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

In the Matter of the Accusation Against:
AMADO MERCHAN
180 Flora Avenue
Walnut Creek, CA 94595
Pharmacy Technician License No. TCH 69567

Respondent.

Case No. 4562
DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about June 9, 2014, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4562 against Amado Merchan (Respondent) before the Board of Pharmacy. (A copy of the Accusation is attached as Exhibit A.)
2. On or about September 11, 2006, the Board of Pharmacy (Board) issued Pharmacy Technician License No. TCH 69567 to Respondent. The Pharmacy Technician License expired on September 30, 2012, and has not been renewed. The License was cancelled based on delinquency on or about January 6, 2013.
3. On or about July 1, 2014, Respondent was served by Certified and First Class Mail with copies of: Accusation No. 4562; a Statement to Respondent; a Notice of Defense (2 copies);

1 a Request for Discovery; and the text of the Discovery Statutes (Government Code sections
2 11507.5, 11507.6, and 11507.7), at Respondent's address of record which was and is: 180 Flora
3 Avenue, Walnut Creek, CA 94595.

4 4. Pursuant to Business and Professions Code section 136 and/or 4100, and/or California
5 Code of Regulations, title 16, section 1704, Respondent's address of record, and any changes
6 thereto, are required to be reported and maintained with the Board.

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

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

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

15 7. Respondent failed to file a Notice of Defense within 15 days after service on him of
16 the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 4562.

17 8. 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 9. 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. 4562, finds that
27 the charges and allegations in Accusation No. 4562, are separately and severally, found to be true
28 and correct by clear and convincing evidence.

10 Taking official notice of its own internal records, pursuant to Business and
11 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
12 and Enforcement are \$4,592.00 as of August 8, 2014.

DETERMINATION OF ISSUES

1
2 1. Based on the foregoing findings of fact, Respondent Amado Merchan has subjected
3 his Pharmacy Technician License No. TCH 69567 to discipline.

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

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

8 a. Respondent's License is subject to revocation pursuant to Business and Professions
9 Code section 4301(f) in that, between in or about March and May 2012, he committed acts
10 involving moral turpitude, dishonesty, fraud, deceit, or corruption, when he diverted/stole, from
11 his employer (a Rite Aid pharmacy in Pleasanton, CA) controlled substances and/or dangerous
12 drugs, including **Hydrocodone with APAP 10/325** (generic **Norco**), **Promethazine with**
13 **Codeine**, and **alprazolam** (generic **Xanax**), for self-use.

14 b. Respondent's License is subject to revocation pursuant to Business and Professions
15 Code section 4301(h) and/or Health and Safety Code section 11170, in that, as described above,
16 Respondent self-administered, and/or conspired to self-administer, and/or assisted or abetted self-
17 administration of, a controlled substance.

18 c. Respondent's License is subject to revocation pursuant to Business and Professions
19 Code section(s) 4301(j) and/or (o) and/or 4059, in that, as described above, Respondent to himself
20 or another, and/or conspired to furnish, and/or assisted or abetted furnishing of, dangerous drugs,
21 without a valid prescription.

22 d. Respondent's License is subject to revocation pursuant to Business and Professions
23 Code section(s) 4301(j), (o), and/or 4060, and/or Health and Safety Code section(s) 11350 and/or
24 11377, in that, as described above, Respondent possessed, conspired to possess, and/or assisted or
25 abetted possession of, a controlled substance without a valid prescription.

26 ///

27 ///

28 ///

1 e. Respondent's License is subject to revocation pursuant to Business and Professions
2 Code section(s) 4301(j) and/r (o), and/or Health and Safety Code section 11173(a), in that, as
3 described above, Respondent obtained, conspired to obtain, and/or assisted or abetted the
4 obtaining of, a controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

5 f. Respondent's License is subject to revocation pursuant to Business and Professions
6 Code section(s) 4301(l) and/or 490, by reference to California Code of Regulations, title 16,
7 section 1770, in that on or about March 24, 2014, in the criminal case *People v. Amado Merchan*,
8 Case No. H55047 in Alameda County Superior Court, based on the conduct described above,
9 Respondent was convicted of violating Penal Code section 487, subdivision (a) (Grand Theft of
10 Personal Property > \$950), a felony.

11 g. Respondent's License is subject to revocation pursuant to Business and Professions
12 Code section 4301, in that Respondent, as stated above, engaged in unprofessional conduct.

13
14 ORDER

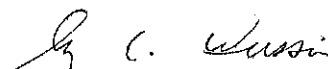
15 IT IS SO ORDERED that Pharmacy Technician License No. TCH 69567, heretofore issued
16 to Respondent Amado Merchan, is revoked.

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

21 This Decision shall become effective on October 13, 2014.

22 It is so ORDERED September 11, 2014.

23 BOARD OF PHARMACY
24 DEPARTMENT OF CONSUMER AFFAIRS
25 STATE OF CALIFORNIA

26 By 
27 STAN C. WEISSER
28 Board President

41044211.DOC
DOJ Matter ID:SF2013404051
Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
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2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JOSHUA A. ROOM
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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. 4562

11 **AMADO MERCHAN**
12 **180 Flora Avenue**
13 **Walnut Creek, CA 94595**

A C C U S A T I O N

14 **Pharmacy Technician License No. TCH 69567**

15 Respondent.

16 Complainant alleges:

17 PARTIES

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

20 2. On or about September 11, 2006, the Board of Pharmacy issued Pharmacy
21 Technician License Number TCH 69567 to Amado Merchan (Respondent). The Pharmacy
22 Technician License expired on or about September 30, 2012, and has not been renewed. The
23 License was cancelled based on delinquency on or about January 6, 2013.

24
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 (Code) unless otherwise indicated.

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

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

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

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

15 10. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous
16 drug or dangerous device except upon the prescription of an authorized prescriber.

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

19 12. Health and Safety Code section 11170 provides that no person shall prescribe,
20 administer, or furnish a controlled substance for himself or herself.

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

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

28 ///

1 15. Health and Safety Code section 11377, in pertinent part, makes it unlawful to possess
2 certain Schedule I-III controlled substances, or any controlled substance in Schedules III-V which
3 is not a narcotic drug, unless upon written prescription of an authorized prescriber.

4 //

5 COST RECOVERY

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

9
10 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

11 17. Section 4021 of the Code states:

12 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
13 11053) of Division 10 of the Health and Safety Code.”

14 18. Section 4022 of the Code states, in pertinent part:

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

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

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

21 19. **Norco, Vicodin, Vicodin ES, Lortab, and Lorcet** are among the brand names for
22 compounds of varying dosages of acetaminophen (aka APAP) and **hydrocodone**, a Schedule III
23 controlled substance as designated by Health and Safety Code section 11056(e)(4) and dangerous
24 drug as designated by Business and Professions Code section 4022. The varying compounds are
25 also known generically as **Hydrocodone with APAP**. These are all narcotic drugs.

26 20. **Xanax** is a brand name for **alprazolam**, a Schedule IV controlled substance as
27 designated by Health and Safety Code section 11057(d)(1) and dangerous drug as designated by
28 Business and Professions Code section 4022. It is used to treat anxiety and panic disorders.

1 c. On or about May 22, 2012, Respondent was interviewed by pharmacy staff or
2 supervisors, and by the Pleasanton Police Department, and admitted to diverting/stealing around
3 500-1,000 tablets of **Hydrocodone with APAP 10/325** (generic **Norco**), approximately six (6)
4 bottles (2,880 mls) of **Promethazine with Codeine**, and approximately 20 tablets of **Xanax**.

5 d. An audit of controlled substance inventories subsequently performed by Rite
6 Aid for the period from May 1, 2011 to June 1, 2012 identified total losses of 2,176 tablets of
7 **Hydrocodone with APAP 10/325** (generic **Norco**), 11,173 mls of **Promethazine with Codeine**,
8 and 222 tablets of varying strengths of **alprazolam** (generic **Xanax**). There were also other
9 shortages of controlled substances in the pharmacy inventory.

10
11 FIRST CAUSE FOR DISCIPLINE

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

13 25. Respondent is subject to discipline under section 4301(f) of the Code, in that
14 Respondent, as described in paragraphs 21 to 23 above, committed acts involving moral turpitude,
15 dishonesty, fraud, deceit, or corruption.

16
17 SECOND CAUSE FOR DISCIPLINE

18 (Self-Administration of Controlled Substance(s))

19 26. Respondent is subject to discipline under section 4301(h) of the Code, and/or Health
20 and Safety Code section 11170, in that Respondent, as described in paragraphs 21 to 23 above,
21 self-administered a controlled substance, and/or conspired and/or assisted or abetted this conduct.

22
23 THIRD CAUSE FOR DISCIPLINE

24 (Furnishing of Controlled Substance(s))

25 27. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
26 4059 of the Code, and/or Health and Safety Code section 11170, in that Respondent, as described
27 in paragraphs 21 to 23 above, furnished to himself a controlled substance without a valid
28 prescription, and/or conspired and/or assisted or abetted this conduct.

1 c. On or about March 24, 2014, Respondent pleaded no contest to Count 1 and
2 was convicted. Count 2 was dismissed pursuant to the plea. Imposition of sentence was
3 suspended and Respondent was placed on formal probation for a period of five (5) years, on terms
4 and conditions including time served of two (2) days, NA/AA attendance, and fines and fees.

5
6 SEVENTH CAUSE FOR DISCIPLINE

7 (Unprofessional Conduct)

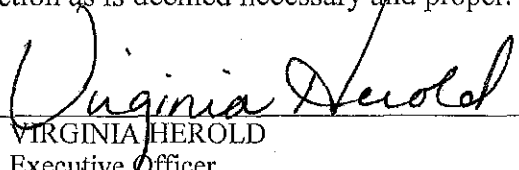
8 31. Respondent is subject to discipline under section 4301 of the Code in that
9 Respondent, as described in paragraphs 21 to 30 above, engaged in unprofessional conduct.

10
11 PRAAYER

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

- 14 1. Revoking or suspending Pharmacy Technician License Number TCH 69567, issued to
15 Amado Merchan (Respondent);
- 16 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
17 enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 18 3. Taking such other and further action as is deemed necessary and proper.

19 DATED: 6/9/14

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

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28 40942419.doc