

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

In the Matter of the Accusation Against:

**VICTOR VILLAFANA**  
8939 Gallatin Rd #117  
Pico Rivera, CA 90660

Pharmacy Technician License TCH 48083

Respondent.

Case No. 3437

OAH No. 2010120183

**DECISION**

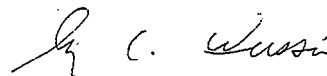
The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as the decision in the above-entitled matter, except that, pursuant to the provisions of Government Code section 11517, subdivision (c)(2)(C), first paragraph of the Decision, appearing on page 1 of the Proposed Decision, is hereby modified for technical reasons as follows:

Administrative Law Judge Dianna L. Albini, Office of Administrative Hearings, State of California, heard this matter on June 14, 2011, Los Angeles, California.

The technical change made above does not affect the factual or legal basis of the Proposed Decision, which shall become effective on May 18, 2012.

IT IS SO ORDERED this 18<sup>th</sup> day of April, 2012.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

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STANLEY C. WEISSER  
Board President

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

In the Matter of the Accusation Against:

VICTOR VILLAFANA

Pharmacy Technician  
Registration No. TCH 48083,

Respondent.

Case No. 3437

OAH No. 2010120183

**PROPOSED DECISION**

Administrative Law Judge Dianna L. Albini, Office of Administrative Hearings, State of California, heard this matter on June 14, 2011, and October 14, 2011, in Los Angeles, California.

Michelle McCarron, Deputy Attorney General, represented complainant Virginia Herold, the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, State of California.

Herbert L. Weinberg, Attorney, represented respondent Victor Villafana.

The record was held open until December 31, 2011, for the submission of additional documents by the respondent. No additional documents were submitted and the record was closed and the matter was submitted on December 31, 2011.

**FACTUAL FINDINGS**

1. The Accusation against respondent was filed by complainant Virginia Herold, while acting in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, State of California (Board).

2. On August 7, 2003, the Board issued Pharmacy Technician registration<sup>1</sup> number TCH 48083 to respondent. His license remains in effect until December 31, 2012, unless renewed.

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<sup>1</sup> Pursuant to Business and Professions Code section 477, a pharmacy technician registration is deemed to be a license.

3. White Memorial Medical Plaza Pharmacy (White Pharmacy) employed respondent as a pharmacy technician from December 28, 1995, until his resignation on March 19, 2008. Hong-Anh Thi Ho has been the pharmacist-in-charge at White Pharmacy since 2000.

4. Hydrocodone with Acetaminophen, also known as Vicodin and Lortab, is a controlled substance as defined in Health and Safety Code section 11055, subdivision (b)(1)(J), and section 11056, subdivision (e)(4), and is categorized as a dangerous drug pursuant to Business and Professions Code section 4022.

5. Between May 11, 2006 and March 12, 2008, 17 prescriptions of Hydrocodone with Acetaminophen, a controlled substance, were filled by White Pharmacy pharmacists, following telephone prescription orders from the office of Fred H. Rundall MD. It was later determined that these phone orders were not authorized by Dr. Rundall. The evidence did not establish that respondent filled any of the prescriptions listed below. The circumstances of the 17 prescriptions are as follows:

a. On May 11, 2006, new prescription number 2337070 was created under the name of CS,<sup>2</sup> for twenty tablets of 5/500 mg Hydrocodone with Acetaminophen. The evidence did not establish which White Pharmacy employee received the telephone prescription order or which pharmacy technician processed the prescription on the pharmacy computer. The evidence did not establish that respondent created this new prescription through the use of dishonesty, fraud or deceit.

b. On December 27, 2006, new prescription number 2407453 was created under the name of VZ,<sup>3</sup> for one hundred tablets of 7.5/750 mg Hydrocodone with Acetaminophen. The evidence did not establish which White Pharmacy employee received the telephone prescription order or which pharmacy technician processed the prescription on the pharmacy computer. The evidence did not establish that respondent created this new prescription through the use of dishonesty, fraud or deceit.

c. On January 24, 2007, a refill for prescription number 2407453 was created under the name of VZ, for one hundred tablets of 7.5/750 mg Hydrocodone with Acetaminophen. The evidence did not establish which White Pharmacy employee received the telephone prescription order. White Pharmacy Technicians JPA<sup>4</sup> and DRZ<sup>5</sup> processed the

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<sup>2</sup> Patient name CS has been omitted for privacy purposes.

<sup>3</sup> Patient name VZ has been omitted for privacy purposes.

<sup>4</sup> JPA's name was removed for privacy purposes.

<sup>5</sup> DRZ's name was removed for privacy purposes.

prescription. The evidence did not establish that respondent created this prescription refill through the use of dishonesty, fraud or deceit.

d. On March 15, 2007, a refill for prescription number 2407453 was created under the name of VZ, for one hundred tablets of 7.5/750 mg Hydrocodone with Acetaminophen. The evidence did not establish which White Pharmacy employee received the telephone prescription order. Respondent did not process the prescription refill on the pharmacy computer. The evidence did not establish that respondent created this prescription refill through the use of dishonesty, fraud or deceit.

e. On April 13, 2007, a refill for prescription number 2407453 was created under the name of VZ, for one hundred tablets of 7.5/750 mg Hydrocodone with Acetaminophen. The evidence did not establish which White Pharmacy employee received the telephone prescription order. Respondent did not process the prescription refill on the pharmacy computer. The evidence did not establish that respondent created this prescription refill through the use of dishonesty, fraud or deceit.

f. On May 24, 2007, a refill for prescription number 2407453 was created under the name of VZ, for one hundred tablets of 7.5/750 mg Hydrocodone with Acetaminophen. The evidence did not establish which White Pharmacy employee received the telephone prescription order. Respondent did not process the prescription refill on the pharmacy computer. The evidence did not establish that respondent created this prescription refill through the use of dishonesty, fraud or deceit.

g. On July 10, 2007, new prescription number 2468329 was created under the name of VZ, for one hundred tablets of 7.5/750 mg Hydrocodone with Acetaminophen. Respondent received the telephone prescription from Irene at Dr. Rundall's office. Irene is authorized by Dr. Rundall to place telephone prescription orders for Dr. Rundall's patients. Respondent did not process the prescription refill on the pharmacy computer. The evidence did not establish that respondent created this new prescription through the use of dishonesty, fraud or deceit.

h. On August 22, 2007, a refill for prescription number 2468329 was created under the name of VZ, for one hundred tablets of 7.5/750 mg Hydrocodone with Acetaminophen. The evidence did not establish which White Pharmacy employee received the telephone prescription order. Respondent did not process the prescription refill on the pharmacy computer. The evidence did not establish that respondent created this prescription refill through the use of dishonesty, fraud or deceit.

i. On September 14, 2007, a refill for prescription number 2468329 was created under the name of VZ, for one hundred tablets of 7.5/750 mg Hydrocodone with Acetaminophen. The evidence did not establish which White Pharmacy employee received

the telephone prescription order. White Pharmacy Technicians JPA and DRZ processed the prescription. The evidence did not establish that respondent created this refill prescription through the use of dishonesty, fraud or deceit.

j. On October 16, 2007, new prescription number 2495241 was created under the name of VZ, for one hundred tablets of 7.5/750 mg Hydrocodone with Acetaminophen. Respondent received the telephone prescription from Rocio at Dr. Rundall's office. Rocio is authorized by Dr. Rundall to place telephone prescription orders for Dr. Rundall's patients. White Pharmacy Technician JPA processed the prescription on the pharmacy computer. The evidence did not establish that respondent created this new prescription through the use of dishonesty, fraud or deceit.

k. On November 1, 2007, new prescription number 2500217 was created under the name of CS, for one hundred tablets of 7.5/750 mg Hydrocodone with Acetaminophen. The evidence did not establish which White Pharmacy employee received the telephone prescription order or processed the prescription on the pharmacy computer. The evidence did not establish that respondent created this new prescription through the use of dishonesty, fraud or deceit.

l. On November 12, 2007, a refill for prescription number 2495241 was created under the name of VZ, for one hundred tablets of 7.5/750 mg Hydrocodone with Acetaminophen. The evidence did not establish which White Pharmacy employee received the telephone prescription order. White Pharmacy Technician NIT<sup>6</sup> processed the prescription on the company computer. The evidence did not establish that respondent created this refill prescription through the use of dishonesty, fraud or deceit.

m. On November 26, 2007, new prescription number 2506087 was created under the name of CS, for one hundred tablets of 7.5/750 mg Hydrocodone with Acetaminophen. Respondent received the telephone prescription from Marilyn at Dr. Rundall's office. Marilyn is authorized by Dr. Rundall to place telephone prescription orders for Dr. Rundall's patients. The evidence did not establish which White Pharmacy technician processed this prescription on the pharmacy computer. The evidence did not establish that respondent created this new prescription through the use of dishonesty, fraud or deceit.

n. On December 11, 2007, a refill for prescription number 2495241 was created under the name of VZ, for one hundred tablets of 7.5/750 mg Hydrocodone with Acetaminophen. The evidence did not establish which White Pharmacy employee received the telephone prescription order. White Pharmacy Technicians JPA and NIT, processed the prescription on the pharmacy computer. The evidence did not establish that respondent created this refill prescription through the use of dishonesty, fraud or deceit.

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<sup>6</sup> NIT's name was removed for privacy purposes.

o. On January 8, 2008, new prescription number 2517675 was created under the name of VZ, for one hundred tablets of 7.5/750 mg Hydrocodone with Acetaminophen. Respondent received the telephone prescription from Rocio at Dr. Rundall's office. Rocio is authorized by Dr. Rundall to place telephone prescription orders for Dr. Rundall's patients. White Pharmacy Technicians SSZ<sup>7</sup> and NIT, and pharmacist EUN<sup>8</sup> processed the prescription refill on the pharmacy computer. The evidence did not establish that respondent created this new prescription through the use of dishonesty, fraud or deceit.

p. On February 18, 2008, new prescription number 2531171 was created under the name of VZ, for one hundred tablets of 7.5/750 mg Hydrocodone with Acetaminophen. Respondent received the telephone prescription from Carola at Dr. Rundall's office. Carola is not authorized by Dr. Rundall to place telephone prescription orders for Dr. Rundall's patients. White Pharmacy Technicians DLB<sup>9</sup> and NIT, processed the prescription on the pharmacy computer. The evidence did not establish that respondent created this new prescription through the use of dishonesty, fraud or deceit.

q. On March 12, 2008, new prescription number 2538851 was created under the name of CS, for one hundred tablets of 5/500 mg Hydrocodone with Acetaminophen. Respondent received the telephone prescription from Maria at Dr. Rundall's office. Maria is authorized by Dr. Rundall to place telephone prescription orders for Dr. Rundall's patients. The evidence did not establish which White Pharmacy technician processed the prescription on the pharmacy computer. The evidence did not establish that respondent created this prescription through the use of dishonesty, fraud or deceit. Respondent signed White Pharmacy's delivery log and entered the medication to be delivered. Respondent delivered this prescription to Dr. Rundall's office.

6. White Pharmacy general manager Maria Jimenez was present and testified at hearing. White Pharmacy did not have a policy and procedure for processing or verifying phone-in prescriptions' from medical offices or patients prior to March 17, 2008. Jimenez stated it was White Pharmacy policy to allow pharmacy technicians to fill controlled substance prescriptions. Jimenez became suspicious when she was unable to find the original prescription and respondent failed to return the cash and the receipt for the March 12, 2008, delivery to Dr. Rundall's office. Jimenez was concerned that respondent was "pocketing the \$58."

7. On March 13, 2008, respondent was questioned by White Pharmacy general manager Maria Jimenez about the March 12, 2008 delivery of medication to Dr. Rundall's office. Respondent prepared a statement setting forth the details of his delivery of the

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<sup>7</sup> SSZ's name was removed for privacy purposes.

<sup>8</sup> EUN's name was removed for privacy purposes.

<sup>9</sup> DLB's name was removed for privacy purposes.

prescription on March 12, 2008, as follows: (Italicized portions demote spelling and grammatical errors in the original.)

(Maria)

Someone called in the morning and gave the ok to refill the Rx. Then since I know that person works there I ~~put~~ delivered it to #2400 ~~her~~ (Dr. Rundall). I left it there in the front with no one. Just *Left* it there. I *diren't* collect money or *got a signAture*. I *Brought* the receipt back with *no signAture*. *Called* in the *mornigg* to pick up money.

Patient was in *A meeting later* spoke to her & she *sAid* she *dirent* know anything *About thAt* prescription.

RE: CS<sup>10</sup> Rx. 2538851

3/13/08 Victor Villifana

8. After consulting with Mark Ballard<sup>11</sup> on March 13, 2008, Jimenez had respondent write and sign the following declaration under penalty of perjury on a pre-printed White Pharmacy form. (Italicized portions demote spelling and grammatical errors in the original.)

I Victor Villafana admit that *I* leaving the pharmacy *and* without letting my supervisor *Know* was *Against* work policies. *Also leaving* a package without giving it to someone and not getting a signature was *Also* against work policies. I *Apoligize* for *this Actions*. Also not collecting the *paytient* co-payment. This statement *is-above about* *relatis too CS<sup>12</sup> medicine*. It was a delivery to Dr. Rundell's office Ste. 2400 [unrecognizable word] Date of *Delivery* was 3/12/08.

9. Thereafter, respondent was placed on unpaid suspension from March 13, 2008 through March 19, 2008.

10. On March 15, 2008, Pharmacist Ho and general manager Jimenez conducted a pharmacy audit which included two stages. The first stage was a physical inventory drug count and purchase analysis which indicated that no product losses had occurred. The

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<sup>10</sup> CS name was removed for privacy purposes.

<sup>11</sup> Mark Ballard is employed by Employers Cost Containment Group, a separate company that provides human resource services to White Pharmacy.

<sup>12</sup> CS name was removed for privacy purposes.

second stage was prescription validation that included a review of suspicious prescriptions. At that time it was discovered that the prescriptions listed in Finding 5, (supra) were not authorized by Dr. Rundall.

11. On March 17, 2008, White Pharmacy implemented a new policy and procedure for receiving and issuing "controlled drug called-in prescriptions and orders" and trained their entire staff. The new policy requires a pharmacist to verify all new prescription orders called in from a doctor's office and call-in refill requests from patients and a doctor's office.

12. On March 19, 2008, between 9:00 a.m. and 1:00 p.m., respondent was interviewed in a small office by Jimenez and Ballard. The interview ended with respondent writing and signing, under penalty of perjury a four-page confession that contained no spelling errors or crossed-out words. Respondent's confession included statements that he "knowingly allowed fraudulent prescriptions for Vicodin to be filled," "falsified prescriptions for Vicodin," and committed "wrongful conduct." Jimenez and Ballard stated respondent voluntarily wrote this confession without their input or participation. These statements are not credible. The March 19, 2008 written confession is inconsistent with the quality and language used by respondent in prior writings as well as respondent's hearing testimony. Respondent's March 19, 2008 written statement of confession was made under coercion and therefore is not reliable.

13. Ballard was present and testified at hearing. Ballard stated that at the beginning of the four hour interview, respondent admitted to not following company policy by to let his supervisor know he was making a delivery and not obtaining the money or a signed delivery receipt. Respondent denied involvement in any wrongdoing and appeared nervous during the four hour interview. At hearing, Ballard testified that neither he nor Jimenez assisted respondent with his resignation or confession and never threatened to send respondent to jail if he failed to resign.

14. Respondent resigned his position with White Pharmacy on March 19, 2008, after a four hour interrogation and threats of criminal prosecution made by Ballard and Jimenez. White Pharmacy owners made the decision not to report this incident to the police.

15. On April 15, 2008, Pharmacist Ho filed an electronic report of theft or loss of controlled substances with the Department of Justice Drug Enforcement Agency (DEA Form 106) and provided the Board with a printed copy. The DEA Form 106 indicates that on March 19, 2008, the following list of controlled substances were lost or stolen:

Trade name of substance	Name of controlled substance	Dosage strength and Form	Quantity
Vicodin	Hydrocodone	5 mg Tablet	20 loose
Vicodin	Hydrocodone	7.5 mg Tablet	1480 loose
Lortab	Hydrocodone	7.5 mg Tablet	90 loose



16. Pharmacist Ho reported that the controlled substances were lost or stolen on March 19, 2008. Respondent was on unpaid leave from March 13, 2008 through March 19, 2008 at which time he resigned. No explanation was given as to why March 19, 2008, a date when respondent had no access to the pharmacy, was reported to the DEA as the date the controlled substances were lost or stolen.

*Board's investigation*

17. On June 10, 2009, the Board's investigator, Lin Hokana, prepared a report of his investigation. Hokana was present and testified at hearing. Hokana conducted an inspection of White Pharmacy on April 2, 2009. At that time he was informed by Pharmacist Ho that all schedule II through schedule IV controlled substances were stored in a locked cabinet with keys held only by a pharmacist, and only pharmacists were authorized to fill those prescriptions. Vicodin, Lortab, and Hydrocodone are classified as schedule III narcotics by the DEA.

18. Hokana determined that with respect to VZ's prescription record, of the 80 times VZ's electronic profile was accessed by pharmacy staff only 27 entries or .34 percent of the entries were made by respondent. Hokana determined this did not substantiate any violations. Hokana also determined that White Pharmacy had no policy and procedure in place to comply with Business and Professions Code section 4104, subdivision (b), which requires "every pharmacy to have written policies and procedures for addressing chemical, mental or physical impairment, as well as theft, diversion, or self-use of dangerous drugs, among licensed individuals employed by or with the pharmacy."

19. The decision to fill a prescription is made by the pharmacist not the pharmacy technician.

20. On April 6, 2009, Hokana sent respondent a letter explaining that he was investigating events that occurred while he was employed at White Pharmacy. On May 26, 2009, Hokana and Inspector Joseph Wong interviewed respondent via a conference call. During this interview, respondent made the following relevant statements:

a. Respondent was told by Jimenez and Ballard what to write in his March 19, 2008 confession. He denied "... knowingly allowed [sic] fraudulent prescriptions for Vicodin to be filled and picked up by people who did not have a valid prescription or physician's order for the drug."

b. Respondent admitted failing to get a signature for the delivery and did not collect the co-pay for the prescription for CS delivered to Dr. Rundall's office on March 12, 2008.

c. Respondent would call CS at Dr. Rundall's office to refill prescriptions. He never questioned the refill authorizations from CS, even when respondent knew Dr. Rundall was not seeing the patient. Respondent testified consistently with this statement at hearing. Respondent's actions in this regard constitute unprofessional conduct.

d. Respondent knew CS was not Dr. Rundall's patient, but was his employee. Respondent did not question CS's prescriptions from Dr. Rundall. Respondent testified consistently with this statement at hearing. Respondent's actions in this regard constitute unprofessional conduct.

e. Respondent knew SC<sup>13</sup> was not Dr. Rundall's patient, but was his employee. Even after SC left Dr. Rundall's employment, respondent would call CS to refill the prescription. Respondent testified consistently with this statement at hearing. Respondent's actions in this regard constitute unprofessional conduct.

f. Respondent admitted knowing LR<sup>14</sup> was SC's husband or boyfriend. Respondent also knew LR was not Dr. Rundall's patient. Respondent testified consistently with this statement at hearing.

g. Respondent denied knowing VZ. He also denied finding VZ's name on the computer to enter fraudulent prescriptions in order to obtain Vicodin. Respondent testified consistently with this statement at hearing.

h. Respondent's primary job duties at White Pharmacy were to process refill requests, call prescribers' offices for refills, accept prescription documents from patients at the counter and deliver filled prescriptions to the adjacent hospital and prescribers' offices. Hokana opined that respondent worked more as an ancillary staff member and not as a pharmacy technician.

21. Respondent did not fill controlled substances. He would occasionally count out the tablets for non-controlled substance prescriptions. Respondent denied entering false information on a refill prescription. He admitted the March 19, 2008, confession and resignation was written by him, however, the contents of the document were dictated to him by Jimenez and Ballard. Respondent wrote several drafts and corrected versions of the March 19, 2008 document and the final draft was the document entered into evidence at the hearing. Jimenez and Ballard told respondent he would go to jail and would be visiting his son behind bars if he did not confess and resign his employment at White Pharmacy.

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<sup>13</sup> SC's name was removed for privacy purposes.

<sup>14</sup> LR's name was removed for privacy purposes.

22. Respondent started working at White Pharmacy in December of 1995 as a clerk. He did not attend a pharmacy technician school, but was issued his pharmacy technician's license based on the number of hours of supervised on-the-job training he received. Respondent worked at White Pharmacy until March 19, 2008. While employed at White Pharmacy, he was unaware that a doctor could not prescribe medication to a non-patient. Respondent was not informed by White Pharmacy that a doctor could only issue prescriptions to their patients.

23. Respondent is currently employed as a pharmacy technician at Farmacia Familia earning an hourly wage of \$15. He is married and has one small child.

24. A 2011 letter from respondent's current employer, Leo Y. Lau, Rph, pharmacy manager for Farmacia Familia, was provided by respondent at hearing. Lau reviewed the accusation and discussed the matter with respondent. Lau finds respondent to be intelligent, caring and honest. Lau finds the allegations contained in the accusation to be at odds with respondent, who he has known for over one year.

25. An April 7, 2011 letter from Patricia Armendariz, L.V.N. was provided by respondent at hearing. Armendariz has known respondent for ten years and worked closely with respondent while he was employed at White Pharmacy. Armendariz worked in a family practice clinic and had experience interacting with respondent regarding prescription refills and medication. Armendariz found respondent to "demonstrate good customer service and was an excellent patient advocate." Armendariz noted that respondent "has always been professional, respectful and courteous to my staff and myself."

26. A February 1, 2011, letter from Josephine Otero was submitted by respondent at hearing. Otero was the supervising pharmacy technician between 1994 and December of 2007 and worked with respondent. Otero's letter describes respondent as working very diligently. White Pharmacy was very busy pharmacy on a daily basis. Respondent was hard working and committed. Otero is aware of the allegations against respondent and finds them to be uncharacteristic of what he demonstrated while working with her.

#### *Matters in aggravation*

27. No evidence was presented at hearing to support complainant's allegation that respondent was convicted of a misdemeanor on March 17, 2008.

#### *Costs*

28. Cost recovery in the amount of \$12,083.50 has been requested by complainant for the investigation and prosecution of this matter. That amount is reasonable.

## LEGAL CONCLUSIONS

### *Respondent's March 19, 2008 confession*

1. Respondent contends that the confession obtained by Jimenez and Ballard was improperly obtained evidence based on threats, and intimidation and as such, the confession must be excluded from use by the Board. Although the evidentiary exclusionary rule has generally not been applied to administrative proceedings, it may apply in exceptional cases (*Gordon J. v. Santa Ana Unified School Dist.* (1984) 162 Cal.App.3d 530, 543), particularly where there has been an egregious violation of due process rights. The application of the rule is to be decided on a case-by-case basis, and should be applied so as to prevent an administrative agency from profiting from the unlawful conduct of its personnel. (*Dyson v. State Personnel Bd.* (1989) 213 Cal.App.3d 711.)

"[A]n administrative agency must reject evidence inconsistent with the dignity of its proceedings and the fair administration of justice." (*Patty v. Board of Medical Examiners* (1973) 9 Cal.3d 356, 364.)

In general confessions that are produced by coercion are inadmissible. *People v. Ditson* (1962) 57 Cal.2d 415. An involuntary confession, whether made to law enforcement or private persons is inadmissible. (*People v. Hayden* (1974) 12 Cal.3d 190, 197.)

By reason of the matters set forth in Findings 7, 8, 12 through 14, respondent's March 19, 2008, four-page written confession is not considered.

### *First cause for discipline - acts involving dishonesty, fraud, and deceit*

2. Pursuant to Health and Safety Code section 11153, subdivision (a), the responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription.

3. Pursuant to Business and Professions Code section 4301, subdivision (f), the Board may take disciplinary action against a licensee who is guilty of unprofessional conduct which includes, the commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption.

Pursuant to Health and Safety code section 11171, "no person shall prescribe, administer, or furnish a controlled substance except under the conditions and in the manner provided by this division." Health and Safety Code section 11173, subdivision (a), provides that no person shall obtain or attempt to obtain a controlled substance, or procure or attempt to procure the administration of or prescription for controlled substances, by fraud, deceit, misrepresentation, or subterfuge, or by the concealment of a material fact. Health and Safety Code section 11173, subdivision (b), provides that no person shall make a false statement in any prescription, order, report, or record.

4. By reason of the matters set forth in Findings 5, 12 through 14, 18 and 19, the evidence did not establish that respondent created new prescriptions or refills through the use of dishonesty, fraud or deceit. Consequently, cause for discipline pursuant to Business and Professions Code section 4301, subdivision (f), as it relates with Health and Safety code section 11173, subdivision (b), does not exist.

5. Respondent furnished controlled substances to CS, knowing that CS was not a patient of Dr. Rundall. Respondent concealed the fact that CS was not a patient of Dr. Rundall's from White Pharmacy. Respondent's actions constituted unprofessional conduct. By reason of the matters set forth in Findings 7, 8, 19 and 21, cause for disciplinary action exists pursuant to Business and Professions Code sections 4301, subdivision (f), as they relate to Health and Safety Code section 11171, and 11173, subdivision (a).

*Second cause for discipline – fraudulent prescriptions*

6. Pursuant to Business and Professions Code section 4301, subdivision (g), the Board may take disciplinary action against a licensee who is guilty of unprofessional conduct which includes, knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

7. Pursuant to Business and Professions Code section 4324, subdivision (a), every person who signs the name of another or of a fictitious person, or falsely makes, alters, forges, or attempts to pass as genuine any prescription for any drug is guilty of forgery and upon conviction thereof shall be punished by imprisonment in the state prison, or county jail for not more than one year.

8. Pursuant to Health and Safety Code sections 11158, subdivision (a), and 11173, subdivision (b), no person shall make false statements on a prescription for a controlled substance.

9. By reason of the matters set forth in Findings 5, 12 through 14, 18 and 19, the evidence did not establish that respondent created new prescriptions or refills through the use of dishonesty, fraud or deceit. Consequently, cause for discipline pursuant to Business and Professions Code sections 4301, subdivision (g), and 4324, subdivision (a), Health and Safety code sections 11158, subdivision (a), and 11173, subdivision (b), does not exist.

*Third cause for discipline – furnishing dangerous drugs without a prescription*

10. Pursuant to Business and Professions Code section 4059, subdivision (a), a person may not furnish any dangerous drug, except upon the prescription of a physician. Pursuant to Business and Professions Code section 4301, subdivision (j), the Board may take disciplinary action against a licensee who is guilty of unprofessional conduct which includes a violation of any of the statutes of this state, or of the United States regulating controlled substances and dangerous drugs.

11. Pursuant to Health and Safety Code sections 11158, subdivision (a), and 11173, subdivision (b), no person shall furnish controlled substances without a prescription from a physician.

12. Respondent admits on March 12, 2008, that he did not obtain a signature for the prescription delivery of CS' medication to Dr. Rundall's office. He also admits that he simply left the medication at the unattended front desk. Respondent admits that he never questioned authorizations from CS even when he knew Dr. Rundall was not treating the patient. The March 12, 2008 prescription for one hundred tablets of 5/500 mg Hydrocodone with Acetaminophen for CS was not authorized by Dr. Rundall. Accordingly by reason of the matters set forth in Findings 7, 8, 20 and 22, cause for disciplinary action exists based on respondent's unprofessional conduct of furnishing dangerous drugs without a prescriptions, pursuant to Business and Professions Code sections 4059, subdivision (a), and 4301, subdivision (j), as they relate to Health and Safety Code sections 11158, subdivision (a), and 11173, subdivision (b).

*Fourth cause for discipline – unauthorized refills*

13. Pursuant to Business and Professions Code sections 4063, and 4301, subdivision (j), no prescription for any dangerous drug may be refilled except upon authorization of the prescriber. Vicodin, Lortab and Hydrocodone constitute dangerous drugs pursuant to Business and Professions Code section 4022. Pursuant to Health and Safety Code section 11158, subdivision (a), no person shall refill prescriptions for a dangerous drug without a prescription from a physician.

14. Respondent admits receiving phone orders from CS Dr. Rundall's to authorize non-patient prescriptions. He never questioned the validity of CS's authorizations even when respondent knew Dr. Rundall was not seeing the patient. By reason of the matters set forth in Findings 7, 8, 20 and 22, cause for disciplinary action exists based on respondent's unprofessional conduct of furnishing unauthorized refills of dangerous drugs without a prescriptions, pursuant to Business and Professions Code sections 4063, and 4301, subdivision (j), as they related to Health and Safety Code section 11158, subdivision (a).

*The Appropriate Measure of Discipline*

15. The Board's disciplinary guidelines were applied in this matter. The character, extent, seriousness, and recent nature of the misconduct established in this disciplinary matter, and the lack of evidence in explanation, mitigation, or rehabilitation mandate an outright revocation of respondent's pharmacy technician registration.

Costs

16. In determining reasonable costs of investigation and enforcement under section 125.3, the Board must consider four factors set forth in *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32. These factors include: 1) whether Respondent used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; 2) respondent's subjective good faith belief in the merits of his position and whether he has raised a colorable challenge to the proposed discipline; 3) the financial ability of respondent to pay; and 4) whether the scope of the investigation was appropriate to the alleged misconduct.


17. Here, respondent did not use the disciplinary hearing process to obtain dismissal of other charges or to seek a reduction in the proposed discipline. He did present a colorable or meaningful challenge to his written confession and rebutted the allegations that respondent created new prescriptions or refills through the use of dishonesty, fraud or deceit. Respondent's financial ability to pay is limited based on his current income, however, no independent evidence was presented at hearing to support respondent's financial situation. The scope of the investigation was appropriate to the alleged misconduct. Based on these factors, the costs of 12,083.50 for investigation and enforcement should be reduced to \$9,000.

ORDER

1. Pharmacy Technician Registration number TCH 48083 issued to respondent, Victor Villafana, is revoked. Respondent shall relinquish his technician registration to the Board within ten (10) days of the effective date of this decision.

2. Respondent Victor Villafana shall reimburse the Board for its costs of investigation and prosecution in the amount of \$9,000. This amount shall be paid in full prior to the reinstatement of his revoked technician license.

DATED: 1/13/12

  
\_\_\_\_\_  
DIANNA L. ALBINI  
Administrative Law Judge  
Office of Administrative Hearings

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*Attorneys for Complainant*

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. 3437

11 **VICTOR VILLAFANA**  
12 **8939 Gallatin Rd., #117**  
13 **Pico Rivera, CA 90660**  
**Pharmacy Technician License No. TCH**  
14 **48083**

**A C C U S A T I O N**

15 Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about August 7, 2003, the Board of Pharmacy issued Pharmacy Technician  
22 License Number TCH 48083 to Victor Villafana (Respondent). The Pharmacy Technician  
23 License was in full force and effect at all times relevant to the charges brought herein and will  
24 expire on December 31, 2010, unless renewed.

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 unless otherwise indicated.



1 4. Section 4300 of the Code states in part:

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

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

6 “(1) Suspending judgment.

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

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

9 “(4) Revoking his or her license.

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

12 . . . .

13 “(e) The proceedings under this article shall be conducted in accordance with Chapter 5  
14 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board  
15 shall have all the powers granted therein. The action shall be final, except that the propriety of  
16 the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of  
17 Civil Procedure.”

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

22 **STATUTORY PROVISIONS**

23 6. Section 4021 of the Code states:

24 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section  
25 11053) of Division 10 of the Health and Safety Code.”

26 7. Section 4022 of the Code states in part:

27 “‘Dangerous drug’ ... means any drug ... unsafe for self-use in humans or animals, and  
28 includes the following:

1           “(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without  
2 prescription," "Rx only," or words of similar import.

3           .....

4           “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on  
5 prescription or furnished pursuant to Section 4006.”

6           8.     Section 4038 of the Code states:

7           “ ‘Pharmacy technician’ means an individual who assists a pharmacist in a pharmacy in the  
8 performance of his or her pharmacy related duties, as specified in section 4115.”

9           9.     Section 4059(a) of the Code states in part:

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

12          10.    Section 4063 of the Code states in part:

13          “No prescription for any dangerous drug ... may be refilled except upon authorization of  
14 the prescriber. The authorization may be given orally or at the time of giving the original  
15 prescription. No prescription for any dangerous drug that is a controlled substance may be  
16 designated refillable as needed.”

17          11.    Section 4115 of the Code states in part:

18          “(a) A pharmacy technician may perform packaging, manipulative, repetitive, or other  
19 nondiscretionary tasks, only while assisting, and while under the direct supervision and control of  
20 a pharmacist.

21          .....

22          “(c) This section does not authorize a pharmacy technician to perform any act requiring the  
23 exercise of professional judgment by a pharmacist.”

24          12.    Section 4301 of the Code states in part:

25          “The board shall take action against any holder of a license who is guilty of unprofessional  
26 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

27 Unprofessional conduct shall include, but is not limited to, any of the following:

28          .....

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

4           “(g) Knowingly making or signing any certificate or other document that falsely represents  
5 the existence or nonexistence of a state of facts.”

6           .....

7           “(j) The violation of any of the statutes of this state, or of the United States regulating  
8 controlled substances and dangerous drugs.”

9           13. Section 4324 of the Code states in part:

10           “(a) Every person who signs the name of another, or of a fictitious person, or falsely makes,  
11 alters, forges, utters, publishes, passes, or attempts to pass, as genuine, any prescription for any  
12 drugs is guilty of forgery and upon conviction thereof shall be punished by imprisonment in the  
13 state prison, or by imprisonment in the county jail for not more than one year.”

14           14. Health and Safety Code section 11158 subdivision (a) states:

15           “(a) Except as provided in Section 11159 or in subdivision (b) of this section, no controlled  
16 substance classified in Schedule II shall be dispensed without a prescription meeting the  
17 requirements of this chapter. Except as provided in Section 11159 or when dispensed directly to  
18 an ultimate user by a practitioner, other than a pharmacist or pharmacy, no controlled substance  
19 classified in Schedule III, IV, or V may be dispensed without a prescription meeting the  
20 requirements of this chapter.”

21           15. Health and Safety Code section 11171 states:

22           “‘No person shall prescribe, administer, or furnish a controlled substance except under the  
23 conditions and in the manner provided by this division.”

24           16. Health and Safety Code section 11173 states in part:

25           “(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt  
26 to procure the administration of or prescription for controlled substances, (1) by fraud, deceit,  
27 misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

28



1 refill authorization from a physician. Furthermore, prescriptions filled under patient name CS<sup>1</sup>,  
2 revealed CS was not under the care of a physician. The prescriptions filled under patient name  
3 VZ, revealed VZ was not a patient of the physician that the prescriptions were fraudulently issued  
4 under. The circumstances are as follows:

5 a. On or about May 11, 2006, Respondent fraudulently created new prescription  
6 number 2337070, for twenty tablets of 5/500 mg Hydrocodone with Acetaminophen, under  
7 patient name CS.

8 b. On or about December 27, 2006, Respondent fraudulently created new prescription  
9 number 2407453, for one hundred tablets of 7.5/750 mg Hydrocodone with Acetaminophen,  
10 under patient name VZ.

11 c. On or about January 24, 2007, Respondent fraudulently created a refill for  
12 prescription number 2407453, for one hundred tablets of 7.5/750 mg of Hydrocodone with  
13 Acetaminophen, under patient name VZ.

14 d. On or about March 15, 2007, Respondent fraudulently created a refill for prescription  
15 number 2407453, for one hundred tablets of 7.5/750 mg of Hydrocodone with Acetaminophen,  
16 under patient name VZ.

17 e. On or about April 13, 2007, Respondent fraudulently created a refill for prescription  
18 number 2407453, for one hundred tablets of 7.5/750 mg of Hydrocodone with Acetaminophen,  
19 under patient name VZ.

20 f. On or about May 24, 2007, Respondent fraudulently created a refill for prescription  
21 number 2407453, for one hundred tablets of 7.5/750 mg of Hydrocodone with Acetaminophen,  
22 under patient name VZ.

23 g. On or about July 10, 2007, Respondent fraudulently created new prescription number  
24 2468329, for one hundred tablets of 7.5/750 mg of Hydrocodone with Acetaminophen, under  
25 patient name VZ.

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27 <sup>1</sup> Patient names CS and VZ have been omitted for privacy purpose. Patient names will be  
28 disclosed pursuant to a request for discovery.

1 h. On or about August 22, 2007, Respondent fraudulently created a refill for prescription  
2 number 2468329, for one hundred tablets of 7.5/750 mg of Hydrocodone with Acetaminophen,  
3 under patient name VZ.

4 i. On or about September 14, 2007, Respondent fraudulently created a refill for  
5 prescription number 2468329, for one hundred tablets of 7.5/750 mg of Hydrocodone with  
6 Acetaminophen, under patient name VZ.

7 j. On or about October 16, 2007, Respondent fraudulently created new prescription  
8 number 2495241, for one hundred tablets of 7.5/750 mg of Hydrocodone with Acetaminophen,  
9 under patient name VZ.

10 k. On or about November 1, 2007, Respondent fraudulently created new prescription  
11 number 2500217, for one hundred tablets of 7.5/750 mg of Hydrocodone with Acetaminophen,  
12 under patient name CS.

13 l. On or about November 12, 2007, Respondent fraudulently created a refill for  
14 prescription number 2495241, for one hundred tablets of 7.5/750 mg of Hydrocodone with  
15 Acetaminophen, under patient name VZ.

16 m. On or about November 26, 2007, Respondent fraudulently created new prescription  
17 number 2506087, for one hundred tablets of 7.5/750 mg of Hydrocodone with Acetaminophen,  
18 under patient name CS.

19 n. On or about December 11, 2007, Respondent fraudulently created a refill for  
20 prescription number 2495241, for one hundred tablets of 7.5/750 mg of Hydrocodone with  
21 Acetaminophen, under patient name VZ.

22 o. On or about January 8, 2008, Respondent fraudulently created new prescription  
23 number 2517675, for one hundred tablets of 7.5/750 mg of Hydrocodone with Acetaminophen,  
24 under patient name VZ.

25 p. On or about February 18, 2008, Respondent fraudulently created new prescription  
26 number 2531171, for one hundred tablets of 7.5/750 mg of Hydrocodone with Acetaminophen,  
27 under patient name VZ.

28 ///

1 q. On or about March 12, 2008, Respondent fraudulently created new prescription  
2 number 2538851, for one hundred tablets of 5/500 mg of Hydrocodone with Acetaminophen,  
3 under patient name CS.

4 r. On or about March 19, 2008, Respondent resigned from his position as a pharmacy  
5 technician at White Memorial Medical Plaza Pharmacy in Los Angeles, California.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Fraudulent Prescriptions)**

8 21. Respondent is subject to disciplinary action under Code 4301 subdivision (g), in  
9 conjunction with Code section 4324 subdivision (a), and Health and Safety Code sections  
10 11158(a) and 11173(b), on the grounds of unprofessional conduct in that Respondent knowingly  
11 created nine (9) fraudulent new prescriptions and eight (8) fraudulent refill prescriptions for  
12 Hydrocodone without a prescription or refill authorization from a physician. Complainant's  
13 allegations, as set forth in paragraph 20 subparagraphs (a) through (q), are incorporated by  
14 reference, as though fully set forth.

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(Furnishing Dangerous Drugs Without a Prescription)**

17 22. Respondent is subject to disciplinary action under Code sections 4059 subdivision (a),  
18 and 4301 subdivision (j), in conjunction with Health and Safety Code section 11158 subdivision  
19 (a), in that Respondent furnished dangerous drugs, as classified in Code section 4022, without a  
20 prescription from a physician. Complainant's allegations, as set forth in paragraph 20  
21 subparagraphs (a), (b), (g), (j), (k), (m), (o), (p) and (q), are incorporated by reference, as though  
22 fully set forth.

23 **FOURTH CAUSE FOR DISCIPLINE**

24 **(Unauthorized Refills)**

25 23. Respondent is subject to disciplinary action under Code sections 4063 and 4301  
26 subdivision (j), in conjunction with Health and Safety Code section 11158 subdivision (a), in that  
27 Respondent refilled prescriptions for dangerous drugs, as classified in Code section 4022, without  
28 a refill authorization from a physician. Complainant's allegations, as set forth in paragraph 20

1 subparagraphs (c) through (f), (h), (i), (l) and (n), are incorporated by reference, as though fully  
2 set forth.

3 **DISCIPLINE CONSIDERATIONS**

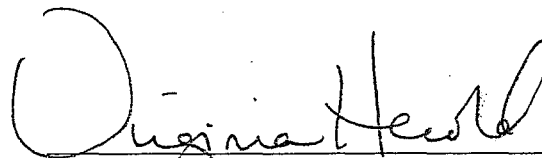
4 24. To determine the degree of discipline, if any, to be imposed on Respondent,  
5 Complainant alleges that on or about March 17, 2008, in a proceeding entitled, (*People v. Victor*  
6 *Villafana*, California Municipal Court Inglewood, 1998, Case No. 8IW01077), Respondent was  
7 convicted of violating Penal Code section 12031 subdivision (A)(1) [Carrying a Loaded Firearm  
8 in a Public Place] a misdemeanor. Respondent was ordered to pay a fine and placed on (36)  
9 months of probation.

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 issue a decision:

- 14 1. Revoking or suspending Pharmacy Technician License Number TCH 48083, issued  
15 to Victor Villafana;
- 16 2. Ordering Victor Villafana to pay the Board of Pharmacy the reasonable costs of the  
17 investigation and enforcement of this case, pursuant to Code section 125.3; and
- 18 3. Taking such other and further action as deemed necessary and proper.
- 19

20  
21 DATED: 7/20/10



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

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