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

In the Matter of the Accusation Against:

JANETH J. BALIAN-MACHAIN

**184 Palm Avenue, # 108
Marina, CA 93933
Pharmacy Technician Registration
No. TCH 66212**

Respondent.

Case No. 5109

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about May 21, 2015, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 5109 against Janeth J. Balian-Machain (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A)
2. On or about December 19, 2005, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 66212 to Respondent. The Pharmacy Technician Registration expired on March 31, 2013, and has not been renewed.

1 3. On or about June 5, 2015, Respondent was served by Certified and First Class Mail
2 copies of Accusation No. 5109, Statement to Respondent, Notice of Defense, Request for
3 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
4 Respondent's address of record which, pursuant to Business and Professions Code section 4100,
5 is required to be reported and maintained with the Board. Respondent's address of record was
6 and is:

7 184 Palm Avenue, # 108
8 Marina, CA 93933.

9 4. Service of the Accusation was effective as a matter of law under the provisions of
10 Government Code section 11505, subdivision (c), and/or Business & Professions Code section
11 124.

12 5. On or about June 25, 2015, the aforementioned documents were returned by the U.S.
13 Postal Service marked "Unable to Forward" and "Unclaimed." The address on the documents
14 was the same as the address on file with the Board. Respondent failed to maintain an updated
15 address with the Board and the Board has made attempts to serve the Respondent at the address
16 on file. Respondent has not made herself available for service and therefore, has not availed
17 herself of her right to file a notice of defense and appear at hearing.

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

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

24 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
25 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 5109.

26 8. California Government Code section 11520 states, in relevant part:

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

ORDER


IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 66212, issued to Respondent Janeth J. Balian-Machain, 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 September 25, 2015.

It is so ORDERED August 26, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____

Amy Gutierrez, Pharm.D.
Board President

90549168.DOC
DOJ Matter ID:SF2014902161

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 TIMOTHY J. McDONOUGH
Deputy Attorney General
4 State Bar No. 235850
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 622-2134
Facsimile: (510) 622-2270
7 E-mail: Tim.McDonough@doj.ca.gov
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 5109

12 **JANETH J. BALIAN-MACHAIN**
13 **184 Palm Avenue, # 108**
14 **Marina, CA 93933**

ACCUSATION

15 **Pharmacy Technician Registration No. TCH**
66212

16 Respondent.

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 December 19, 2005, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 66212 to Janeth J. Balian-Machain (Respondent). The Pharmacy
24 Technician Registration expired on March 31, 2013, and has not been 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 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 of the Code states, in relevant part:

5 "(a) Every license issued may be suspended or revoked.

6 "(b) The board shall discipline the holder of any license issued by the board, whose default
7 has been entered or whose case has been heard by the board and found guilty, by any of the
8 following methods:

9 "(1) Suspending judgment.

10 "(2) Placing him or her upon probation.

11 "(3) Suspending his or her right to practice for a period not exceeding one year.

12 "(4) Revoking his or her license.

13 "(5) Taking any other action in relation to disciplining him or her as the board in its
14 discretion may deem proper.

15 ...
16 "(e) The proceedings under this article shall be conducted in accordance with Chapter 5
17 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board
18 shall have all the powers granted therein. The action shall be final, except that the propriety of the
19 action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil
20 Procedure."

21 6. Section 4300.1 of the Code states:

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

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1 9. Section 4060 of the Code states:

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

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

16 10. Section 4115, subdivision (e), of the Code states:

17 "(e) No person shall act as a pharmacy technician without first being licensed by the board as
18 a pharmacy technician."

19 11. Section 4022 of the Code states

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

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

24 "(b) Any device that bears the statement: "Caution: federal law restricts this device to sale
25 by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled
26 in with the designation of the practitioner licensed to use or order use of the device.

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

1 DRUG STATUTES

2 12. Hydrocodone/Acetaminophen is a Schedule III controlled substance as designated by
3 Health and Safety Code section 11056, subdivision (e)(4), and a dangerous drug as designated by
4 Business and Professions Code section 4022. Hydrocodone is a pain medication and is combined
5 with Acetaminophen. Norco is a brand name of the controlled substance, Hydrocodone.

6 COST RECOVERY

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

13 FACTUAL BACKGROUND

14 14. Respondent worked as a pharmacy technician at various Safeway Pharmacies from on
15 or about October 1, 2012, until on or about May 20, 2013. On May 3, 2013, Respondent stole 58
16 dosage units of hydrocodone/acetaminophen 10/325 mg from Safeway Pharmacy # 761 in Pacific
17 Grove, California while she was working as a pharmacy technician.

18 15. On or about May 7, 2013, Pacific Grove Safeway Pharmacy conducted an annual
19 audit of controlled inventory. The audit revealed 58 dosages of hydrocodone/acetaminophen
20 10/325 mg were missing. A review of security video taken on May 3, 2014 at the pharmacy led
21 Safeway officials to suspect that Respondent took the missing pills. On May 14, 2013, a Safeway
22 loss prevention investigator and another Safeway employee interviewed Respondent at a Safeway
23 Pharmacy in Santa Cruz¹ regarding the missing drugs. At that time, Respondent admitted to
24 stealing an unknown amount of generic Norco 10/325 mg from a bottle at the Safeway pharmacy
25 in Pacific Grove. Respondent wrote and signed a statement in which she admitted to taking the
26 pills and explained that she took the pills because she suffered an injury while working a second

27 _____
28 ¹ Respondent was working at the Safeway Pharmacy in Santa Cruz on May 14, 2013.

1 job and did not have medical insurance. In the statement, she further explained she used the pills
2 for her injury and for her father who is suffering from kidney failure and Hepatitis C. Respondent
3 also signed a promissory note on May 14, 2013, in which she promised to pay Safeway \$36.49,
4 the costs of the missing medication. Respondent paid the \$36.49 that same day. Respondent was
5 terminated from Safeway on May 20, 2013.

6 **FIRST CAUSE FOR DISCIPLINE**
7 **(Unprofessional Conduct--Act of Dishonesty, Fraud, or Deceit)**
8 **(Bus & Prof. Code § 4301, subd. (f))**

9 16. Respondent has subjected her Pharmacy Technician Registration to disciplinary
10 action under Code section 4301, subdivision (f), in that she stole prescription drugs from Safeway
11 Pharmacy, her employer. The circumstances are explained more fully in paragraphs 14 and 15,
12 above.

13 **SECOND CAUSE FOR DISCIPLINE**
14 **(Possession of Controlled Substance without a Prescription)**
15 **(Bus. & Prof. Code, §§ 4301, subd. (j))**

16 17. Respondent has subjected her Pharmacy Technician Registration to disciplinary
17 action under Code section 4301, subdivision (j), in that she illegally possessed a controlled
18 substance without a prescription. By doing so, she violated numerous state and federal statutes
19 regarding controlled substances including Business and Professions Code section 4060. The
20 circumstances are explained more fully in paragraphs 14 and 15, above.

21 **THIRD CAUSE FOR DISCIPLINE**
22 **(Furnishing Dangerous Drugs without a Prescription)**
23 **(Bus. & Prof Code, §§ 4301, subd. (o), & 4059, subd. (a))**

24 18. Respondent has subjected her Pharmacy Technician Registration to disciplinary
25 action under Code section 4301, subdivision (o), in that she violated section 4059, subdivision
26 (a), when she furnished controlled substances and dangerous drugs to a person, her father, without
27 a prescription. The circumstances are explained in paragraphs 14 and 15, above.

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