

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

In the Matter of the Accusation Against:

**MICHAEL FRANCIS CRUZ  
242 Woodridge Drive  
Vallejo, CA 94591**

**Pharmacy Technician License No. THC 93333**

Respondent.

Case No. 3898

OAH No. 2011060778

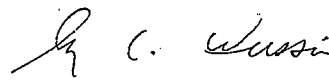
**DECISION AND ORDER**

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on April 2, 2012.

It is so ORDERED on March 1, 2012.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
STANLEY C. WEISSER  
Board President

1 KAMALA D. HARRIS  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 JOSHUA A. ROOM  
Deputy Attorney General  
4 State Bar No. 214663  
455 Golden Gate Avenue, Suite 11000  
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*Attorneys for Complainant*

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

10 In the Matter of the Accusation Against:

Case No. 3898

11 **MICHAEL FRANCIS CRUZ**  
12 **242 Woodridge Drive**  
13 **Vallejo, CA 94591**

OAH No. 2011060778

**STIPULATED SURRENDER OF  
LICENSE AND ORDER**

13 **Pharmacy Technician License No. TCH 93333**

14 Respondent.

15 In the interest of a prompt and speedy resolution of this matter, consistent with the public  
16 interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs  
17 the parties hereby agree to the following Stipulated Surrender of License and Order which will be  
18 submitted to the Board for approval and adoption as the final disposition of the Accusation.

19 PARTIES

20 1. Virginia Herold (Complainant), Executive Officer of the Board of Pharmacy, brought  
21 this action solely in her official capacity and is represented in this matter by Kamala D. Harris,  
22 Attorney General of the State of California, by Joshua A. Room, Deputy Attorney General.

23 2. Michael Francis Cruz (Respondent) is represented in this proceeding by attorney  
24 Robert F. Hahn, whose address is Law Offices of Gould & Hahn, 2550 Ninth Street, Suite 101,  
25 Berkeley, CA 94710 (telephone (510) 665-1800).

26 3. On or about September 5, 2009, the Board of Pharmacy issued Pharmacy Technician  
27 License No. TCH 93333 to Respondent. The License was in force and effect at all times relevant  
28 to Accusation No. 3898 and will expire on January 31, 2013, unless renewed.

1    JURISDICTION

2             4.     Accusation No. 3898 was filed before the Board of Pharmacy (Board), Department of  
3 Consumer Affairs, and is currently pending against Respondent. The Accusation and all other  
4 statutorily required documents were properly served on Respondent on April 11, 2011.  
5 Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation  
6 No. 3898 is attached as exhibit A and is incorporated herein by reference.

7    ADVISEMENT AND WAIVERS

8             5.     Respondent has carefully read, fully discussed with counsel, and understands the  
9 charges in Accusation No. 3898. Respondent also has carefully read, fully discussed with  
10 counsel, and understands the effects of, this Stipulated Surrender of License and Order.

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

18            7.     Respondent voluntarily, knowingly, and intelligently waives and gives up each and  
19 every right set forth above.

20    CULPABILITY

21            8.     Respondent admits the truth of each and every charge and allegation in Accusation  
22 No. 3898, agrees that cause exists for discipline, and hereby surrenders his Pharmacy Technician  
23 License No. TCH 93333 for the Board's formal acceptance.

24            9.     Respondent understands that by signing this stipulation he enables the Board to issue  
25 an order accepting the surrender of his Pharmacy Technician License without further process.

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RESERVATION

10. Admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Board of Pharmacy or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

11. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that facsimile copies of this stipulation, including facsimile signatures thereto, shall have the same force and effect as the originals.

13. This Stipulated Surrender of License and Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

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ORDER

IT IS HEREBY ORDERED that Pharmacy Technician License No. TCH 93333, issued to Respondent Michael Francis Cruz, is surrendered and accepted by the Board of Pharmacy.

1. The surrender of Respondent's Pharmacy Technician License and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board of Pharmacy.

2. Respondent shall lose all rights and privileges as a Pharmacy Technician in California as of the effective date of the Board's Decision and Order.

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

4. Respondent may not apply, reapply, or petition for any licensure or registration of the Board for two (2) years from the effective date of the Decision and Order.

5. If he ever applies for licensure or petitions for reinstatement in the State of California, the Board shall treat it as a new application for licensure. Respondent must comply with all laws, regulations and procedures for licensure in effect at the time the application or petition is filed, and all of the charges in Accusation No. 3898 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the application or petition.

6. Respondent shall pay the agency its costs of investigation and enforcement in the amount of \$5,500.00 prior to issuance of a new or reinstated license.

7. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges in Accusation No. 3898 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

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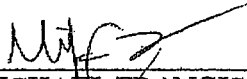
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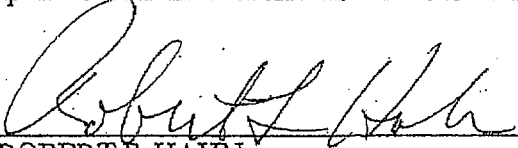
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ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney, Robert F. Hahn. I understand the stipulation and the effect it will have on my Pharmacy Technician License. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.


DATED: JAN 27 2012   
MICHAEL FRANCIS CRUZ  
Respondent

I have read and fully discussed with Respondent Michael Francis Cruz the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: 1/30/12   
ROBERT F. HAHN  
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated: 2/3/2012 Respectfully submitted,  
KAMALA D. HARRIS  
Attorney General of California  
FRANK H. PACOE  
Supervising Deputy Attorney General  
  
JOSHUA A. ROOM  
Deputy Attorney General  
*Attorneys for Complainant*

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**Exhibit A**

**Accusation No. 3898**

1 KAMALA D. HARRIS  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 JOSHUA A. ROOM  
Deputy Attorney General  
4 State Bar No. 214663  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
Telephone: (415) 703-1299  
6 Facsimile: (415) 703-5480  
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Case No. 3898

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12 **242 Woodridge Drive**  
13 **Vallejo, CA 94591**

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

14 **Pharmacy Technician License No. TCH 93333**

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 September 5, 2009, the Board of Pharmacy issued Pharmacy Technician  
22 License No. TCH 93333 to Michael Francis Cruz (Respondent). The License was in full force  
23 and effect at all times relevant herein and will expire on January 31, 2013, unless renewed.

24 JURISDICTION

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

28 ///



1 4. Section 4011 of the Code provides that the Board shall administer and enforce both  
2 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances  
3 Act [Health & Safety Code, § 11000 et seq.]. Section 4300(a) of the Code provides that every  
4 license issued by the Board may be suspended or revoked.

5 5. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration,  
6 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a  
7 disciplinary action during the period within which the license may be renewed, restored, reissued  
8 or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not  
9 renewed within three years following its expiration may not be renewed, restored, or reinstated  
10 and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of  
11 the Code provides that any other license issued by the Board may be canceled by the Board if not  
12 renewed within 60 days after its expiration, and any license canceled in this fashion may not be  
13 reissued but will instead require a new application to seek reissuance.

14 STATUTORY AND REGULATORY PROVISIONS

15 6. Section 4301 of the Code provides, in pertinent part, that the Board shall take action  
16 against any holder of a license who is guilty of "unprofessional conduct," defined to include, but  
17 not be limited to, any of the following:

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

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

23 (l) The conviction of a crime substantially related to the qualifications, functions, and duties  
24 of a licensee under this chapter.

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

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

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

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

11           9. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous  
12 drug or dangerous device except upon the prescription of an authorized prescriber.

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

15           11. Health and Safety Code section 11158 provides, in pertinent part, that no controlled  
16 substance classified in Schedules II-V shall be dispensed without a valid prescription.

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

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

24   COST RECOVERY

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

28           ///

1 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

2 15. Section 4021 of the Code states:

3 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section  
4 11053) of Division 10 of the Health and Safety Code.”

5 16. Section 4022 of the Code states, in pertinent part:

6 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use,  
7 except veterinary drugs that are labeled as such, and includes the following:

8 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without  
9 prescription,’ ‘Rx only,’ or words of similar import.

10 ...

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

13 17. **Phenergan with Codeine** is a brand name for a compound consisting of the  
14 antihistamine **promethazine**, a dangerous drug as designated by Business and Professions Code  
15 section 4022, and **codeine**, a Schedule V controlled substance as designated by Health and Safety  
16 Code section 11058 and a dangerous drug as designated by Business and Professions Code  
17 section 4022. This drug is also known generically as **Promethazine with Codeine**. It is an  
18 antihistamine/antitussive, narcotic analgesic, and sleep aid.

19 FACTUAL BACKGROUND

20 18. Between on or about May 17, 2009 and on or about March 26, 2010, Respondent was  
21 employed as a pharmacy technician at a CVS Pharmacy (PHY 49701) located in Benicia, CA,  
22 where he had access to controlled substances and dangerous drugs.

23 19. During the tenure of his employment, Respondent used his access to divert/steal  
24 controlled substances and dangerous drugs, including **Phenergan/Promethazine with Codeine**.

25 20. The exact number of instances of diversion/theft by Respondent, and the full quantity  
26 of controlled substances or dangerous drugs diverted/stolen by Respondent, are not known, but in  
27 the course of investigations conducted by the pharmacy and by police, the following were among  
28 the observations, admissions, and revelations reported:

1 a. An investigation of controlled substance/dangerous drug inventory and stock on  
2 hand by CVS auditors/investigators determined that between in or around April 2009 and March  
3 2010 the CVS Pharmacy by which Respondent was employed was short anywhere between 86.9  
4 and 88 pints of **Phenergan/Promethazine with Codeine** (stock bottle contains one pint).

5 b. On or about March 18, 2010 and March 19, 2010, Respondent was captured on  
6 store surveillance (videocamera) placing 5 or 6 pint bottles of **Phenergan/Promethazine with**  
7 **Codeine** on each occasion (a total of 10-12 pint bottles) into plastic bags, and handing those bags  
8 to the driver or passenger in an automobile at the pharmacy drive-through window. On neither  
9 occasion did Respondent receive or process a prescription for the medication(s).

10 c. Respondent subsequently admitted to having similarly dispensed/furnished pint  
11 bottles of **Phenergan/Promethazine with Codeine**, without prescription, on several occasions.  
12 He admitted to having dispensed/furnished at least twenty (20) pints in this fashion.

13 d. Respondent further admitted that in connection with his criminal case (see  
14 below) he paid restitution to CVS in an amount equal to 88 pints of **Promethazine with Codeine**.

15  
16 FIRST CAUSE FOR DISCIPLINE

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

18 21. Respondent is subject to discipline under section 4301(f) of the Code in that  
19 Respondent, as described in paragraphs 18 to 20 above, committed numerous acts involving  
20 moral turpitude, dishonesty, fraud, deceit, or corruption.

21  
22 SECOND CAUSE FOR DISCIPLINE

23 (Furnishing of Controlled Substance)

24 22. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section  
25 4059 of the Code, and/or Health and Safety Code section 11158, in that Respondent, as described  
26 in paragraphs 18 to 20 above, furnished/dispensed without a valid prescription, and/or conspired  
27 to furnish/dispense, and/or assisted or abetted furnishing/dispensing of, a controlled substance.

1 THIRD CAUSE FOR DISCIPLINE

2 (Possession of Controlled Substance)

3 23. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section  
4 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described  
5 in paragraphs 18 to 20 above, possessed, conspired to possess, and/or assisted in or abetted  
6 possession of, a controlled substance, without a prescription.

7  
8 FOURTH CAUSE FOR DISCIPLINE

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

10 24. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,  
11 and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs  
12 18 to 20 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a  
13 controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

14  
15 FIFTH CAUSE FOR DISCIPLINE

16 (Conviction of Substantially Related Crime(s))

17 25. Respondent is subject to discipline under section 4301(l) and/or section 490 of the  
18 Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of  
19 a substantially related crime, in that on or about July 15, 2010, in the criminal case *People v.*  
20 *Michael Francis Cruz*, Case No. VCR207210 in Solano County Superior Court, Respondent was  
21 convicted of violating Health and Safety Code section 11153, subdivision (a) (Unlawful  
22 Controlled Substance Prescription), a misdemeanor. The conviction was entered as follows:

23 a. On or about July 15, 2010, based on the conduct described in paragraphs 18 to  
24 20, Respondent was charged by Amended Felony Complaint in Case No. VCR207210 under (1)  
25 Penal Code section 487(a) (Grand Theft by Embezzlement), a felony, and (2) Health and Safety  
26 Code section 11153(a) (Unlawful Controlled Substance Prescription), a felony.

27 b. On or about July 15, 2010, Count 2 was amended from felony to misdemeanor.  
28 Respondent pleaded *nolo contendere* and was found guilty. Count 1 was dismissed.

1 c. On or about July 15, 2010, the Court noted that Respondent had paid restitution  
2 in full. Imposition of sentence was suspended in favor of a period of court probation of three (3)  
3 years, on terms and conditions including time served (1 day), and search conditions.

4  
5 SIXTH CAUSE FOR DISCIPLINE

6 (Unprofessional Conduct)

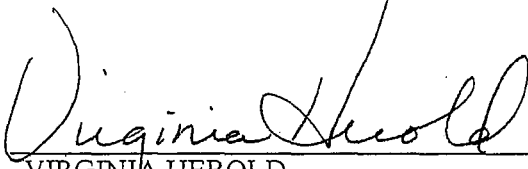
7 .26. Respondent is subject to discipline under section 4301 of the Code in that  
8 Respondent, as described in paragraphs 18 to 25 above, engaged in unprofessional conduct.

9  
10 PRAYER

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

- 13 1. Revoking or suspending Pharmacist Technician License Number TCH 93333, issued  
14 to Michael Francis Cruz (Respondent);
- 15 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and  
16 enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 17 3. Taking such other and further action as is deemed necessary and proper.

18  
19 DATED: 4/5/11

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

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