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2 **BEFORE THE**  
3 **BOARD OF PHARMACY**  
4 **DEPARTMENT OF CONSUMER AFFAIRS**  
5 **STATE OF CALIFORNIA**

6 In the Matter of the Accusation Against:

Case No. 4918

OAH No. 2014020798

7 **HARVEY AYALA ALVAREZ**  
8 **AKA HARVEY AYALA ALVAREZ, JR.**

**DEFAULT DECISION AND ORDER**

9 **Pharmacy Technician Registration No. TCH**  
10 **103851**

[Gov. Code, §11520]

11 Respondent.  
12

13 **FINDINGS OF FACT**

14 1. On or about November 4, 2013, Complainant Virginia K. Herold, in her official  
15 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs,  
16 filed Accusation No. 4918 against Harvey Ayala Alvarez (Respondent) before the Board of  
17 Pharmacy. (Accusation and First Amended Accusation attached as Exhibit A.)

18 2. On or about June 29, 2010, the Board of Pharmacy (Board) issued Pharmacy  
19 Technician Registration No. TCH 103851 to Respondent. The Pharmacy Technician Registration  
20 was in full force and effect at all times relevant to the charges brought in Accusation No. 4918  
21 and expired on February 28, 2014. The Pharmacy Technician Registration was cancelled on June  
22 1, 2014, pursuant to Business and Professions Code section 4402, subdivision (e). This lapse in  
23 licensure, however, pursuant to Business and Professions Code section 4300.1 does not deprive  
24 the Board of its authority to institute or continue this disciplinary proceeding.

25 3. On or about December 3, 2013, Respondent was served by Certified and First Class  
26 Mail copies of the Accusation No. 4918, Statement to Respondent, Notice of Defense, Request  
27 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and  
28 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code

1 section 4100, is required to be reported and maintained with the Board. Respondent's address of  
2 record was and is: 5433 48<sup>th</sup> Avenue, Sacramento, CA 95823.

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

5 5. On or about February 20, 2014, Respondent signed and returned a Notice of Defense,  
6 requesting a hearing in this matter. A Notice of Hearing was served by mail at Respondent's  
7 address of record and it informed him that an administrative hearing in this matter was scheduled  
8 for September 8, 2014. Respondent failed to appear at that hearing. Respondent was in contact  
9 with the Board's counsel, and was fully aware of the hearing date.

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

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

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

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

21 8. Pursuant to its authority under Government Code section 11520, the Board finds  
22 Respondent is in default. The Board will take action without further hearing and, based on the  
23 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as  
24 taking official notice of all the investigatory reports, exhibits and statements contained therein on  
25 file at the Board's offices regarding the allegations contained in Accusation No. 4918, finds that  
26 the charges and allegations in Accusation No. 4918, are separately and severally, found to be true  
27 and correct by clear and convincing evidence.

28 9. Taking official notice of its own internal records, pursuant to Business and  
Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation  
and Enforcement is \$8,776.50 as of September 8, 2014.

///

**DETERMINATION OF ISSUES**

1  
2       1.    Based on the foregoing findings of fact, Respondent Harvey Ayala Alvarez has  
3 subjected his Pharmacy Technician Registration No. TCH 103851 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 Registration based upon the following violations alleged in the Accusation which are supported  
7 by the evidence contained in the Default Decision Evidence Packet in this case.:

8       a.    Code section 4301, subdivision (f), for engaging in acts involving moral turpitude,  
9 dishonesty, fraud, deceit, or corruption, by embezzling the controlled substance and dangerous  
10 drug Promethazine with Codeine from his employer, Kaiser Pharmacy.

11       b.    Code section 4060 and Health and Safety Code section 11350, unlawful possession of  
12 a controlled substance, Promethazine with Codeine.

13       c.    Code section 4059 and Health and Safety Code section 11170, unlawfully furnishing  
14 a dangerous drug to himself.

15       d.    Code section 4301, subdivision (j), violation of statutes governing controlled  
16 substances and dangerous drugs, as set forth above and below in paragraph (e).

17       e.    Code section 4301, subdivision (l), conviction of crimes substantially related to the  
18 qualifications, functions, or duties of a pharmacy technician, Respondent was convicted of  
19 embezzlement and of possession of a loaded weapon unsecured under the driver's seat of a  
20 vehicle.

21       f.    Code section 4301, subdivision (o), violation of the laws governing pharmacy as set  
22 forth above.

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**ORDER**

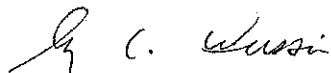
IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 103851, heretofore issued to Respondent Harvey Ayala Alvarez, is revoked.

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

This Decision shall become effective on November 14, 2014.

It is so ORDERED October 15, 2014.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By   
\_\_\_\_\_  
STAN C. WEISSER  
Board President

11503685.DOC  
DOJ Matter ID:SA2013112577

Attachment:  
Exhibit A: Accusation

# Exhibit A

Accusation

1 KAMALA D. HARRIS  
Attorney General of California  
2 KENT D. HARRIS  
Supervising Deputy Attorney General  
3 STEPHANIE ALAMO-LATIF  
Deputy Attorney General  
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Facsimile: (916) 327-8643  
7 E-mail: Stephanie.AlamoLatif@doj.ca.gov  
*Attorneys for Complainant*

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

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12 In the Matter of the Accusation Against:

Case No. 4918

13 **HARVEY AYALA ALVAREZ**  
14 **AKA HARVEY AYALA ALVAREZ, JR**  
5433 48th Ave  
Sacramento, CA 95823

**FIRST AMENDED**  
**ACCUSATION**

15 **Pharmacy Technician Registration No. TCH**  
16 **103851**

17 Respondent.

18  
19 Virginia Herold ("Complainant") alleges:

20 **PARTIES**

21 1. Complainant brings this Accusation solely in her official capacity as the Executive  
22 Officer of the Board of Pharmacy, Department of Consumer Affairs.

23 2. On or about June 29, 2010, the Board of Pharmacy issued Pharmacy Technician  
24 Registration Number TCH 103851 to Harvey Ayala Alvarez, also known as (AKA) Harvey Ayala  
25 Alvarez, Jr. ("Respondent"). The Pharmacy Technician Registration was in full force and effect  
26 at all times relevant to the charges brought herein and expired on February 28, 2014. The  
27 Pharmacy Technician Registration was cancelled on June 1, 2014, pursuant to Code section 4402,  
28 subdivision (e).

## JURISDICTION

1  
2 3. This Accusation is brought before the Board of Pharmacy ("Board"), Department of  
3 Consumer Affairs, under the authority of the following laws. All section references are to the  
4 Business and Professions Code unless otherwise indicated.

5 4. Code section 4011 provides, in pertinent part, that the Board shall administer and  
6 enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled  
7 Substances Act [Health & Safety Code, § 11000 et seq.].

8 5. Code section 4300 provides, in pertinent part, that every license issued may be  
9 suspended or revoked.

10 6. Code Section 4300.1 states:

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

## STATUTORY PROVISIONS

### **Business and Professions Code**

17  
18 7. Code Section 4021 states:

19 "'Controlled Substance' means any substance listed in Chapter 2 (commencing with section  
20 11053) of Division 10 of the Health and Safety Code."

21 8. Code Section 4022 states, in pertinent part:

22 "Dangerous drug" means any drug unsafe for self-use in humans or animals, and includes  
23 the following:

24 "(a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing without  
25 a prescription,' 'Rx only.' Or words of similar import."

26 ...

27 (c) Any drug that by federal or state law can be lawfully dispensed only on prescription  
28 or furnished pursuant to section 4006.

1 9. Code Section 4059 provides, in pertinent part:

2 "No person shall furnish any dangerous drug, except upon the prescription of a physician,  
3 dentist, podiatrist, optometrist, or veterinarian..."

4 10. Code Section 4060 provides, in pertinent part:

5 No person shall possess any controlled substance, except that furnished to a person upon  
6 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor  
7 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-  
8 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a  
9 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,  
10 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of  
11 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052

12 11. Code section 4301 states, in pertinent part:

13 The board shall take action against any holder of a license who is guilty of unprofessional  
14 conduct. Unprofessional conduct shall include, but is not limited to, any of the following:

15 "...  
16 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or  
17 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and  
18 whether the act is a felony or misdemeanor or not."

19 "...  
20 "(j) The violation of any of the statutes of this state, or any other state, or of the United  
21 States regulating controlled substances and dangerous drugs."

22 "...  
23 "(l) The conviction of a crime substantially related to the qualifications, functions, and duties  
24 of a licensee under this chapter.

25 "...  
26 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
27 violation of or conspiring to violate any provision or term of this chapter or of the applicable  
28 federal and state laws and regulations governing pharmacy, including regulations established by  
the board or by any other state or federal regulatory agency."

29 ...

30 **Health and Safety Code**

31 12. Health and Safety Code section 11170 states:

32 "No person shall prescribe, administer, or furnish a controlled substance for himself."

33 13. Health and Safety Code section 11173 states, in pertinent part:



1 “(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt  
2 to procure the administration of controlled substances, (1) by fraud, deceit, misrepresentation, or  
3 subterfuge; or (2) by the concealment of a material fact.”

4 ...

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

9 **COST RECOVERY**

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

14 **DRUGS**

15 16. “Promethazine with Codeine” is a generic name for Phenergan with Codeine, and is a  
16 controlled substance under Health and Safety Code section 11058, subdivision (c)(1) and a  
17 dangerous drug within the meaning of Business and Professions Code section 4022 in that it  
18 requires a prescription under federal law.

19 **FIRST CAUSE FOR DISCIPLINE**

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

21 17. Respondent is subject to discipline under Code section 4301, subdivision (f), for  
22 unprofessional conduct, in that between approximately May 31, 2012 and June 22, 2012,  
23 Respondent committed numerous acts involving moral turpitude, dishonesty, fraud, deceit or  
24 corruption. The circumstances are as follows:

25 a. On or about March 26, 2012, the Kaiser Permanente (“Kaiser”) Call Center  
26 received an anonymous telephone call reporting theft of a cough syrup with codeine by  
27 Respondent. Kaiser conducted an investigation and found that an audit of promethazine with  
28 codeine conducted at the Elk Grove Kaiser location from April 14, 2011 to June 22, 2012 resulted

1 in a negative variance of 33.6%. Covert cameras were installed in the pharmacy and a daily count  
2 of the drug was initiated by pharmacist-in-charge Dong. Upon review of the daily count of the  
3 drug and the video footage from the pharmacy, it was confirmed that Respondent was responsible  
4 for four incidents of loss of promethazine with codeine on May 31, 2012, June 8, 2012, June 18,  
5 2012, and June 22, 2012. Respondent stole the drug by reaching into the promethazine with  
6 codeine stock bin, removing bottles, and walking off with the bottles of promethazine with  
7 codeine. No prescriptions for promethazine with codeine cough syrup were sold or filled by the  
8 pharmacy during the dates in question. On July 2, 2012, the investigator interviewed Respondent  
9 in the presence of local pharmacy management, Kaiser Human Resource personnel and a union  
10 representative. The union representative privately advised the Kaiser Human Resources  
11 representative that Respondent had admitted to diverting the promethazine with codeine cough  
12 syrup on four or five occasions, and was willing to resign in lieu of termination for theft.  
13 Although Respondent would not personally admit the diversion to the Kaiser representatives out  
14 of fear of criminal prosecution, he confirmed his written resignation in lieu of termination.

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Unlawful Possession of Controlled Substance)**

17 18. Respondent is subject to discipline under Code section 4060 and Health and Safety  
18 Code section 11350, in that Respondent had possession of a controlled substance, to wit:  
19 Promethazine with Codeine, without authorization or a valid prescription therefore, as more fully  
20 set forth above in paragraph 17 and its subpart.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Furnishing of Dangerous Drug)**

23 19. Respondent is subject to discipline under Code section 4059 and Health and Safety  
24 Code section 11170, in that on multiple instances Respondent furnished to himself a dangerous  
25 drug, to wit: promethazine with codeine, without a valid prescription, as more fully set forth  
26 above in paragraph 17 and its subpart.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Violation of Statutes Regulating Controlled Substances and Dangerous Drugs)**

3 20. Respondent is subject to discipline under Code section 4301, subdivision (j), on the  
4 grounds of unprofessional conduct, in that between approximately May 31, 2012 and June 22,  
5 2012, Respondent violated statutes regulating controlled substances and dangerous drugs,  
6 including Business and Professions Code section 4060 and Health and Safety Code section  
7 11350, as set forth above in paragraph 18, Business and Professions Code section 4059 and  
8 Health and Safety Code section 11170, as set forth above in paragraph 19, and Health and Safety  
9 Code section 11173, as set forth above in paragraph 20.

10 **FIFTH CAUSE FOR DISCIPLINE**

11 **(Conviction of Crimes)**

12 21. Respondent is subject to discipline under Code section 4301, subdivision (I), in that  
13 he was convicted of the following crimes which are substantially related to the qualifications,  
14 functions, or duties of a licensed pharmacy technician:

15 a. On or about November 6, 2012, in the case of *People v. Harvey Ayala Alvarez*  
16 (Super. Ct. Sacramento County, Case No. 12M01740), Respondent was convicted on his plea of  
17 nolo contendere of violating Penal Code section 25400, subdivision (a)(1)(Carrying concealed  
18 weapon in a vehicle), a misdemeanor. The circumstances are as follows: On or about March 2,  
19 2012, Officer M. conducted a vehicle stop for operating a radio or similar device in a vehicle on a  
20 street in a manner which results in sound from the device being audible to a person of normal  
21 hearing sensitivity more than twenty-five feet from the vehicle. Respondent was the driver and  
22 only occupant in the vehicle. Upon investigation, the Officer determined that Respondent was  
23 driving on a suspended license. During the tow inventory of the vehicle, the Officer located a  
24 loaded .380 semi-automatic handgun underneath the driver's seat. The handgun was registered to  
25 Respondent, who admitted to placing the gun beneath the seat.

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1 b. On or about April 8, 2014, in the case of *People v. Harvey Ayala Alvarez*  
2 (Super. Ct. Sacramento County, Case No. 13M02794), Respondent was convicted on his plea of  
3 no contest of violating Penal Code section 503 (Embezzlement), a misdemeanor. The facts and  
4 circumstances are more fully set forth above in paragraph 17 and its subpart.

5 **SIXTH CAUSE FOR DISCIPLINE**

6 **(Violating Laws Governing Pharmacy)**

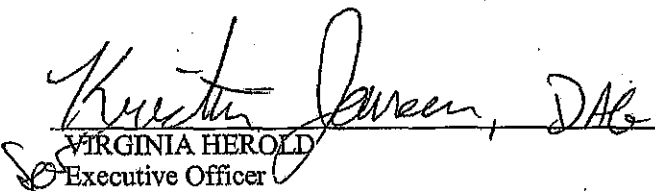
7 22. Respondent is subject to discipline under Code section 4301, subdivision (o), in that  
8 Respondent violated the laws governing pharmacy, as more fully set forth above in paragraphs 17  
9 through 23, and their subparts.

10 **PRAYER**

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

- 13 1. Revoking or suspending Pharmacy Technician Registration Number TCH 103851,  
14 issued to Harvey Ayala Alvarez;
- 15 2. Ordering Harvey Ayala Alvarez to pay the Board of Pharmacy the reasonable costs of  
16 the investigation and enforcement of this case, pursuant to Business and Professions Code section  
17 125.3;
- 18 3. Taking such other and further action as deemed necessary and proper.

19  
20 DATED: Sept. 4, 2014

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

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1 KAMALA D. HARRIS  
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2 KENT D. HARRIS  
Supervising Deputy Attorney General  
3 STEPHANIE ALAMO-LATIF  
Deputy Attorney General  
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Facsimile: (916) 327-8643  
7 E-mail: Stephanie.AlamoLatif@doj.ca.gov  
*Attorneys for Complainant*  
8

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10 **BEFORE THE  
BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**  
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12 In the Matter of the Accusation Against:  
13 **HARVEY AYALA ALVAREZ**  
5433 48th Ave  
14 Sacramento, CA 95823  
15 **Pharmacy Technician Registration No. TCH  
103851**  
16 Respondent.  
17

Case No. 4918

**ACCUSATION**

18  
19 Virginia Herold ("Complainant") alleges:

20 **PARTIES**

- 21 1. Complainant brings this Accusation solely in her official capacity as the Executive  
22 Officer of the Board of Pharmacy, Department of Consumer Affairs.  
23 2. On or about June 29, 2010, the Board of Pharmacy issued Pharmacy Technician  
24 Registration Number TCH 103851 to Harvey Ayala Alvarez ("Respondent"). The Pharmacy  
25 Technician Registration was in full force and effect at all times relevant to the charges brought  
26 herein and will expire on February 28, 2014, unless renewed.

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**JURISDICTION**

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

4. Code section 4011 provides, in pertinent part, that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].

5. Code section 4300 provides, in pertinent part, that every license issued may be suspended or revoked.

6. Code Section 4300.1 states:

"The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by 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."

**STATUTORY PROVISIONS**

**Business and Professions Code**

7. Code Section 4021 states:

"'Controlled Substance' means any substance listed in Chapter 2 (commencing with section 11053) of Division 10 of the Health and Safety Code."

8. Code Section 4022 states, in pertinent part:

"Dangerous drug" means any drug unsafe for self-use in humans or animals, and includes the following:

"(a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing without a prescription,' 'Rx only,' Or words of similar import."

...

(c) Any drug that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to section 4006.

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9. Code Section 4059 provides, in pertinent part:

"No person shall furnish any dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian..."

10. Code Section 4060 provides, in pertinent part:

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

11. Code section 4301 states, in pertinent part:

The board shall take action against any holder of a license who is guilty of unprofessional conduct. Unprofessional conduct shall include, but is not limited to, any of the following:

...

"(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."

...

"(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."

...

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter.

...

"(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

1 federal and state laws and regulations governing pharmacy, including regulations established by the  
2 board or by any other state or federal regulatory agency.”

3 ...

4 **Health and Safety Code**

5 12. Health and Safety Code section 11170 states:

6 “No person shall prescribe, administer, or furnish a controlled substance for himself.”

7 13. Health and Safety Code section 11173 states, in pertinent part:

8 “(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt  
9 to procure the administration of controlled substances, (1) by fraud, deceit, misrepresentation, or  
10 subterfuge; or (2) by the concealment of a material fact.”

11 ...

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

16 **COST RECOVERY**

17 15. Code section 125.3 provides, in pertinent part, that the Board may request the  
18 administrative law judge to direct a licentiate found to have committed a violation or violations of  
19 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
20 enforcement of the case.

21 **DRUGS**

22 16. “Promethazine with Codeine” is a generic name for Phenergan with Codeine, and is a  
23 controlled substance under Health and Safety Code section 11058, subdivision (c)(1) and a  
24 dangerous drug within the meaning of Business and Professions Code section 4022 in that it  
25 requires a prescription under federal law.

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27 \\\

28 \\\



1 **FIRST CAUSE FOR DISCIPLINE**

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

3 17. Respondent is subject to discipline under Code section 4301, subdivision (f), for  
4 unprofessional conduct, in that between approximately May 31, 2012 and June 22, 2012,  
5 Respondent committed numerous acts involving moral turpitude, dishonesty, fraud, deceit or  
6 corruption. The circumstances are as follows:

7 a. On or about March 26, 2012, the Kaiser Permanente ("Kaiser") Call Center  
8 received an anonymous telephone call reporting theft of a cough syrup with codeine by  
9 Respondent. Kaiser conducted an investigation and found that an audit of promethazine with  
10 codeine conducted at the Elk Grove Kaiser location from April 14, 2011 to June 22, 2012 resulted  
11 in a negative variance of 33.6%. Covert cameras were installed in the pharmacy and a daily count  
12 of the drug was initiated by pharmacist-in-charge Dong. Upon review of the daily count of the  
13 drug and the video footage from the pharmacy, it was confirmed that Respondent was responsible  
14 for four incidents of loss of promethazine with codeine on May 31, 2012, June 8, 2012, June 18,  
15 2012, and June 22, 2012. Respondent stole the drug by reaching into the promethazine with  
16 codeine stock bin, removing bottles, and walking off with the bottles of promethazine with  
17 codeine. No prescriptions for promethazine with codeine cough syrup were sold or filled by the  
18 pharmacy during the dates in question. On July 2, 2012, the investigator interviewed Respondent  
19 in the presence of local pharmacy management, Kaiser Human Resource personnel and a union  
20 representative. The union representative privately advised the Kaiser Human Resources  
21 representative that Respondent had admitted to diverting the promethazine with codeine cough  
22 syrup on four or five occasions, and was willing to resign in lieu of termination for theft. Although  
23 Respondent would not personally admit the diversion to the Kaiser representatives out of fear of  
24 criminal prosecution, he confirmed his written resignation in lieu of termination.

25 18. On April 15, 2013, a criminal complaint in the case of *People v. Harvey Ayala Alvarez*  
26 (Super. Ct. Sacramento County Case No. 13M02794) was filed against Respondent on charges of  
27 violation of Business and Professions Code section 4060 (Possession of Controlled Substance  
28 without a valid prescription) and Penal Code section 503 (Embezzlement), for the conduct set

1 forth above in paragraphs 17 through 21, and their subparts. This matter is currently pending in  
2 Sacramento County Superior Court.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Unlawful Possession of Controlled Substance)**

5 19. Respondent is subject to discipline under Code section 4060 and Health and Safety  
6 Code section 11350, in that Respondent had possession of a controlled substance, to wit:  
7 Promethazine with Codeine, without authorization or a valid prescription therefore, as more fully  
8 set forth above in paragraph 17 and its subpart.

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Furnishing of Dangerous Drug)**

11 20. Respondent is subject to discipline under Code section 4059 and Health and Safety  
12 Code section 11170, in that on multiple instances Respondent furnished to himself a dangerous  
13 drug, to wit: promethazine with codeine, without a valid prescription, as more fully set forth above  
14 in paragraph 17 and its subpart.

15 **FOURTH CAUSE FOR DISCIPLINE**

16 **(Violation of Statutes Regulating Controlled Substances and Dangerous Drugs)**

17 21. Respondent is subject to discipline under Code section 4301, subdivision (j), on the  
18 grounds of unprofessional conduct, in that between approximately May 31, 2012 and June 22,  
19 2012, Respondent violated statutes regulating controlled substances and dangerous drugs, including  
20 Business and Professions Code section 4060 and Health and Safety Code section 11350, as set  
21 forth above in paragraph 18, Business and Professions Code section 4059 and Health and Safety  
22 Code section 11170, as set forth above in paragraph 19, and Health and Safety Code section  
23 11173, as set forth above in paragraph 20.

24 **FIFTH CAUSE FOR DISCIPLINE**

25 **(Conviction of Crime)**

26 22. Respondent is subject to discipline under Code section 4301, subdivision (l), in that he  
27 was convicted of the following crime which is substantially related to the qualifications, functions,  
28 or duties of a licensed pharmacy technician: On or about November 6, 2012, in the case of *People*

1 v. *Harvey Ayala Alvarez* (Super. Ct. Sacramento County, Case No. 12M01740), Respondent was  
2 convicted on his plea of nolo contendere of violating Penal Code section 25400, subdivision  
3 (a)(1)(Carrying concealed weapon in a vehicle), a misdemeanor. The circumstances are as  
4 follows:

5 a. On or about March 2, 2012, Officer M. conducted a vehicle stop for operating a  
6 radio or similar device in a vehicle on a street in a manner which results in sound from the device  
7 being audible to a person of normal hearing sensitivity more than twenty-five feet from the vehicle.  
8 Respondent was the driver and only occupant in the vehicle. Upon investigation, the Officer  
9 determined that Respondent was driving on a suspended license. During the tow inventory of the  
10 vehicle, the Officer located a loaded .380 semi-automatic handgun underneath the driver's seat.  
11 The handgun was registered to Respondent, who admitted to placing the gun beneath the seat.

12 **SIXTH CAUSE FOR DISCIPLINE**

13 **(Violating Laws Governing Pharmacy)**

14 23. Respondent is subject to discipline under Code section 4301, subdivision (o), in that  
15 Respondent violated the laws governing pharmacy, as more fully set forth above in paragraphs 17  
16 through 23, and their subparts.

17 **PRAYER**

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

20 1. Revoking or suspending Pharmacy Technician Registration Number TCH 103851,  
21 issued to Harvey Ayala Alvarez;

22  
23 2. Ordering Harvey Ayala Alvarez to pay the Board of Pharmacy the reasonable costs of  
24 the investigation and enforcement of this case, pursuant to Business and Professions Code section  
25 125.3;

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28 3. Taking such other and further action as deemed necessary and proper.

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DATED: 11/4/13

*Virginia Herold*

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

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