

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

In the Matter of the Accusation Against:

**WILLIAM J. AMADOR GOMEZ
39150 Sundale Drive # 20
Fremont, CA 94538**

Pharmacy Technician License No. TCH 61343

Respondent.

Case No. 4973

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about May 8, 2014, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 5016 against William J. Amador Gomez (Respondent) before the Board of Pharmacy. (A copy of the Accusation is attached as exhibit A.)

2. On or about March 21, 2005, the Board of Pharmacy (Board) issued Pharmacy Technician License No. TCH 61343 to Respondent. The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought in Accusation No. 4973 and will expire on September 30, 2014, unless renewed.

3. On or about May 22, 2014, Respondent was served by Certified and First Class Mail with copies of: Accusation No. 4973; a Statement to Respondent; a Notice of Defense (2 copies); a Request for Discovery; and the text of the Discovery Statutes (Government Code sections

1 11507.5, 11507.6, and 11507.7), at Respondent's address of record which was and is: 39150
2 Sundale Drive # 20, Fremont, CA 94538.

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

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

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

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

14 7. Respondent failed to file a Notice of Defense within 15 days after service on him of
15 the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 4973.

16 8. 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 9. 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. 4973, finds that
26 the charges and allegations in Accusation No. 4973 are, separately and severally, found to be true
27 and correct by clear and convincing evidence.

28 10. 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 are \$3,252.50 as of August 4, 2014.

DETERMINATION OF ISSUES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. Based on the foregoing findings of fact, Respondent William J. Amador Gomez has subjected his Pharmacy Technician License No. TCH 61343 to discipline.

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

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

a. Respondent's License is subject to revocation pursuant to Business and Professions Code section 4301(f) in that, between on or about October 12, 2005 and on or about April 2, 2013, he committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption, when he diverted/stole, from his employer (a Pharmerica pharmacy in Union City, CA) controlled substances and/or dangerous drugs, including **Hydrocodone with APAP 10/325** (generic **Norco**, a narcotic analgesic) and/or **doxycycline** (an antibiotic).

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

c. Respondent's License is subject to revocation pursuant to Business and Professions Code section(s) 4301(j) and/or (o) and/or Health and Safety Code section 11170, in that, as described above, Respondent furnished to himself or another without a valid prescription, and/or conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance

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

///
///
///

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

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

7
8 ORDER

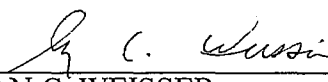
9 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 61343, heretofore
10 issued to Respondent William J. Amador Gomez, is revoked.

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

15 This Decision shall become effective on October 9, 2014.

16 It is so ORDERED September 9, 2014.

17 BOARD OF PHARMACY
18 DEPARTMENT OF CONSUMER AFFAIRS
19 STATE OF CALIFORNIA

20 By 
21 STAN C. WEISSER
22 Board President

21 41003880.DOC
22 DOJ Matter ID:SF2013406210

23 Attachment:
24 Exhibit A: Accusation
25
26
27
28

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JOSHUA A. ROOM
Supervising Deputy Attorney General
4 State Bar No. 214663
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-1299
6 Facsimile: (415) 703-5480
Attorneys for Complainant

7
8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 4973

13 **WILLIAM J. AMADOR GOMEZ**
14 **39150 Sundale Drive # 20**
15 **Fremont, CA 94538**

A C C U S A T I O N

16 **Pharmacy Technician License No. TCH 61343**

Respondent.

17 Complainant alleges:

18 PARTIES

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

21 2. On or about March 21, 2005, the Board of Pharmacy issued Pharmacy Technician
22 License No. TCH 61343 to William J. Amador Gomez (Respondent). The Pharmacy Technician
23 License was in full force and effect at all times relevant to the charges brought herein and will
24 expire on September 30, 2014, unless renewed.

25 JURISDICTION

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

///

1 4. Section 4011 of the Code provides that the Board shall administer and enforce both
2 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
3 Act [Health & Safety Code, § 11000 et seq.].

4 5. Section 4300(a) of the Code provides that every license issued by the Board may be
5 suspended or revoked.

6 6. Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or
7 suspension of a Board-issued license, the placement of a license on a retired status, or the
8 voluntary surrender of a license by a licensee, shall not deprive the Board of jurisdiction to
9 commence or proceed with any investigation of, or action or disciplinary proceeding against, the
10 licensee or to render a decision suspending or revoking the license.

11 STATUTORY AND REGULATORY PROVISIONS

12 7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action
13 against any holder of a license who is guilty of “unprofessional conduct,” defined to include, but
14 not be limited to, any of the following:

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

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

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

24 8. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous
25 drug or dangerous device except upon the prescription of an authorized prescriber.

26 9. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
27 controlled substance, except that furnished upon a valid prescription/drug order.
28

1 10. Health and Safety Code section 11170 provides that no person shall prescribe,
2 administer, or furnish a controlled substance for himself or herself.

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

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

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

13 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

14 14. Section 4021 of the Code states:

15 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
16 11053) of Division 10 of the Health and Safety Code.”

17 15. Section 4022 of the Code states, in pertinent part:

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

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

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

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

1 17. **Doryx**, **Doxy**, and **Vibramycin** are among the brand names for **doxycycline**, a
2 dangerous drug as designated by Business and Professions Code section 4022. It is an antibiotic.

3 FACTUAL BACKGROUND

4 18. Between on or about October 12, 2005 and on or about April 2, 2013, Respondent
5 was employed as a pharmacy technician by Pharmerica pharmacy (PHY 48699) in Union City,
6 CA, where he had access to controlled substances and dangerous drugs.

7 19. During the tenure of his employment by Pharmerica, on one or more occasions
8 Respondent used his access to divert/steal controlled substances or dangerous drugs.

9 20. The exact number of instances of diversion/theft by Respondent, and the full quantity
10 of controlled substances or dangerous drugs diverted/stolen by Respondent, are not known, but in
11 the course of investigations conducted by the pharmacy, by police, and by the Board of Pharmacy,
12 the following were among the observations, admissions, and revelations reported:

13 a. On or about April 2, 2013, an inventory check of controlled substances at the
14 pharmacy revealed an apparent shortage of sixteen (16) tablets of **Hydrocodone with APAP**
15 **10/325** (generic **Norco**) that were missing from one or more emergency kits maintained in a
16 storage room at the pharmacy. This room was subject to video surveillance.

17 b. Video footage of the storage room from April 1, 2013 showed Respondent
18 entering the room, cutting open one or more emergency kits, removing container(s) from the kits,
19 and shaking contents of the container(s) into his hand before departing the room. Respondent's
20 supervisor(s) stated there would have been no legitimate reason for this behavior.

21 c. Union City Police were contacted, reviewed the video evidence, and conducted
22 one or more interviews with Respondent, during which Respondent admitted to diversion/theft of
23 eight (8) capsules of **Doxycycline**, but denied taking any **Hydrocodone with APAP 10/325**.

24 d. Further inspection of the emergency kits kept in the storage room revealed no
25 missing capsules of **Doxycycline**. Only the sixteen (16) missing tablets of **Hydrocodone with**
26 **APAP 10/325**. The video footage also revealed that the container(s) accessed by Respondent in
27 the emergency kit(s) were from a location in the kit(s) corresponding to the expected location of
28 the **Hydrocodone with APAP 10/325**, and did not correspond to the **Doxycycline**'s location.

1 e. Audit(s) of the pharmacy stock of **Hydrocodone with APAP 10/325** for the
2 period from April 25, 2012 to April 1, 2013 revealed a total shortage of sixty-four (64) tablets.

3
4 FIRST CAUSE FOR DISCIPLINE

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

6 21. Respondent is subject to discipline under section 4301(f) of the Code, in that
7 Respondent, as described in paragraphs 18 to 20 above, committed acts involving moral turpitude,
8 dishonesty, fraud, deceit, or corruption.

9
10 SECOND CAUSE FOR DISCIPLINE

11 (Furnishing of Dangerous Drug(s))

12 22. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
13 4059 of the Code, in that Respondent, as described in paragraphs 18 to 20 above, furnished to
14 himself or another without a valid prescription, and/or conspired to furnish, and/or assisted or
15 abetted furnishing of, a dangerous drug.

16
17 THIRD CAUSE FOR DISCIPLINE

18 (Furnishing of Controlled Substance(s))

19 23. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
20 and/or Health and Safety Code section 11170, in that Respondent, as described in paragraphs 18
21 to 20 above, furnished to himself or another without a valid prescription, and/or conspired to
22 furnish, and/or assisted or abetted furnishing of, a controlled substance.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 FOURTH CAUSE FOR DISCIPLINE

2 (Possession of Controlled Substance(s))

3 24. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
4 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described
5 in paragraphs 18 to 20 above, possessed, conspired to possess, and/or assisted in or abetted
6 possession of, a controlled substance, without a prescription.

7
8 FIFTH CAUSE FOR DISCIPLINE

9 (Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

10 25. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
11 and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs
12 18 to 20 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a
13 controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

14
15 SIXTH CAUSE FOR DISCIPLINE

16 (Unprofessional Conduct)

17 26. Respondent is subject to discipline under section 4301 of the Code in that
18 Respondent, as described in paragraphs 18 to 25 above, engaged in unprofessional conduct.

19
20
21
22
23
24 PRAYER

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

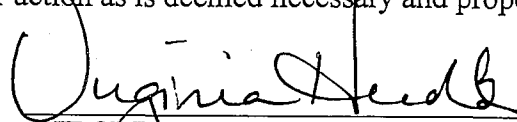
27 1. Revoking or suspending Pharmacy Technician License No. TCH 61343, issued to
28 William J. Amador Gomez (Respondent);

1 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
2 enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

4
5 DATED: _____

5/8/14



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

9 SF2013406210
10 40839811.doc

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28