

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

In the Matter of the Accusation Against:

JUAN LUIS ALARCON

Pharmacy Technician Registration
No. TCH 82087

Respondent.

Case No. 4870

OAH No. 2015070331

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on April 28, 2016.

It is so ORDERED on March 29, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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PROPOSED DECISION

Matthew Goldsby, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on January 20, 2016, at Los Angeles, California.

Antonio Lopez, Jr., Deputy Attorney General, appeared and represented complainant Virginia Herod, Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

Respondent Juan Luis Alarcon appeared and represented himself.

The record was held open for respondent to submit a character reference letter by January 29, 2016, with any objections to be filed by February 3, 2016. On January 27, 2016, respondent filed a character reference letter, which was marked for identification as Exhibit A. Complainant filed no written objections. Exhibit A was admitted as administrative hearsay and the matter was submitted for decision on February 3, 2016.

FACTUAL FINDINGS

1. Complainant brought the Accusation in her official capacity. Respondent timely submitted a Notice of Defense. At the hearing Respondent stipulated on the record that the factual allegations in the Accusation were true. Accordingly the following facts were established.

2. On March 13, 2008, the Board issued Pharmacy Technician Registration number TCH 82087 to respondent. Respondent's license is valid and is due to expire on March 31, 2016.

3. In 2006, respondent began working at CVS Pharmacy as a temporary employee. After acquiring his registration, he worked full-time for CVS as a pharmacy technician.

4. On September 4, 2011, during his employment at CVS Pharmacy, respondent picked up medication at the employer's drive-through window. A fellow employee handed respondent a bag with a prescription bottle filled with promethazine with codeine. Respondent did not have a prescription and did not pay for the medication. Respondent admitted to picking up medications for self-use without a prescription or payment from another employee several times.

5. On September 20, 2011, law enforcement arrested respondent for receiving stolen property in violation of Penal Code section 496. The District Attorney did not prosecute the case and respondent was not convicted of any crime.

6. At the time of the incident, respondent was a "heavy marijuana smoker" and began taking prescription medications in search of "that better high," as he described in his testimony. He used Vicodin, Soma, and promethazine with codeine, each of which is a dangerous drug. (Health & Saf. Code, §§ 11056 and 11058, and Bus. & Prof. Code, § 4022.) Respondent believed he became addicted to these prescription medications.

7. After respondent's arrest, CVS Pharmacy discharged respondent. Also, respondent's family conducted an intervention. Respondent realized that his drug use was "ruining" his life and he changed his attitude about drug use. Respondent credibly testified that he has not consumed marijuana or any controlled substance since 2011. He lives with his parents and they monitor his activities. He no longer associates with the CVS employees who were involved in the scheme to divert medications. He has not misappropriated property since the incident. He has no criminal record.

8. In February 2012, OptumRX hired respondent as a pharmacy technician. The company is a mail service pharmacy. Respondent's job duties do not include handling any controlled substances; he works in an office setting and all medications are processed and shipped from an off-site location. At the time of his employment, respondent submitted to a drug test with no resulting trace of marijuana or other controlled substance. He has performed to the employer's satisfaction and has received no employment discipline. He is subject to random drug testing, although the employer has not directed him to submit to a drug test since his pre-employment screening. He has not misappropriated any of the employer's property.

9. At the hearing, respondent testified: "I know what I did was wrong" and "I have cleaned up my act." Respondent has not undergone treatment because he "wanted to do this on [his] own."

10. Respondent presented a character reference letter from his direct supervisor at work.¹ The letter does not indicate whether the supervisor knows about respondent's past drug use or his diversion of medications. The supervisor describes respondent as "one of our highest performers" and states that respondent "has always been receptive to constructive criticism" and that "he has proven to be a valuable asset to our company." (Ex. A.)

11. On June 10, 2013, the Board sent respondent a request for a written explanation of the incident with 12 specific questions. Respondent promptly replied and responded to all questions. Respondent stated "I realized that I let my friends and family down, but most importantly my mother. This was the biggest mistake I've ever made and it changed my life. It was the hardest part seeing my mother cry because of my mistake. If I could do it over, I wouldn't be involved." (Ex. 4, p. 48.)

12. Complainant incurred reasonable prosecution costs in the amount of \$6,062.50.

LEGAL CONCLUSIONS

1. Complainant has the burden of proving cause for discipline by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.)

2. "The Board shall take action against any licensee who is guilty of unprofessional conduct." (Bus. & Prof. Code, § 4301.)

3. Unprofessional conduct includes the commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor. (Bus. & Prof. Code, § 4301, subd. (f).)

4. Unprofessional conduct includes the violation of any of laws regulating controlled substances and dangerous drugs, including the possession of a controlled substance without a prescription. (Bus. & Prof. Code, §§ 4060 and 4301, subd. (j).)

5. In this case, respondent committed acts involving dishonesty and deceit by diverting controlled substances for his personal use. He violated Business and Professions section 4060, a law governing controlled substances, by possessing promethazine with codeine without a prescription. He was a heavy smoker of marijuana and self-administered other dangerous drugs, including Vicodin and Soma, without a prescription. He abused his position as a pharmacy technician to gain access to controlled substances for his personal use.

¹ During the hearing, respondent requested that his current supervisor testify by telephone. With complainant's consent, the administrative law judge attempted to call his current supervisor at two telephone numbers, but no one answered.

6. Complainant has established by clear and convincing evidence that respondent is guilty of unprofessional conduct. Accordingly, cause exists to discipline respondent's license under Business and Professions sections 4301, subdivisions (f) and (j). (Factual Findings 1-6.)

7. When considering the revocation or suspension of a license, the Board must consider evidence of mitigation and rehabilitation. (Cal. Code Regs., tit. 16, § 1769). To evaluate respondent's rehabilitation, the Board must consider the following criteria:

- (A) The nature and severity of the act under consideration as grounds for discipline.
- (B) The total criminal record.
- (C) The time that has elapsed since commission of the act.
- (D) Whether respondent has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.
- (E) Whether respondent has complied with any terms of parole, probation, restitution, or other sanctions lawfully imposed against respondent.
- (F) Evidence, if any, of rehabilitation submitted by respondent.

8. In this case, respondent failed to undergo formal treatment for his acknowledged addiction and the evidence is unclear whether respondent made full disclosure to his current employer. Nonetheless, respondent has made significant strides in his rehabilitation. More than four years have passed since respondent diverted a controlled substance or used any drug without a prescription. During that period time, there is no evidence that respondent has smoked marijuana or engaged in any other unprofessional conduct. He has worked to the satisfaction of a mail service pharmacy with no evidence of diversion; on the contrary, he has established himself as one of his employer's highest performers and an asset to the company. The incident is the only evidence that respondent has committed any dishonest act during the course of his employment. Respondent has no criminal record and no prior record of license or employment discipline. No court has imposed any terms of parole, probation, restitution, or other sanctions.

9. Outright revocation of respondent's registration would be unduly punitive. The task in disciplinary cases is preventative, protective and remedial, not punitive. (*In re Kelley* (1990) 52 Cal. 3d 487.) Probationary terms and conditions will safeguard the public's interest and monitor respondent's continuing rehabilitation. Because the incident involved the self-administration and diversion of controlled substances, a minimum probationary term of five years and provisions for drug treatment and monitoring are appropriate. Because respondent has worked to the satisfaction of his current employer without any evidence of drug use or diversion for four years, standard terms requiring automatic suspension and recertification are omitted as having no preventative, protective, or remedial purpose.

10. The Board is entitled to recover all reasonable costs incurred to investigate and prosecute this matter. (Bus. & Prof. Code, § 125.3.)

11. In *Zuckerman v. State Bd. of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court enumerated several factors that a licensing agency must consider in assessing costs. The agency must not assess the full costs of investigation and enforcement when to do so would unfairly penalize a respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty. The agency must also consider a respondent's subjective good faith belief in the merits of his or her position and whether the respondent has raised a colorable challenge to the discipline or is unable to pay.

12. In this case, respondent stipulated to the alleged misconduct and used the hearing process to obtain a reduction of discipline. Accordingly, assessing the full costs of prosecution would unfairly penalize respondent and a reduced award of costs is appropriate under the circumstances. Respondent shall pay costs in the sum of \$3,000, payable to the Board in installments of \$100 per month, beginning in the month following the effective of this decision, and continuing each month until paid in full.

ORDER

Pharmacy technician license number TCH 82087 is revoked; however, the revocation is stayed and respondent is placed on probation for five years upon the following terms and conditions.

1. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the Board, in writing, within 72 hours of such occurrence:

(A) An arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws.

(B) A plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information, or indictment.

(C) A conviction of any crime.

(D) Discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's pharmacy technician registration or which is

related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

Failure to timely report any such occurrence shall be considered a violation of probation.

2. Report to the Board

Respondent shall report to the Board quarterly, on a schedule as directed by the Board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the Board.

3. Interview with the Board

Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the Board or its designee, at such intervals and locations as are determined by the Board or its designee. Failure to appear for any scheduled interview without prior notification to Board staff, or failure to appear at two or more scheduled interviews with the Board or its designee during the period of probation, shall be considered a violation of probation.

4. Cooperate with Board Staff

Respondent shall cooperate with the Board's inspection program and with the Board's monitoring and investigation of respondent's compliance with the terms and conditions of his probation. Failure to cooperate shall be considered a violation of probation.

5. Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 4870 and the terms, conditions, and restrictions imposed on respondent by the decision, as follows.

Within 30 days of the effective date of this decision, and within 15 days of respondent undertaking any new employment, respondent shall cause his direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the Board in writing acknowledging that the listed individuals have read the decision in case number 4870 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employers and supervisors submit timely acknowledgements to the Board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every pharmacy of the terms and conditions of the decision in case number 4870 in advance of the respondent commencing work at each pharmacy. A record of this notification must be provided to the Board upon request.

Furthermore, within 30 days of the effective date of this decision, and within 15 days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause his direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that he or she has read the decision in case number 4870 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employers and supervisors submit timely acknowledgments to the Board.

The failure to timely notify any present or prospective employer or the failure to cause any such employers to submit timely acknowledgements to the Board shall be a violation of probation.

"Employment" within the meaning of this provision shall include any full-time, part-time, temporary or relief service or pharmacy management service as a pharmacy technician or in any position for which a pharmacy technician license is a requirement or criterion for employment, whether respondent is considered an employee, independent contractor, or volunteer.

6. Reimbursement of Board Costs

As a condition precedent to successful completion of probation, respondent shall pay to the Board its prosecution costs in the amount of \$3,000, payable to the Board in installments of \$100 per month, beginning in the month following the effective of this decision, and continuing each month until paid in full. Installments shall be due on the fifth day of each month.

There shall be no deviation from this schedule absent prior written approval by the Board or its designee. Failure to pay costs by the deadlines as directed shall be a violation of probation.

The filing of bankruptcy by respondent shall not relieve respondent of his responsibility to reimburse the Board its costs of prosecution.

7. Probation Monitoring Costs

Respondent shall pay any costs associated with probation monitoring as determined by the Board each and every year of probation. Such costs shall be payable to the Board on a

schedule as directed by the Board or its designee. Failure to pay such costs by the deadlines as directed shall be a violation of probation.

8. Status of License

Respondent shall, at all times while on probation, maintain an active, current pharmacy technician license with the Board, including any period during which suspension or probation is tolled. Failure to maintain an active, current license shall be a violation of probation.

If respondent's pharmacy technician license expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof due to tolling or otherwise, upon renewal or reapplication respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

9. License Surrender While on Probation/Suspension

Following the effective date of this decision, should respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender his pharmacy technician license to the Board for surrender. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of respondent's license history with the Board.

Upon acceptance of the surrender, respondent shall relinquish his pharmacy technician license to the Board within 10 days of notification by the Board that the surrender is accepted. Respondent may not reapply for any license, permit, or registration from the Board for three years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

10. Notification of a Change in Name, Residence Address, Mailing Address or Employment

Respondent shall notify the Board in writing within 10 days of any change of employment. Said notification shall include the reasons for leaving, the address of the new employer, the name of the supervisor and owner, and the work schedule, if known. Respondent shall further notify the Board, in writing within 10 days, of a change in name, residence address, mailing address, or phone number.

Failure to timely notify the Board of any change in employer, name, address, or phone number shall be a violation of probation.

11. Tolling of Probation

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of 60 hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation.

Should respondent, regardless of residency, for any reason (including vacation) cease working as a pharmacy technician for a minimum of 60 hours per calendar month in California, respondent must notify the Board in writing within 10 days of cessation of work and must further notify the Board in writing within 10 days of the resumption of the work. Any failure to provide such notification shall be a violation of probation.

It is a violation of probation for respondent's probation to remain tolled pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding 36 months.

"Cessation of work" means calendar month during which respondent is not working for at least 60 hours as a pharmacy technician, as defined in Business and Professions Code section 4115. "Resumption of work" means any calendar month during which respondent is working as a pharmacy technician for at least 60 hours as a pharmacy technician as defined by Business and Professions Code section 4115.

12. Violation of Probation

If respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over respondent, and probation shall automatically be extended, until all terms and conditions have been satisfied or the Board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

If respondent violates probation in any respect, the Board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If the Board or its designee files a petition to revoke probation or an accusation against respondent during probation, the Board shall have continuing jurisdiction, and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

13. Attend Substance Abuse Recovery Relapse Prevention and Support Groups

Within 30 days of the effective date of this decision, respondent shall begin regular attendance at a recognized and established substance abuse recovery support group in California, (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been approved by the Board or its designee. Respondent must attend at least one group meeting per week unless otherwise directed by the Board or its designee. Respondent shall continue regular attendance and submit signed and dated documentation confirming attendance with each quarterly report for the duration of probation. Failure to attend or submit documentation of attendance shall be a violation of probation.

14. Random Drug Screening

Respondent, at his own expense, shall participate in random testing, including, but not limited to, biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug screening program as directed by the Board or its designee. Respondent may be required to participate in testing for the entire probation period and the Board or its designee shall determine the frequency of testing. At all times, respondent shall fully cooperate with the Board or its designee, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the Board or its designee may direct. Failure to timely submit to testing as directed shall be a violation of probation.

Upon request of the Board or its designee, respondent shall provide documentation from a licensed practitioner that the prescription for a detected drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be a violation of probation. Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall be a violation of probation and shall result in the automatic suspension of work by respondent. In such case, respondent may not resume work as a pharmacy technician until notified by the Board in writing.

During suspension, respondent shall not enter any pharmacy area or any portion of or any other Board licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer, or assist any licensee of the Board. Respondent shall not have access to or control the ordering, manufacturing, or dispensing of dangerous drugs and devices or controlled substances. Respondent shall not resume work until notified by the Board. Respondent shall not direct, control, or perform any aspect of the practice of pharmacy. Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises in which he holds an interest at the time this decision becomes effective unless otherwise specified in this order. Failure to comply with this suspension shall be a violation of probation.

15. Work Site Monitor

Within 10 days of the effective date of this decision, respondent shall identify a work site monitor, for prior approval by the Board, who shall be responsible for supervising respondent during working hours. Respondent shall be responsible for ensuring that the work site monitor reports in writing to the Board quarterly. Should the designated work site monitor determine at any time during the probationary period that respondent has not maintained sobriety, he shall notify the Board immediately, either orally or in writing as directed. Should respondent change employment, respondent must designate a new work site monitor, for prior approval by the Board, within 10 days of commencing new employment. Failure to identify an acceptable initial or replacement work site monitor, or to ensure quarterly reports are submitted to the Board, shall be a violation of probation.

16. Abstain from Drugs and Alcohol Use

Respondent shall completely abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their associated paraphernalia, except when a licensed practitioner prescribes the drugs as part of a documented medical treatment. Upon request of the Board or its designee, respondent shall provide documentation from the licensed practitioner that he or she legitimately issued the prescription as a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be a violation of probation. Respondent shall ensure that he is not in the same physical location as individuals who are using illicit substances even if respondent is not personally ingesting the drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia not supported by the documentation timely provided, and/or any physical proximity to persons using illicit substances, shall be a violation of probation.

17. Tolling of Suspension

During the period of suspension, respondent shall not leave California for any period exceeding 10 days, regardless of purpose (including vacation). Any such absence in excess of 10 days during suspension shall be considered a violation of probation. Moreover, any absence from California during the period of suspension exceeding 10 days shall toll the suspension, i.e., the suspension shall be extended by one day for each day over 10 days respondent is absent from California. During any such period of tolling of suspension, respondent must nonetheless comply with all terms and conditions of probation.

Respondent must notify the Board in writing within 10 days of departure, and must further notify the Board in writing within 10 days of return. The failure to provide such notification shall be a violation of probation. Upon such departure and return, respondent shall not return to work until notified by the Board that the period of suspension has been satisfactorily completed.

18. Completion of Probation

Upon written notice by the Board indicating successful completion of probation, respondent's pharmacy technician license will be fully restored.

DATED: February 16, 2016

DocuSigned by:

Matthew Goldsby

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MATTHEW GOLDSBY
Administrative Law Judge
Office of Administrative Hearings

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

11 In the Matter of the Accusation Against:
12 **JUAN LUIS ALARCON**
11233 Sue Ave.
13 Lynwood, CA 90262
14 Pharmacy Technician Registration
No. TCH 82087
15
16 Respondent.

Case No. 4870

A C C U S A T I O N

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about March 13, 2008, the Board of Pharmacy (Board) issued Pharmacy
23 Technician Registration No. TCH 82087 to Juan Luis Alarcon (Respondent). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought
25 herein and will expire on March 31, 2016, unless renewed.

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1 **JURISDICTION**

2 3. This Accusation is brought before the Board under the authority of the following
3 laws. All section references are to the Business and Professions Code unless otherwise indicated.

4 **STATUTORY PROVISIONS**

5 4. Section 4060 states:

6 "No person shall possess any controlled substance, except that furnished to a person upon
7 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
8 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
9 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
10 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
11 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
12 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
13 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
14 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
15 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
16 labeled with the name and address of the supplier or producer.

17 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a
18 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs
19 and devices."

20 5. Section 4300 provides in pertinent part, that every license issued by the Boards is
21 subject to discipline, including suspension or revocation.

22 6. Section 4300.1 states:

23 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by
24 operation of law or by order or decision of the board or a court of law, the placement of a license
25 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
26 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
27 proceeding against, the licensee or to render a decision suspending or revoking the license."

28 ///

1 7. Section 4301 states, in pertinent part:

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

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

5

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

9

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

12

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

17 **COST RECOVERY**

18 8. Section 125.3 provides, in pertinent part, that the Board may request the
19 administrative law judge to direct a licentiate found to have committed a violation or violations of
20 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
21 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
22 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
23 included in a stipulated settlement.

24 9. **CONTROLLED SUBSTANCES/DANGEROUS DRUGS**

25 a. "Phenergan with Codeine", a brand name for Promethazine with Codeine, is a
26 Schedule V controlled substance as designated by Health and Safety Code section 11058,
27 subdivision (c)(1) and is categorized as a dangerous drug pursuant to section 4022.

28 b. "Soma", is designated as a dangerous drug pursuant to section 4022

1 c. "Vicodin", is a Schedule III controlled substance as defined in Health and Safety
2 Code section 11056, subdivision (e)(7) and is categorized as a dangerous drug according to
3 section 4022.

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Illegally Obtained or Possessed Controlled Substances)**

6 10. Respondent is subject to disciplinary action under section 4301, subdivision (j) and
7 (o), for violating section 4060, as follows,

8 a. On or about September 4, 2011, Respondent while employed by CVS was observed
9 by the pharmacist picking up medication through the drive thru window. An investigation was
10 conducted and the video surveillance showed another employee filling a prescription bottle with
11 Promethazine with Codeine, placing it in a bag without label or receipt and passing it to
12 Respondent without prescription or payment. Respondent admitted to picking up the medications
13 for self-use thru the drive thru window without a prescription or payment from another employee
14 several times. These included Promethazine-Codeine, Soma, and Vicodin. Respondent was
15 subsequently arrested on September 20, 2011 for violating Penal Code section 496 [receiving
16 stolen property].

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Acts Involving Dishonesty, Fraud, or Deceit)**

19 11. Respondent is subject to disciplinary action under section 4301, subdivision (f), in
20 that Respondent committed acts involving dishonesty, fraud, or deceit with the intent to
21 substantially benefit himself, or substantially injure another. Complainant refers to, and by this
22 reference incorporates, the allegations set forth above in paragraph 10, subparagraph (a), as
23 though set forth fully.

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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 issue a decision:

1. Revoking or suspending Pharmacy Technician Registration No. TCH 82087, issued to Juan Luis Alarcon;
2. Ordering Juan Luis Alarcon to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 8/12/14 Virginia Herold
VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

LA2013510088