuana inside packages wrapped as presents;

12 d. Business and Professions Code section 4301, subdivision (l), in that Respondent was
13 convicted of a crime that is substantially related to his qualifications, functions and duties as a
14 pharmacy technician when he was convicted of violating of Title 21 of the United States Code,
15 section 841(a)(1), possession with intent to distribute a controlled substance;

16 e. Business and Professions Code section 4301, subdivision (f), for unprofessional
17 conduct in engaging in acts involving moral turpitude, dishonesty, fraud, deceit or corruption in
18 that Respondent stole controlled substances from his employer, Steven's Pharmacy, over the
19 course of one and half years, concealed the stolen bottles of Norco and OxyContin, and offered
20 them for sale;

21 f. Business and Professions Code section 4301, subdivision (j), for unprofessional
22 conduct in that Respondent violated Title 21 of the United States Code, section 841(a)(1),
23 possession with intent to distribute a controlled substance.

24 ///

25 ///

26 ///

27 ///

28 ///

Exhibit A
Amended Accusation No. 3320

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 MARICHELLE S. TAHIMIC, State Bar No. 147392
Deputy Attorney General
4 110 West "A" Street, Suite 1100
San Diego, CA 92101

5 P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-3154
7 Facsimile: (619) 645-2061

8 Attorneys for Complainant

9
10 **BEFORE THE**
BOARD OF PHARMACY
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. 3320

13 **JOSEPH A. GONZALEZ**
14 708 South Ohio Street
Anaheim, CA 92805

FIRST AMENDED
A C C U S A T I O N

15 FED ID #45408-112
16 FCI Victorville Medium II
P.O. Box 5300
17 Adelanto, CA 92301

18 Pharmacy Technician Registration
19 No. TCH 55572

20 Respondent.

21
22 Complainant alleges:

23 **PARTIES**

24 1. Virginia K. Herold (Complainant) brings this First Amended Accusation
25 solely in her official capacity as the Executive Officer of the Board of Pharmacy.

26 2. On or about March 10, 2004, the Board of Pharmacy issued Pharmacy
27 Technician Registration Number TCH 55572 to Joseph A. Gonzalez (Respondent). The

28 ///

1 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges
2 brought herein and will expire on March 31, 2010, unless renewed.

3 **JURISDICTION**

4 3. This First Amended Accusation is brought before the Board of Pharmacy,
5 under the authority of the following laws. All section references are to the Business and
6 Professions Code unless otherwise indicated.

7 4. Section 4300 of the Code states:

8 “(a) Every license issued may be suspended or revoked.

9 “(b) The board shall discipline the holder of any license issued by the
10 board, whose default has been entered or whose case has been heard by the board
and found guilty, by any of the following methods:

11 “(1) Suspending judgment.

12 “(2) Placing him or her upon probation.

13 “(3) Suspending his or her right to practice for a period not exceeding one
14 year.

15 “(4) Revoking his or her license.

16 “(5) Taking any other action in relation to disciplining him or her as the
board in its discretion may deem proper.

17 “. . . . “

18 **STATUTORY PROVISIONS AND REGULATIONS**

19 5. Section 4301 of the Code states:

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

23

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

26

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

(k) The conviction of more than one misdemeanor or any felony involving
the use, consumption, or self-administration of any dangerous drug or alcoholic
beverage, or any combination of those substances.

1
2 (l) The conviction of a crime substantially related to the qualifications,
3 functions, and duties of a licensee under this chapter. The record of conviction of
4 a violation of Chapter 13 (commencing with Section 801) of Title 21 of the
5 United States Code regulating controlled substances or of a violation of the
6 statutes of this state regulating controlled substances or dangerous drugs shall be
7 conclusive evidence of unprofessional conduct. In all other cases, the record of
8 conviction shall be conclusive evidence only of the fact that the conviction
9 occurred. The board may inquire into the circumstances surrounding the
10 commission of the crime, in order to fix the degree of discipline or, in the case of
11 a conviction not involving controlled substances or dangerous drugs, to determine
12 if the conviction is of an offense substantially related to the qualifications,
13 functions, and duties of a licensee under this chapter. A plea or verdict of guilty
14 or a conviction following a plea of nolo contendere is deemed to be a conviction
15 within the meaning of this provision. The board may take action when the time
16 for appeal has elapsed, or the judgment of conviction has been affirmed on appeal
17 or when an order granting probation is made suspending the imposition of
18 sentence, irrespective of a subsequent order under Section 1203.4 of the Penal
19 Code allowing the person to withdraw his or her plea of guilty and to enter a plea
20 of not guilty, or setting aside the verdict of guilty, or dismissing the accusation,
21 information, or indictment.

22

23 6. Section 4022 of the Code states:

24 "Dangerous drug" or "dangerous device" means any drug or device unsafe
25 for self-use in humans or animals,

26 7. Section 118, subdivision (b), of the Code provides that the suspension,
27 expiration, surrender or, cancellation of a license shall not deprive the Board of jurisdiction to
28 proceed with a disciplinary action during the period within which the license may be renewed,
restored, reissued or reinstated.

8. Section 490 of the Code provides that a board may suspend or revoke a
license on the ground that the licensee has been convicted of a crime substantially related to the
qualifications, functions, or duties of the business or profession for which the license was issued.

9. Section 492 of the Code states:

Notwithstanding any other provision of law, successful completion of any
diversion program under the Penal Code, or successful completion of an alcohol
and drug problem assessment program under Article 5 (commencing with section
23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit
any agency established under Division 2 ([Healing Arts] commencing with
Section 500) of this code, or any initiative act referred to in that division, from
taking disciplinary action against a licensee or from denying a license for
professional misconduct, notwithstanding that evidence of that misconduct may
be recorded in a record pertaining to an arrest.

1 This section shall not be construed to apply to any drug diversion program
2 operated by any agency established under Division 2 (commencing with Section
3 500) of this code, or any initiative act referred to in that division.

4 10. Section 493 of the Code states:

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

16 As used in this section, 'license' includes 'certificate,' 'permit,'
17 'authority,' and 'registration.'

18 11. Section 482 of the Code states:

19 Each board under the provisions of this code shall develop criteria to
20 evaluate the rehabilitation of a person when:

- 21 (a) Considering the denial of a license by the board under Section 480; or
22 (b) Considering suspension or revocation of a license under Section 490.

23 Each board shall take into account all competent evidence of rehabilitation
24 furnished by the applicant or licensee.

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

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

13. California Code of Regulations, title 16, section 1769,
subdivision (b), states:

When considering the suspension or revocation of a facility
or personal license on the ground that the licensee or the registrant
has been convicted of a crime, the board in evaluating the
rehabilitation of such person and her present eligibility for a license
will consider the following:

- 1 (1) The nature and severity of the act(s) or offense(s).
- 2 (2) Total criminal record.
- 3 (3) Time that has elapsed since the commission of the act or offense.
- 4 (4) Whether the licensee has complied with all terms of parole,
5 probation, restitution, or any other sanctions lawfully imposed against the
6 licensee.
- 6 (5) Evidence, if any, of rehabilitation submitted by the licensee.

7 **COST RECOVERY**

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

12 **DRUGS**

13 15. **Marijuana** is a Schedule I controlled substance as designated by
14 Health and Safety Code section 11054(d)(13), and is a dangerous drug pursuant to Business
15 & Professions Code section 4022.

16 16. **Hydrocodone bitartate/acetaminophen**, also known by the brand
17 names Vicodin, Norco, Zydone, Maxidone, Lortab, Lorcet, Hydrocet, Co-Gesic, and
18 Anexsia, is a narcotic Schedule III controlled substance as designated by Health and Safety
19 Code section 11056(3)(4), and is a dangerous drug pursuant to Business and Professions
20 Code section 4022. Hydrocodone is used as a narcotic analgesic in the relief of pain.

21 17. **Oxycodone**, also sold under the brand name of OxyContin, is a
22 Schedule II controlled substance as designated by Health and Safety Code section 11055,
23 subdivision (b)(1)(N), and is a dangerous drug pursuant to Business and Professions Code
24 section 4022.

25 ///

26 ///

27 ///

28 ///

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct -**
3 **August 2006 Conviction of Illegal Possession of Marijuana)**

4 18. Respondent is subject to disciplinary action under Code section 4301
5 subdivision (l), in that Respondent was convicted of a crime that is substantially related to
6 the qualifications, duties and functions of a licensed Pharmacy Technician on August 3,
7 2006, in *People v. Joseph Alexander Gonzalez*, Superior Court of Mendocino County, Case
8 No. MCWLCRCR 06 70955-003. Respondent was convicted by his plea of guilty of
9 violating Health and Safety Code section 11357 (illegal possession of marijuana for
10 personal use), a felony.

11 19. The circumstances that led to Respondent's August 2006
12 conviction are that on April 29, 2006, a Mendocino County Sheriff Deputy initiated a traffic
13 stop of Respondent's vehicle. As he approached the vehicle, the Sheriff's Deputy detected
14 the smell of green marijuana. Respondent and his passenger denied there was marijuana in
15 the vehicle. The Deputy's K-9 partner detected marijuana inside some packages that were
16 wrapped as presents and placed inside the trunk. The Deputy opened the packages and
17 found eight (8) pounds of fresh marijuana buds. The Deputy also found over four thousand
18 dollars (\$4,000.00) cash money inside Respondent's pants' pocket. Respondent was
19 arrested for violation of Health and Safety Code section 11360 (a) (possession of marijuana
20 for sale).

21 20. Respondent was sentenced to three (3) years formal probation and
22 participation in the Proposition 36 program. On June 19, 2007, Respondent provided proof
23 of completion of the Proposition 36 program and his sentence was modified. Respondent's
24 modified sentence included three (3) years informal probation, forty (40) hours community
25 service, fines and restitution. Respondent is scheduled to complete his criminal probation
26 on June 18, 2010.

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Illegal Possession of Marijuana)

21. Respondent is subject to disciplinary action under Code section 4301 subdivision (j), in that Respondent illegally possessed eight pounds of marijuana for personal use, in violation of Health and Safety Code section 11357, as set forth more fully in paragraphs 19-20, above.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Dishonest Acts in Concealing Marijuana)

22. Respondent is subject to disciplinary action under Code section 4301, subdivision (f), in that he committed acts involving moral turpitude, dishonesty, deceit, or corruption when he concealed eight pounds of illegally possessed marijuana inside packages wrapped as presents, as set forth more fully in paragraphs 19-20, above.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct - September 2008 Conviction of Possession of Controlled Substances with Intent to Distribute)

23. Respondent is subject to disciplinary action under Code section 4301 subdivision (l), in that Respondent was convicted of a crime that is substantially related to the qualifications, duties and functions of a licensed Pharmacy Technician on September 29, 2008, in *United States of America vs. Joseph Alexander Gonzalez*, United States District Court, Central District of California, Docket No. SA CR08-0013 DOC. Respondent was convicted by his plea of guilty of violating Title 21 of the United States Code, Section 841(a)(1), possession with intent to distribute a controlled substance, a felony.

24. The circumstances that led to Respondent's September 2008 conviction are as follows. On September 7, 2007, Officer L. of the Costa Mesa Police Department responded to Steven's Pharmacy in Costa Mesa following a reported theft. Upon the officer's arrival, he met with the pharmacist, C.B. C.B. advised that while he was out of the country on vacation during the Labor Day holiday, he received a telephone call

1 from an employee who was in charge of the pharmacy in his absence. His employee told
2 him she found six bottles of hydrocodone wrapped inside a plastic baggy in the trash bin
3 inside the store and that she suspected another employee of stealing from the pharmacy.
4 When C.B. returned from vacation, he reviewed his surveillance video and began to take
5 inventory. After reviewing his inventory, he noted that two orders for hydrocodone had
6 been placed. Each order contained 10 bottles, each bottle contained 500 pills. The orders
7 arrived on Saturday, August 25, 2007. Because of the size of the orders, all of the bottles
8 could not be placed in a locked container; some bottles were placed on an overflow shelf
9 for return to the vendor on Monday, August 27, 2007.

10 25. C.B. showed the officer the surveillance video of Monday, August 27,
11 2007. The videotape showed that Respondent, a pharmacy technician employed at Steven's
12 Pharmacy, took bottles of hydrocodone from the overflow shelf and placed them into his lab
13 coat pockets. His activity began at 9:02 in the morning, almost immediately after the
14 pharmacy opened. C.B. advised the officer that there was no reason for Respondent to be in
15 that area and no reason for him to be handling narcotics at that time in the morning. During
16 the time Respondent did this, he kept his back to the camera and attempted to hide what he
17 was doing. Respondent walked back to the compounding area, which was not covered by
18 surveillance cameras. Respondent made three separate trips from the overflow shelves to
19 the compounding area before the video showed him taking a trash bag outside. C.B.
20 forwarded the videotape to August 29, 2007, which showed Respondent filling an empty
21 plastic bin with bottles of hydrocodone, going to the compounding area and then taking a
22 trash bag outside. It was on this day, August 29, that C.B.'s other employee found the bag
23 of hydrocodone bottles and called C.B. during his vacation.

24 26. C.B. confronted Respondent after another employee told him that
25 Respondent admitted to her that he took the hydrocodone. Respondent did not admit to
26 C.B. that he took the hydrocodone but offered him \$5,000 in cash for the loss.

27 27. For one and a half years, Respondent stole bottles of drugs from
28 Steven's Pharmacy and put them in the trash. When no one was looking, he would take out

1 the trash and retrieve the drugs. Respondent sold the drugs in sealed bottles with the labels
2 removed. Respondent received \$1.60 for each tablet of hydrocodone and sold about 5,000-
3 13,000 tablets during each transaction. He received \$5.00 per tablet of the 40 mg size of
4 OxyContin and \$10-\$14 per tablet of the 80 mg size. He sold about 3,000-5,000 OxyContin
5 tablets during those 1.5 years.

6 28. On January 10, 2008, Respondent was arrested after purchasing 1000
7 OxyContin tablets for \$15,000.

8 29. As a result of his conviction, Respondent was sentenced to 63 months
9 in prison and payment of \$200 in fines. Upon release from prison, Respondent is required
10 to be on supervised release for 3 years subject to terms and conditions, which include
11 abstaining from any unlawful use of a controlled substance, submitting to drug tests, and
12 participating in outpatient substance abuse treatment and counseling. As an additional term
13 and condition of supervised release, Respondent is prohibited from being employed in any
14 position that requires licensing and/or certification by any local, state or federal agency, or
15 work at any pharmacy or in a capacity where he has access to prescription medication,
16 without prior approval of the Probation Officer.

17 **FIFTH CAUSE FOR DISCIPLINE**

18 **(Unprofessional Conduct - Moral Turpitude, Dishonesty, Fraud, Deceit
19 or Corruption in the Theft of Controlled Substances from Steven's Pharmacy)**

20 30. Respondent is subject to disciplinary action under Code section 4301,
21 subdivision (f), in that he committed acts involving moral turpitude, dishonesty, fraud,
22 deceit, or corruption when he stole controlled substances from his employer, Steven's
23 Pharmacy, over the course of one and a half years, concealed the stolen bottles of Norco and
24 OxyContin, and offered them for sale, as more fully set forth in paragraphs 23-29, above.

25 **SIXTH CAUSE FOR DISCIPLINE**

26 **(Unprofessional Conduct - Violation of Laws of the United States)**

27 31. Respondent is subject to disciplinary action under Code section 4301,
28 subdivision (j), in that he violated Title 21 of the United States Code, Section 841(a)(1),

1 possession with intent to distribute a controlled substance, as more fully set forth in
2 paragraphs 23-29, above.

3 **PRAYER**

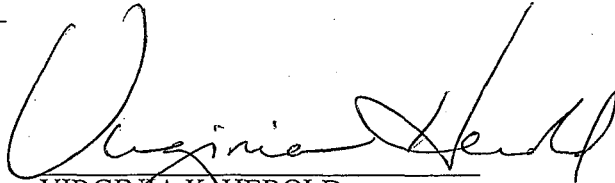
4 WHEREFORE, Complainant requests that a hearing be held on the matters
5 herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

6 1. Revoking or suspending Pharmacy Technician Registration
7 Number TCH 55572, issued to Joseph A. Gonzalez;

8 2. Ordering Joseph A. Gonzalez to pay the Board of Pharmacy the
9 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
10 Professions Code section 125.3; and,

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

12
13 DATED: 7/14/09



14
15
16 VIRGINIA K. HEROLD
17 Executive Officer
18 Board of Pharmacy
19 State of California
20 Complainant
21
22
23
24
25
26
27
28