

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

In the Matter of the Accusation Against:

Case No. 4903

EMMANUEL BRITO
2760 W. Segerstrom Ave., #E
Santa Ana, CA 92704

Pharmacy Technician Registration No.
TCH 75112

Respondent.

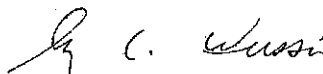
DECISION AND ORDER

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

This decision shall become effective on October 13, 2014.

It is so ORDERED on October 8, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STAN C. WEISSER
Board President

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
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10 **BEFORE THE**
BOARD OF PHARMACY
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12
13 In the Matter of the Accusation Against:

Case No. 4903

14 **EMMANUEL BRITO**
2760 W. Segerstrom Ave. #E
15 Santa Ana, CA 92704

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

16 **Pharmacy Technician Registration**
17 **No. TCH 75112**

18 Respondent.

19
20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
21 entitled proceedings that the following matters are true:

22 PARTIES

23 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
24 She brought this action solely in her official capacity and is represented in this matter by Kamala
25 D. Harris, Attorney General of the State of California, by Loretta A. West, Deputy Attorney
26 General.

27 2. Emmanuel Brito is representing himself in this proceeding and has chosen not to
28 exercise his right to be represented by counsel.

ORDER

1
2 IT IS HEREBY ORDERED that Pharmacy Technician Registration No. TCH 75112, issued
3 to Respondent Emmanuel Brito, is surrendered and accepted by the Board of Pharmacy.

4 1. The surrender of Respondent’s Pharmacy Technician Registration and the acceptance
5 of the surrendered license by the Board shall constitute the imposition of discipline against
6 Respondent. This stipulation constitutes a record of the discipline and shall become a part of
7 Respondent’s license history with the Board of Pharmacy.

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

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

12 4. If Respondent ever files an application for licensure or a petition for reinstatement in
13 the State of California, the Board shall treat it as a petition for reinstatement. Respondent must
14 comply with all the laws, regulations and procedures for reinstatement of a revoked license in
15 effect at the time the petition is filed, and all of the charges and allegations contained in
16 Accusation No. 4903 shall be deemed to be true, correct and admitted by Respondent when the
17 Board determines whether to grant or deny the petition.

18 5. Respondent shall pay the agency its costs of investigation and enforcement in the
19 amount of \$3,247.00 prior to issuance of a new or reinstated license.

20 6. If Respondent should ever apply or reapply for a new license or certification, or
21 petition for reinstatement of a license, by any other health care licensing agency in the State of
22 California, all of the charges and allegations contained in Accusation, No. 4903 shall be deemed
23 to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any
24 other proceeding seeking to deny or restrict licensure.


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26 **ACCEPTANCE**

27 I have carefully read the Stipulated Surrender of License and Order. I understand the
28 stipulation and the effect it will have on my Pharmacy Technician Registration. I enter into this

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Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 7/23/14



EMMANUEL BRITO
Respondent

ENDORSEMENT

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

Dated: July 24, 2014

Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General


LORETTA A. WEST
Deputy Attorney General
Attorneys for Complainant

SD2013705729

Exhibit A

Accusation No. 4903

1 KAMALA D. HARRIS
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2 LINDA K. SCHNEIDER
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3 LORETTA A. WEST
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9
10 **BEFORE THE**
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**
12

13 In the Matter of the Accusation Against:

Case No. 4903

14 **EMMANUEL BRITO**
15 **16450 Beach Blvd.**
16 **Westminster, CA 92683**

A C C U S A T I O N

17 **Pharmacy Technician Registration**
No. TCH 75112

18 ~~Respondent.~~

19
20 Complainant alleges:

21 **PARTIES**

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

24 2. On or about April 2, 2007, the Board of Pharmacy issued Pharmacy Technician
25 Registration Number TCH 75112 to Emmanuel Brito (Respondent). The Pharmacy Technician
26 Registration was in full force and effect at all times relevant to the charges brought herein and
27 will expire on July 31, 2014, unless renewed.

28 ///

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 (Code) unless otherwise indicated.

5 4. Code section 4300, subdivision (a), states "Every license issued may be suspended or
6 revoked."

7 5. Code section 4300.1 states:

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

12 **STATUTORY PROVISIONS**

13 6. Code section 482 states:

14 Each board under the provisions of this code shall develop criteria to evaluate
the rehabilitation of a person when:

15 ...

16 (b) Considering suspension or revocation of a license under Section 490.

17 Each board shall take into account all competent evidence of rehabilitation
18 furnished by the applicant or licensee.

19 7. Code section 490 provides, in pertinent part, that a board may suspend or revoke a
20 license on the ground that the licensee has been convicted of a crime substantially related to the
21 qualifications, functions, or duties of the business or profession for which the license was issued.

22 8. Code section 492 states:

23 Notwithstanding any other provision of law, successful completion of a
24 diversion program under the Penal Code, or successful completion of an alcohol and
25 drug problem assessment program under Article 5 (commencing with Section
26 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any
agency established under Division 2 (commencing with Section 500) of this code, or
any initiative act referred to in that division, from taking disciplinary action against
a licensee or from denying a license for professional misconduct, notwithstanding
that evidence of that misconduct may be recorded in a record pertaining to an arrest.

27 This section shall not be construed to apply to any drug diversion program
28 operated by any agency established under Division 2 (commencing with Section
500) of this code, or any initiative act referred to in that division.

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9. Code section 493 states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

10. Code section 4059 provides, in pertinent part, that a person may not furnish any dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

11. Code section 4060 states:

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

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

12. Code section 4301 states:

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 misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

- (a) Gross immorality.

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...
(f) 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 or not.
...

(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.
....

(l) The conviction of a crime substantially related to the qualifications, 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 States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive 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 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 substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.
...

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

REGULATORY PROVISIONS

13. California Code of Regulations, title 16, section 1769, states:
....

(b) When considering the suspension or revocation of a facility or a personal license on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

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- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) Evidence, if any, of rehabilitation submitted by the licensee.

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

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

COST RECOVERY

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

DRUGS

16. Ambien, a brand name for zolpidem tartrate, is a schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(32), and is a dangerous drug pursuant to Business & Professions Code section 4022.

17. Celexa, a brand name for citalopram hydrobromide is a dangerous drug within the meaning of Business and Professions Code section 4022.

18. Norco, a brand name for hydrocodone bitartate/acetaminophen, also known by the brand name Vicodin, is a narcotic Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4), and is a dangerous drug pursuant to Business and Professions Code section 4022.

1 19. Phentermine, a generic for phentermine hydrochloride, is sold under the brand name
2 Fastin, is a schedule IV controlled substance as designated by Health and Safety Code section
3 11057(f)(4), and is a dangerous drug pursuant to Business and Professions Code section 4022.

4 20. Soma, a brand name for carisoprodol, is a Schedule III controlled substance as
5 designated by Health and Safety Code Section 11056(e), and is a dangerous drug pursuant to
6 Business and Professions Code section 4022.

7 21. Tussionex is a brand name for hydrocodone and chlorpheniramine, a cough syrup, is a
8 Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (e), and
9 is a dangerous drug pursuant to Business and Professions Code section 4022.

10 22. Vicoprofen, a generic name for hydrocodone and ibuprofen, is a narcotic Schedule III
11 controlled substance as designated by Health and Safety Code section 11056(e)(4), and is a
12 dangerous drug pursuant to Business and Professions Code section 4022.

13
14 **FIRST CAUSE FOR DISCIPLINE**

15 **(December 14, 2012 Conviction for Burglary on July 31, 2013)**

16 23. Respondent is subject to disciplinary action for unprofessional conduct under Code
17 sections 490 and 4301, subdivision (l), in that he was convicted of crimes that are substantially
18 related to the qualifications, duties, and functions of a Pharmacy Technician. The circumstances
19 are as follows.

20 24. On or about December 14, 2012, in a criminal proceeding entitled *People of the State*
21 *of California v. Emmanuel Brito*, Orange County Superior Court, West Justice Center, case
22 number 12WF22260, Respondent was convicted on his plea of guilty to violating Penal Code
23 (PC) section 459-460 (b) (second degree commercial burglary), reduced from a felony to a
24 misdemeanor, and Respondent pled guilty to violating Health and Safety (H&S) Code section
25 11350 (unlawful possession of a controlled substance, to wit, hydrocodone and acetaminophen), a
26 felony; and H&S Code section 11377 (a) (unlawful possession of a controlled substance, to wit,
27 carisoprodol and citalopram), a felony.
28

1 25. As a result of Respondent's guilty plea on charges for unlawful possession of
2 controlled substances, the Court deferred entry of judgment pursuant to PC section 1000
3 (PC 1000 program) and ordered Respondent to appear on January 14, 2013, and provide the Court
4 with proof of his enrollment in an 18 month Diversion Program. On or about January 14, 2013,
5 Respondent was terminated from the PC 1000 program due to his failure to appear and provide
6 the Court with proof of his enrollment. A bench warrant was issued for Respondent's arrest.
7 Respondent has not yet been arrested on the current warrant.

8 26. As a result of Respondent's conviction for burglary, he was sentenced to 3 years
9 informal probation on standard terms for crimes involving unlawful possession of drugs,
10 including to submit his person, property, residence and vehicle to searches by law enforcement
11 with or without cause, and to pay fines, fees, and restitution. On January 14, 2013, Respondent's
12 probation was revoked due to his failure to appear and provide the Court with proof of his
13 enrollment in the PC 1000 Diversion Program.

14 27. The circumstances surrounding the conviction are that between approximately
15 July 31, 2011 through July 31, 2012, while working as a Pharmacy Technician at Vons Pavilion
16 Pharmacy in Westminster, California, Respondent stole controlled substances from his employer
17 and self-administered them without a valid prescription. Respondent's unprofessional conduct
18 was discovered after the Pharmacist-in-Charge (PIC) noticed that the pharmacy was experiencing
19 shortages of inventory. Two covert cameras were installed in the pharmacy. The surveillance
20 cameras recorded Respondent as he took a stock bottle of cough syrup from the pharmacy shelf,
21 drank directly from the bottle, and then replaced the bottle. On July 31, 2012, the cameras
22 recorded Respondent as he took a stock bottle of Norco 10 from the pharmacy shelf, poured pills
23 into his hand, placed the pills into his rear pants' pocket, and replaced the Norco 10 bottle. After
24 observing Respondent take pills from the pharmacy and place them into his pants' pocket, Vons'
25 loss prevention (LP) investigators promptly went to the pharmacy and escorted Respondent to the
26 LP manager's office. Upon request, Respondent removed twelve Norco 10 tablets, one Celexa
27 tablet and two Soma tablets from his rear pants' pocket and gave them to a LP investigator. On
28 July 31, 2012, Respondent admitted that he began diverting drugs from the pharmacy

1 approximately one year prior. Respondent admitted that he had diverted the following drugs from
2 the pharmacy for self-use on a regular basis: Ambien, Celexa, Norco 10, Phentermine, Soma,
3 Tussionex, and Vicoprofen. Respondent also admitted that he self-administered the drugs while
4 he worked as a Pharmacy Technician and he did not have a valid prescription for any of the drugs
5 that he diverted. Respondent estimated that he consumed eight hydrocodone/APAP tablets and
6 one Soma tablet daily. The police were contacted and Respondent was arrested. During the
7 booking process, police officers found two more Norco 10 tablets and one more Soma tablet on
8 Respondent's person. A pharmacy drug audit for the time period of May 2, 2011, through
9 July 31, 2012, revealed that the following drugs were unaccounted for at the Vons Pavilion
10 Pharmacy where Respondent worked full-time as a Pharmacy Technician: 595 tablets of
11 carisoprodol 350 mg; 5,446 tablets of hydrocodone/APAP 7.5/325; 1,703 ml of hydrocodone
12 cough syrup; 738 tablets of phentermine 37.5 mg; 56 tablets of phentermine 30 mg; 316 tablets of
13 Vicoprofen and 9,110 tablets of zolpidem 10 mg.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Gross Immorality)**

16 28. Respondent is subject to disciplinary action for unprofessional conduct under Code
17 section 4301(a) in that he committed gross immorality by stealing controlled substances and
18 dangerous drugs from his employer, self administering the drugs without a valid prescription and
19 working as a Pharmacy Technician while under the influence of the stolen drugs, as set forth
20 above in paragraphs 23 through 27, which are incorporated by reference.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Moral Turpitude, Fraud, Deceit, Misrepresentation and Subterfuge)**

23 29. Respondent is subject to disciplinary action for unprofessional conduct under Code
24 section 4301(f) in that he displayed moral turpitude, and committed fraud, deceit, subterfuge and
25 misrepresentation, by stealing controlled substances and dangerous drugs from his employer, self
26 administering the drugs without a valid prescription, and working as a Pharmacy Technician
27 while under the influence of the stolen drugs, as set forth above in paragraphs 23 through 27,
28 which are incorporated by reference.

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FOURTH CAUSE FOR DISCIPLINE

(Unlawful Self Administration of Controlled Substances and Dangerous Drugs)

19. Respondent is subject to disciplinary action for unprofessional conduct under Code section 4301(h) in that he self-administered controlled substances and dangerous drugs without a valid prescription in a manner injurious to himself or others. Further, Respondent worked as a Pharmacy Technician while under the influence of unlawfully obtained and unlawfully self-administered controlled substances and dangerous drugs, as set forth above in paragraphs 23 through 27, which are incorporated by reference.

FIFTH CAUSE FOR DISCIPLINE

(Violated Statutes Governing Controlled Substances and Dangerous Drugs)

19. Respondent is subject to disciplinary action for unprofessional conduct under Code section 4301(o) in that he violated the Pharmacy Act by possessing and self-administering controlled substances and dangerous drugs without a prescription in violation of Code sections 4059 and 4060, as set forth above in paragraphs 23 through 27, which are incorporated by reference.

PRAYER

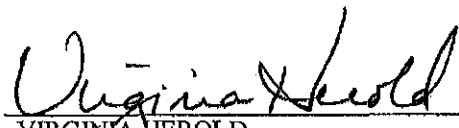
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Pharmacy Technician Registration Number TCH 75112, issued to Emmanuel Brito
 2. Ordering Emmanuel Brito 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;
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3. Taking such other and further action as deemed necessary and proper.

DATED: 5/8/14


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