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

In the Matter of the Accusation Against:

VINCENT V. RUIZ

**500 N St., #601
Sacramento, CA 95814
Pharmacy Technician Registration No. TCH
92083**

Respondent.

Case No. 4393
OAH No. 2013080407
DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about March 16, 2013, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4393 against Vincent V. Ruiz (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about August 31, 2009, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 92083 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 4393 and expired on January 31, 2013. The lapse in licensure, pursuant to Business and Professions

1 Code section 4300.1, does not deprive the Board of its authority to institute or continue this
2 disciplinary proceeding.

3 3. On or about April 2, 2013, Respondent was served by Certified and First Class Mail
4 copies of the Accusation No. 4393, Statement to Respondent, Notice of Defense, Request for
5 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
6 Respondent's address of record which, pursuant to Business and Professions Code section 4100,
7 is required to be reported and maintained with the Board. Respondent's address of record was
8 and is:

9 4511 Baumbach Lane
10 Acampo, CA 95220.

11
12 4. Service of the Accusation was effective as a matter of law under the provisions of
13 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
14 124.

15 5. On or about August 7, 2013, Respondent signed and returned a Notice of Defense,
16 requesting a hearing in this matter. A Notice of Hearing was served by mail at Respondent's
17 indicated address on the Notice of Defense, 500 N Street, #601, Sacramento, CA 95814, and it
18 informed him that an administrative hearing in this matter was scheduled for May 13, 2014.
19 Respondent failed to appear at that hearing.

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

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

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

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

1 containing 8 white oblong pills imprinted with G3719. Respondent claimed the pills were Xanax
2 or Alprazolam. Respondent did not have a prescription for Xanax.

3 c. On January 20, 2012, when detectives searched respondents' residence they found the
4 following items, among others, which belong to Respondent: One small baggie with four
5 unmarked white round pills, three digital scales with suspected Heroin residue (later tested
6 positive as an Opiate), three razor blades with suspected Heroin residue (later tested positive as an
7 Opiate), one hypodermic syringe.

8
9 ORDER

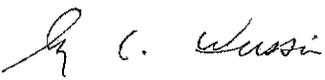
10 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 92083, heretofore
11 issued to Respondent Vincent V. Ruiz, is revoked.

12 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
13 written motion requesting that the Decision be vacated and stating the grounds relied on within
14 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
15 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

16 This Decision shall become effective on August 1, 2014.

17 It is so ORDERED July 2, 2014.

18
19 BOARD OF PHARMACY
20 DEPARTMENT OF CONSUMER AFFAIRS
21 STATE OF CALIFORNIA

22 By 
23 STAN C. WEISSER
24 Board President

25 11347601.DOC
26 DOJ Matter ID:SA2012107614

27 Attachment:
28 Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 KENT D. HARRIS
Deputy Attorney General
4 State Bar No. 144804
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-7859
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 4393

13 **VINCENT V. RUIZ**
4511 Baumbach Lane
Acampo, CA 95220

A C C U S A T I O N

14 Pharmacy Technician Registration No. TCH 92083

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 31, 2009, the Board of Pharmacy issued Pharmacy Technician
22 Registration Number TCH 92083 to Vincent V. Ruiz ("Respondent"). The Pharmacy Technician
23 Registration was in full force and effect at all times relevant to the charges brought herein and
24 will expire on January 31, 2013, 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:

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

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

5 "(1) Suspending judgment.

6 "(2) Placing him or her upon probation.

7 "(3) Suspending his or her right to practice for a period not exceeding one
8 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 discretion may deem proper...

11 "(d) The board may initiate disciplinary proceedings to revoke or suspend
12 any probationary certificate of licensure for any violation of the terms and conditions
of probation. Upon satisfactory completion of probation, the board shall convert the
13 probationary certificate to a regular certificate, free of conditions.

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

17 5. Section 4301 of the Code states in pertinent part:

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

20 ...

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

22 ...

23 "(l) The conviction of a crime substantially related to the qualifications,
24 functions, and duties of a licensee under this chapter. The record of conviction of a
violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
25 States Code regulating controlled substances or of a violation of the statutes of this
state regulating controlled substances or dangerous drugs shall be conclusive
26 evidence of unprofessional conduct. In all other cases, the record of conviction shall
be conclusive evidence only of the fact that the conviction occurred. The board may
27 inquire into the circumstances surrounding the commission of the crime, in order to
fix the degree of discipline or, in the case of a conviction not involving controlled
28 substances or dangerous drugs, to determine if the conviction is of an offense

1 substantially related to the qualifications, functions, and duties of a licensee under this
2 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
3 contendere is deemed to be a conviction within the meaning of this provision. The
4 board may take action when the time for appeal has elapsed, or the judgment of
5 conviction has been affirmed on appeal or when an order granting probation is made
6 suspending the imposition of sentence, irrespective of a subsequent order under
7 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
8 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
9 dismissing the accusation, information, or indictment.

10 ...
11 "(o) Violating or attempting to violate, directly or indirectly, or assisting
12 in or abetting the violation of or conspiring to violate any provision or term of this
13 chapter or of the applicable federal and state laws and regulations governing
14 pharmacy, including regulations established by the board or by any other state or
15 federal regulatory agency.

16 "(p) Actions or conduct that would have warranted denial of a license.

17 6. Code section 4060 states in pertinent part:

18 "No person shall possess any controlled substance, except that furnished to a person upon
19 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
20 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-
21 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician
22 assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a
23 pharmacist pursuant to either Section 4052.1 or 4052.2. This section shall not apply to the
24 possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist,
25 physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-
26 midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled
27 with the name and address of the supplier or producer. Section 490 of the Code provides, in
28 pertinent part, that a board may suspend or revoke a license on the ground that the licensee has
been convicted of a crime substantially related to the qualifications, functions, or duties of the
business or profession for which the license was issued..."

7. Health and Safety Code section 11350 states in pertinent part:

"(a) Except as otherwise provided in this division, every person who possesses (1) any
controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of
Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or

1 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section
2 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic
3 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian
4 licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of
5 Section 1170 of the Penal Code.”

6 8. Health and Safety Code section 11351 states :

7 “Except as otherwise provided in this division, every person who possesses for sale or
8 purchases for purposes of sale (1) any controlled substance specified in subdivision (b), (c), or (e)
9 of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054,
10 or specified in subdivision (b) or (c) of Section 11055, or specified in sub-division (h) of Section
11 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic
12 drug, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal
13 Code for two, three, or four years.”

14 9. Health and Safety Code section 11352 states in pertinent part:

15 “(a) Except as otherwise provided in this division, every person who transports, imports
16 into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this
17 state, sell, furnish, administer, or give away, or attempts to import into this state or transport (1)
18 any controlled substance specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision
19 (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section
20 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of
21 Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a
22 narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or
23 veterinarian licensed to practice in this state, shall be punished by imprisonment pursuant to
24 subdivision (h) of Section 1170 of the Penal Code for three, four, or five years.”

25 **DRUGS**

26 10. “**Alprazolam**” (also know as Xanax) is a Schedule IV controlled substance pursuant
27 to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to
28 Business and Professions Code section 4022.

1 11. "Heroin" is a Schedule I controlled substance as designated by Health and Safety
2 Code section 11054(c)(11).

3 **COST RECOVERY**

4 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request
5 the administrative law judge to direct a licensee found to have committed a violation or
6 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
7 and enforcement of the case.

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(Criminal Conviction)**

10 13. Respondent has subjected his license to disciplinary action under Code section 4301
11 subdivision (1) in that Respondent plead guilty to the following crime that is substantially related
12 to the qualifications, functions, and duties of a pharmacy technician:

13 14. On or about February 28, 2012, in a case entitled *The People of the State of*
14 *California v. Vincent V. Ruiz*, County of San Joaquin Superior Case No. LF013054A, Respondent
15 pled guilty to violation of Code section 4060 (possession of a controlled substance without a
16 prescription), a misdemeanor. The Court granted Respondent Deferred Entry of Judgment¹.

17 15. The circumstances of the crimes are that on or about January 20, 2012, Detective
18 N.R. obtained a search warrant for Respondent's residence and vehicle, after an anonymous
19 citizen reported that Respondent was actively involved in the sales of analgesic pills and heroin.
20 On or about January 20, 2012, when Detective N.R. and Detective S.M. first encountered
21 Respondent, he was in possession of a prescription pill bottle with no prescription label,
22 containing 8 white oblong pills imprinted with G3719. Respondent claimed the pills were Xanax
23 or Alprazolam. Respondent did not have a prescription for Xanax.

24 16. On January 20, 2012, when detectives searched respondents' residence they found the
25 following items, among others, which belong to Respondent:

26
27 ¹ Deferred Entry of Judgment is a program designed for a population of drug offenders,
28 who enter plea of guilty or nolo contendere to drug related charges. The offenders are ordered to
participate in a program, usually for 12-18 months, of drug education and basic counseling.

- 1 a. One small baggie with four unmarked white round pills.
- 2 b. Three digital scales with suspected Heroin residue (later tested positive as an Opiate).
- 3 c. Three razor blades with suspected Heroin residue (later tested positive as an Opiate).
- 4 d. Several torn "pinch baggies" and plastic material commonly used for packaging drugs
- 5 and narcotics.
- 6 e. Hypodermic syringe.
- 7 f. One hyper kit with burnt aluminum can with heroin residue (later tested positive as an
- 8 opiate).
- 9 g. A "tie line."
- 10 h. 2 empty wrappers from a heroin bindle with Opiate residue.

11 17. Respondent was arrested and booked for violations of felony Penal Code section
12 25800 (a) (carry loaded firearm), felony Health and Safety Code section 11351
13 (possession/purchase for sale narcotic controlled substance), 11352 (a) (transport sell/narcotic
14 controlled substance), 11350 (a) (possession of a narcotic controlled substance), and
15 misdemeanor Code section 4140 (possession of hypodermic needle/syringe), and 4060
16 (possession of controlled substance without a prescription).

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Violation of Statues Regulating Controlled Substance)**

19 18. Respondent has subjected his license to disciplinary action under Code section 4301
20 subdivision (j),(o), and (p) on the grounds of unprofessional conduct in that Respondent violated
21 Health and Safety Code section 11351 (possession/purchase for sale narcotics controlled
22 substance), 11352 (a) (transport sell/narcotic controlled substance), and 11350 (a) (possession of
23 a narcotic controlled substance) and Code section 4060 (possession of controlled substance
24 without a prescription), as set forth in paragraphs 8-10 above.

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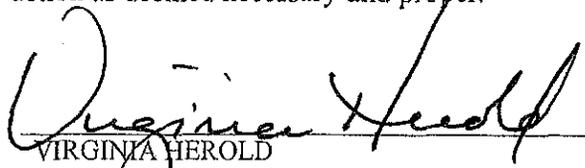
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PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 92083, issued to Vincent V. Ruiz;
2. Ordering Vincent V. Ruiz to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: 3/16/13



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

SA2012107614