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

In the Matter of the Accusation Against:
FRANCISCO JUNIOR VELASQUEZ
6700 E. Olympic Blvd, #3
Los Angeles, CA 90022
Pharmacy Technician Registration No. TCH
77063

Respondent.

Case No. 4136
DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about April 9, 2012, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4136 against Francisco Junior Velasquez (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)
2. On or about July 3, 2007, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 77063 to Respondent. The Pharmacy Technician Registration expired on July 31, 2011, and has not been renewed.
3. On or about April 25, 2012, Respondent was served by Certified and First Class Mail copies of the Accusation No. 4136, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code section 4100,

1 is required to be reported and maintained with the Board. Respondent's address of record was
2 and is:

3 6700 E. Olympic Blvd, #3
4 Los Angeles, CA 90022.

5 3. Service of the Accusation was effective as a matter of law under the provisions of
6 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
7 124.

8 4. Government Code section 11506 states, in pertinent part:

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

14 5. Respondent failed to file a Notice of Defense within 15 days after service upon him
15 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
16 4136.

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

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

22 7. Pursuant to its authority under Government Code section 11520, the Board finds
23 Respondent is in default. The Board will take action without further hearing and, based on the
24 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
25 taking official notice of all the investigatory reports, exhibits and statements contained therein on
26 file at the Board's offices regarding the allegations contained in Accusation No. 4136, finds that
27 the charges and allegations in Accusation No. 4136, are separately and severally, found to be true
28 and correct by clear and convincing evidence.

8. Taking official notice of its own internal records, pursuant to Business and
Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation

1 and Enforcement are \$4,661.00 (Board costs of \$2091.00 plus AG costs of \$2,570) as of May 17,
2 2012.

3 DETERMINATION OF ISSUES

4 1. Based on the foregoing findings of fact, Respondent Francisco Junior Velasquez has
5 subjected his Pharmacy Technician Registration No. TCH 77063 to discipline.

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

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

10 a. Business & Professions Code sections 4301(f), (j) & (l) and 490, in conjunction with
11 California Code of Regulations, title 16, section 1770, in that Respondent engaged in
12 unprofessional conduct and committed dishonest acts, by admitting that, on or about July 30,
13 2010, he diverted four prescriptions for controlled substances (Hydrocodone) from his employer,
14 Walgreens, by distributing the drugs to persons at the drive-thru window without a prescription.
15 On or about August 23, 2010, after pleading guilty, Respondent was convicted of one felony
16 count of violating Business & Professions Code section 4324(a) [forgery], in the criminal
17 proceeding entitled *People v. Francisco Velasquez*, Superior Court of California, County of Los
18 Angeles, Case No. VA116445.

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ORDER

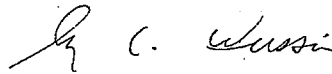
IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 77063, heretofore issued to Respondent Francisco Junior Velasquez, is revoked.

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 August 15, 2012.

It is so ORDERED on July 16, 2012.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

default decision_LIC.rtf
DOJ Matter ID:LA2011601237

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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2 GREGORY J. SALUTE
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3 HELENE E. SWANSON
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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. 4136

11 **FRANCISCO JUNIOR VELASQUEZ**
12 **6700 E. Olympic Blvd, #3**
13 **Los Angeles, CA 90022**

A C C U S A T I O N

14 **Pharmacy Technician Registration**
15 **No. TCH 77063**

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 July 3, 2007, the Board of Pharmacy (Board) issued Pharmacy
22 Technician Registration No. TCH 77063 to Francisco Junior Velasquez (Respondent). The
23 Pharmacy Technician Registration expired on July 31, 2011, and has not been renewed.

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1 JURISDICTION

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

5 STATUTORY PROVISIONS

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

10 5. Section 490 states:

11 "(a) In addition to any other action that a board is permitted to take against a licensee, a
12 board may suspend or revoke a license on the ground that the licensee has been convicted of a
13 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
14 or profession for which the license was issued.

15 (b) Notwithstanding any other provision of law, a board may exercise any authority to
16 discipline a licensee for conviction of a crime that is independent of the authority granted under
17 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
18 of the business or profession for which the licensee's license was issued.

19 (c) A conviction within the meaning of this section means a plea or verdict of guilty or a
20 conviction following a plea of nolo contendere. Any action that a board is permitted to take
21 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
22 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
23 made suspending the imposition of sentence, irrespective of a subsequent order under the
24 provisions of Section 1203.4 of the Penal Code."

25 6. Section 4059 states:

26 "(a) A person may not furnish any dangerous drug, except upon the prescription of a
27 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
28 3640.7. A person may not furnish any dangerous device, except upon the prescription of a

1 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
2 3640.7.”

3 7. Section 4060 states, in pertinent part:

4 “No person shall possess any controlled substance, except that furnished to a person upon
5 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
6 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
7 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a
8 physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to either Section
9 4052.1 or 4052.2. This section shall not apply to the possession of any controlled substance by a
10 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist,
11 veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician
12 assistant, when in stock in containers correctly labeled with the name and address of the supplier
13 or producer.

14 Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a
15 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and
16 devices.”

17 8. Section 4300 provides, in pertinent part, that every license by the Board is subject to
18 discipline, including suspension or revocation.

19 9. Section 4301 states:

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

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

23

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

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

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

21 10. Section 4342, subdivision (a), provided, in relevant part:

22 "Every person who signs the name of another, or of a fictitious person, or falsely
23 makes, alters, forges, utters, publishes, passes, or attempts to pass, as genuine, any
24 prescription for any drugs is guilty of forgery and upon conviction thereof shall be
25 punished by imprisonment in the state prison, or by imprisonment in the county jail for not more
26 than one year."

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1 11. Health & Safety Code section 11352, subdivision (a), states that:

2 "Except as otherwise provided in this division, every person who transports, imports into
3 this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state,
4 sell, furnish, administer, or give away, or attempts to import into this state or transport (1) any
5 controlled substance specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of
6 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or
7 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section
8 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic
9 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian
10 licensed to practice in this state, shall be punished by imprisonment in the state prison for three,
11 four, or five years."

12 **REGULATORY PROVISIONS**

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

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

21 **COST RECOVERY**

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

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FIRST CAUSE FOR DISCIPLINE
(Unprofessional Conduct - Criminal Conviction)

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2 14. Respondent is subject to disciplinary action under Sections 4301, subdivision (l) and
3 490, in conjunction with California Code of Regulations, title 16, section 1770, in that
4 Respondent was convicted for a crime substantially related to the qualifications, functions or
5 duties of a pharmacy technician, as follows:

6 a. On or about August 23, 2010, after pleading guilty, Respondent was convicted of one
7 felony count of violating Business and Professions Code section 4324, subdivision (a) [forgery],
8 in the criminal proceeding entitled *The People of the State of California v. Francisco Velasquez,*
9 *Jr.* (Super. Ct., Los Angeles County, 2010, No. VA116445). On or about September 7, 2010, the
10 criminal court sentenced Respondent to three years formal probation, 180 days in the Los Angeles
11 County Jail, 120 hours of Cal Trans community service, and the payment of various restitution,
12 fines and fees. The circumstances surrounding the conviction are as follows:

13 b. On or about July 30, 2010, while employed as a pharmacy technician at Walgreens
14 Drug Store #5649 ("Walgreens") located at 8201 Greenleaf Avenue, Whittier, California,
15 Respondent diverted four prescriptions of Hydrocodone/Acetaminophen 7.5/750 mg and
16 distributed the drugs to an unknown vehicle through the Walgreens drive-thru window. A
17 Walgreens assistant pharmacy manager stated that patients were coming in and stating that they
18 never received their medications, but the pharmacy's records showed that the Respondent had
19 distributed them. Respondent manipulated the pharmacy computer in order to divert four
20 prescriptions of Hydrocodone, RX 730385, RX 743632, RX 743630, and RX 743590, all dated
21 July 30, 2010. The assistant pharmacy manager subsequently reviewed surveillance camera
22 video of that specific date and time and noticed that, following transactions Respondent made at
23 drive-thru pharmacy window #2, Respondent immediately went on a break. When confronted by
24 the Whittier Police, Respondent admitted diverting four prescriptions of Hydrocodone, by
25 distributing the drugs to individuals through the drive-thru window.

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SECOND CAUSE FOR DISCIPLINE
**(Unprofessional Conduct - Possession of Controlled Substances
Without a Valid Prescription)**

15. Respondent is subject to disciplinary action under Sections 4301, subdivision (l) and 4301, subdivision (j), as defined in Section 4059, in that on or about July 30, 2010, Respondent, by his own admission, diverted four prescriptions of Hydrocodone (Vicodin) 7.5/750 mg, and distributed these drugs to two unknown individuals. Complainant refers to, and by this reference incorporates, the allegations set forth above in Paragraph 14, subparagraphs (a) and (b), inclusive, as set forth fully herein.

THIRD CAUSE FOR DISCIPLINE
(Unprofessional Conduct - Dishonest Acts)

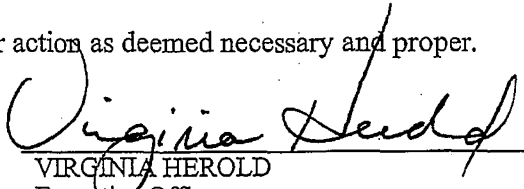
16. Respondent is subject to disciplinary action under Sections 4301, subdivision (f) and 4342, subdivision (a), in that Respondent committed dishonest acts by admittedly diverting four prescriptions of Hydrocodone from his employer, which he furnished to others without a prescription. Complainant refers to, and by this reference incorporates, the allegations set forth above in Paragraph 14, subparagraphs (a) and (b), inclusive, as set forth fully herein.

PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration No. TCH 77063, issued to Francisco Junior Velasquez;
2. Ordering Francisco Junior Velasquez to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 4/9/12



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