

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

In the Matter of the Accusation Against:

CECILIA DELORES ROMERO
P.O. Box 2158
Crestline, CA 92325

4190 W. FM 476
Poteet, TX 78065-3538
Pharmacy Technician License No. TCH
44069

Respondent.

Case No. 3334

OAH No. L-2010030199

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about October 27, 2009, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, filed Accusation No. 3334 against Cecilia Delores Romero (Respondent) before the Board of Pharmacy.
2. On or about November 22, 2002, the Board of Pharmacy (Board) issued Pharmacy Technician License No. TCH 44069 to Respondent. The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2010, unless renewed.

3. On or about November 6, 2009, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation No. 3334, STATEMENT TO RESPONDENT, ACCUSATION, NOTICE OF DEFENSE (2 copies), REQUEST FOR DISCOVERY and DISCOVERY STATUTES to Respondent's address of record with the Board, which was and is: 4190 W. FM 476, Poteet, TX 78065-3538.

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

5. On or about November 19, 2009, Respondent signed and returned a Notice of Defense, requesting a hearing in this matter. A Notice of Hearing was served by mail at Respondent's address of record and it informed her that an administrative hearing in this matter was scheduled for August 2, 2010. Respondent failed to appear at that hearing.

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

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

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

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

8. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based upon the evidence contained in the Default Decision Evidence Packet, finds that the charges and allegations in Accusation No. 3334, are separately and severally, true and correct.

9. The total cost for investigation and enforcement in connection with the Accusation are \$4,789.75 as of August 2, 2010.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Cecilia Delores Romero has subjected her Pharmacy Technician License No. TCH 44069 to discipline.

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

3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician License based upon the following violations alleged in the Accusation, which are supported by the evidence contained in the Default Decision Evidence Packet:

a. Bus. & Prof. Code, §§ 4301, subd. (l), and 490 (conviction of a substantially-related crime: driving under the influence of alcohol or drugs in violation of Vehicle Code § 23152, subd. (a));

b. Bus. & Prof. Code, § 4301, subd. (h) and (j) (use of controlled substances in violation of Health and Safety Code § 11550, subd. (a)), and

c. Bus. & Prof. Code, §§ 4301, subd. (o), and 4060 (possession of controlled substances without a valid prescription).

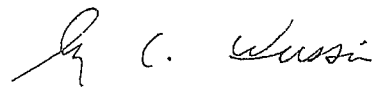
ORDER

IT IS SO ORDERED that Pharmacy Technician License No. TCH 44069, heretofore issued to Respondent Cecilia Delores Romero, 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 December 8, 2010.

It is so ORDERED November 8, 2010.



STANLEY C. WEISSER, BOARD PRESIDENT
FOR THE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS

Exhibit A
Accusation No. 3334

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

12 In the Matter of the Accusation Against:

Case No. 3334

13 **CECILIA DELORES ROMERO**
14 **P.O. Box 2158**
Crestline, CA 92325

A C C U S A T I O N

15
16 **Pharmacy Technician Registration**
No. TCH 44069

17 Respondent.
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 November 22, 2002, the Board of Pharmacy (Board) issued Pharmacy
24 Technician Registration No. TCH 44069 to Cecilia Delores Romero (Respondent). The
25 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges
26 brought herein and will expire on April 30, 2010, unless renewed.

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1 7. Section 4300 provides, in pertinent part, that every license issued by the Board is
2 subject to discipline, including suspension or revocation.

3 8. Section 4301 states:

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

7

8 “(h) The administering to oneself, of any controlled substance, or the use of any dangerous
9 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
10 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
11 to the extent that the use impairs the ability of the person to conduct with safety to the public the
12 practice authorized by the license.

13 ...

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

16

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

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

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7 “(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
8 violation of or conspiring to violate any provision or term of this chapter or of the applicable
9 federal and state laws and regulations governing pharmacy, including regulations established by
10 the board or by any other state or federal regulatory agency.”

11 STATE DRUG STATUTE

12 9. Health and Safety Code section 11550, subdivision (a) states, in pertinent part:

13 “No person shall use, or be under the influence of any controlled substance which is
14 (1) specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of section 11054,
15 specified in paragraph (14), (15), (21), (22), or (23) of subdivision (d) of section 11054, specified
16 in subdivision (b) or (c) of section 11055, or specified in paragraph (1) or (2) of subdivision (d) or
17 in paragraph (3) of subdivision (e) of section 11055, or (2) a narcotic drug classified in Schedule
18 III, IV, or V, except when administered by or under the direction of a person licensed by the state
19 to dispense, prescribe, or administer controlled substances.”

20 REGULATORY PROVISIONS

21 10. California Code of Regulations, title 16, section 1770, states:

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

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1 COST RECOVERY

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

6 CONTROLLED SUBSTANCES

7 12. "Hydrocodone," is in Schedule II of the Controlled Substances Act. Preparations
8 containing hydrocodone in combination with other non-narcotic medicinal ingredients are in
9 Schedule III.

10 13. "Soma," a brand name for carisoprodol, is a dangerous drug according to Business
11 and Professions Code section 4022. Its indicated use is as an adjunct to rest, physical therapy and
12 other measures for acute painful musculoskeletal conditions.

13 14. "Tylenol with Codeine #3," a brand name for Acetaminophen with Codeine, 30 mg.
14 for #3, 60 mg. for #4 with 500 mg. Acetaminophen with Codeine is a Schedule III controlled
15 substance as designated by Health and Safety Code section 11056, subdivision (e)(2), and is
16 categorized as a dangerous drug pursuant to section 4022 of the Code.

17 15. "Vicodin," is a combination drug containing hydrocodone bitartrate and
18 acetaminophen. It a Schedule III controlled substance as defined in Health and Safety Code
19 section 11056, subdivision (e)(4), and is categorized as a dangerous drug pursuant to section
20 4022.

21 FIRST CAUSE FOR DISCIPLINE

22 (Conviction of a Substantially-Related Crime)

23 16. Respondent has subjected her license to disciplinary action under sections 4301,
24 subdivision (l), and 490, in conjunction with California Code of Regulations, title 16, section
25 1770, in that Respondent was convicted of a crime substantially related to the qualifications,
26 functions or duties of a licensed Pharmacy Technician, as follows:

27 a. On or about April 5, 2007, after pleading nolo contendere, Respondent was convicted
28 of one misdemeanor count of violating Vehicle Code section 23152, subdivision (a) [driving

1 under the influence of alcohol or drugs] in the criminal proceeding entitled *The People of the*
2 *State of California v. Cecilia Dolores Romero* (Super. Ct. San Bernardino County, 2007, No.
3 TSB122965). The Court sentenced Respondent to 60 days in county jail, 36 months of probation,
4 fined, and ordered Respondent to complete an alcohol rehabilitation program.

5 b. The circumstances surrounding the conviction are that on or about January 10, 2007,
6 Respondent was stopped by a San Bernardino Sheriff's Officer during a routine traffic stop for
7 expired registration. The officers discovered that Respondent's driver's license was suspended,
8 and that Respondent had in her possession four medication bottles, which contained Vicodin,
9 Tylenol 3 with Codine, hydrocodone, and Soma, without a prescription. Respondent was
10 observed by the Sheriff's Officer to be very fidgety, clenching her jaw, licking her lips and unable
11 to stop moving her hands and fingers. After being given a series of field sobriety tests,
12 Respondent was arrested for driving under the influence of a controlled substance.

13 SECOND CAUSE FOR DISCIPLINE

14 (Use/Under the Influence of Controlled Substances)

15 17. Respondent has subjected her license to disciplinary action under section 4301,
16 subdivisions (h) and (j) [for violating Health and Safety Code section 11550, subdivision (a)], in
17 that Respondent used and was under the influence of a controlled substance to an extent or in a
18 manner dangerous or injurious to herself and the public. Complainant now refers to and
19 incorporates all the allegations contained in paragraph 16, as though set forth fully.

20 THIRD CAUSE FOR DISCIPLINE

21 (Possession of Controlled Substances without a Valid Prescription)

22 18. Respondent has subjected her license to disciplinary action under section 4301,
23 subdivision (o), and section 4060, in that on or about January 10, 2007, Respondent possessed
24 controlled substances without a prescription. Complainant now refers to and incorporates all the
25 allegations contained in paragraph 16, as though set forth fully.

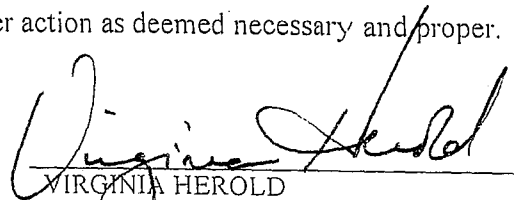
26 PRAYER

27 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
28 and that following the hearing, the Board issue a decision:

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1. Revoking or suspending Pharmacy Technician Registration No. TCH 44069, issued to Respondent;
2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 10/27/09


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

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