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

In the Matter of the Accusation Against:
CARLOS JESUS RUIZ
3873 E. Clinton Avenue
Fresno, CA 93703
Pharmacy Technician Registration
No. TCH 128933

Respondent.

Case No. 5235

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about December 3, 2014, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the California State Board of Pharmacy, filed Accusation No. 5235 against Carlos Jesus Ruiz (“Respondent”). A true and correct copy of Accusation No. 5235 is attached hereto, marked Exhibit A, and incorporated herein by reference.

2. On or about December 14, 2012, the Board of Pharmacy issued Pharmacy Technician Registration Number TCH 128933 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation Number 5235 and expired on December 31, 2014, without renewal. This lapse in licensure, however, pursuant to Business and Professions Code section 4300.1 does not deprive the Board of Pharmacy of its authority to institute or continue this disciplinary proceeding.

1 3. On or about December 29, 2014, Respondent was served by Certified and First Class
2 Mail copies of the Accusation No. 5235, and Statement to Respondent, Notice of Defense,
3 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,
4 and 11507.7) (collectively referred to as "Packet") at Respondent's address of record which,
5 pursuant to Business and Professions Code section 4100, is required to be reported and
6 maintained with the Board of Pharmacy. Respondent's address of record was and is: 3873 E.
7 Clinton Avenue, Fresno, CA 93703.

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

11 5. The Accusation and Packet served by Certified Mail were returned to the Attorney
12 General's Office and stamped "Unclaimed."

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

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

17 7. Respondent failed to file a Notice of Defense within fifteen (15) days after service
18 upon him of the Accusation, and therefore waived his right to a hearing on the merits of
19 Accusation No. 5235.

20 8. California Government Code section 11520 states, in pertinent part:

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

24 9. Pursuant to its authority under Government Code section 11520, the Board of
25 Pharmacy finds Respondent is in default. The Board of Pharmacy will take action without further
26 hearing and, based on the relevant evidence contained in the Default Decision Investigatory
27 Evidence Packet in this matter, as well as taking official notice of all the investigatory reports,
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1 exhibits and statements contained therein on file at the Board's offices regarding the allegations
2 contained in Accusation Number 5235.

3 9. The Board of Pharmacy finds that the charges and allegations in Accusation Number
4 5235, are separately and severally, found to be true and correct by clear and convincing evidence.

5 10. Taking official notice of its own internal records, pursuant to Business and
6 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
7 and Enforcement is \$ 2,468.00 as of February 27, 2015.

8 DETERMINATION OF ISSUES

9 1. Based on the foregoing findings of fact, Respondent Carlos Jesus Ruiz
10 ("Respondent") has subjected his Pharmacy Technician Registration Number TCH 128933 to
11 discipline.

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

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

16 a. Respondent violated Business and Professions Code ("Code") section 4301,
17 subdivision (f), in that he committed acts involving moral turpitude, dishonesty, fraud, deceit, or
18 corruption; and

19 b. Respondent violated Code section 4301, subdivision (h), in that he self-
20 administered controlled substances, that is, Lorazepam, Norco, Tylenol with Codeine, and
21 Vicodin, and the dangerous drugs Levothyroxine, Amlodipine, and Zoloft to an extent or in a
22 manner dangerous or injurious to himself, others, and/or the public; and

23 c. Respondent violated Code section 4301, subdivision (j), in that he violated state
24 laws regulating controlled substances, that is, Code section 4060 and Health and Safety Code
25 sections 11170; and

26 d. Respondent violated Code section 4301, subdivision (o), in that he violated or
27 attempted to violate, directly or indirectly, a provision or term of the Pharmacy Law (Bus. & Prof.
28 Code § 4300, et seq.), specifically, Code section 4060.

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ORDER

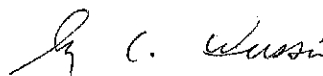
IT IS SO ORDERED that Pharmacy Technician Registration Number TCH 128933, heretofore issued to Respondent Carlos Jesus Ruiz, is REVOKED.

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 April 24, 2015.

It is so ORDERED on March 25, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____

STAN C. WEISSER
Board President

Attachment:

Exhibit A: Accusation

Exhibit A

Accusation No. 5235

1 KAMALA D. HARRIS
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
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5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-5337
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 5235

12 **CARLOS JESUS RUIZ**
13 **3873 E. Clinton Avenue**
14 **Fresno, CA 93703**

ACCUSATION

15 **Pharmacy Technician Registration**
16 **No. TCH 128933**

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 ("Board"), Department of Consumer Affairs.

21 2. On or about December 14, 2012, the Board issued Pharmacy Technician Registration
22 Number TCH 128933 to Carlos Jesús Ruiz ("Respondent"). The pharmacy technician
23 registration was in full force and effect at all times relevant to the charges brought herein and will
24 expire on December 31, 2014, unless renewed.

25 **JURISDICTION**

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

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1 4. Code section 4300 states, in pertinent part:

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

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

5 (1) Suspending judgment.

6 (2) Placing him or her upon probation.

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

9 (4) Revoking his or her license.

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

11 5. Code section 4300.1 states:

12 The expiration, cancellation, forfeiture, or suspension of a board-issued
13 license by operation of law or by order or decision of the board or a court of law, the
14 placement of a license on a retired status, or the voluntary surrender of a license by a
15 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.

16 **STATUTORY PROVISIONS**

17 6. Code section 4301 states, in pertinent part:

18 The board shall take action against any holder of a license who is guilty
19 of unprofessional conduct or whose license has been procured by fraud or
misrepresentation or issued by mistake. Unprofessional conduct shall include, but is
20 not limited to, any of the following:

21 (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
22 a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

23 (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
24 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
25 the person to conduct with safety to the public the practice authorized by the license.

26 (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.

27 (o) Violating or attempting to violate, directly or indirectly, or assisting in
28 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

1 pharmacy, including regulations established by the board or by any other state or
2 federal regulatory agency

3 7. Code section 4022 states:

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

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

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

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

14 8. Code section 4060 states, in pertinent part:

15 No person shall possess any controlled substance, except that furnished to
16 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
17 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant
18 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a
19 nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to
20 Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist
21 pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
22 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.

23 9. Health and Safety Code section 11170 states that no person shall prescribe,
24 administer, or furnish a controlled substance for himself.

25 **DRUGS**

26 10. **Ativan**, a brand of **Lorazepam**, is a Schedule IV controlled substance as designated
27 by Health and Safety Code section 11057, subdivision (d)(16). Ativan is used in the treatment of
28 anxiety.

11 11. **Norco**, a brand of Hydrocodone Bitartrate and Acetaminophen, is a Schedule III
12 controlled substance as designated by Health and Safety Code section 11056, subdivision (e)(4).
13 Norco is used for pain relief.

14 12. **Norvase**, a brand of **Amlodipine**, is a dangerous drug within the meaning of Code
15 section 4022 in that it requires a prescription under federal law. Amlodipine is used in the
16 treatment of hypertension.

1 accrue their reward points on his personal CVS Extra Care Card and receive in-store credit to
2 purchase CVS merchandise. Respondent was terminated by CVS on or about July 26, 2013.
3 CVS reported Respondent's thefts to the Fresno Police Department for investigation.

4 20. On or about July 26, 2013, a Fresno Police Department law enforcement officer
5 interviewed Respondent at CVS. Respondent admitted to the officer that he had stolen
6 prescription medications from CVS for the past six months and to the CVS Extra Care rewards
7 points scam, described in paragraph 18, above. Respondent confirmed to the officer that he had
8 not been coerced in writing and signing his confession statement provided to CVS. Respondent
9 was cited for violating Penal Code section 484, subdivision (a) (theft).

10 21. On or about August 8, 2013, the Board received notice from CVS Senior Regulatory
11 Compliance Consultant L.P. that Respondent had been terminated from his employment on July
12 26, 2013, following his admission to stealing controlled substances from the pharmacy and
13 customers' CVS Extra Care reward points.

14 FIRST CAUSE FOR DISCIPLINE

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

16 22. Respondent is subject to disciplinary action pursuant to Code section 4301,
17 subdivision (f), for unprofessional conduct, in that while employed as a pharmacy technician, at
18 CVS/Pharmacy #09971, Respondent committed acts involving moral turpitude, dishonesty, fraud,
19 deceit, or corruption, as follows:

20 a. In and between January 2013 and July 24, 2013, Respondent stole or diverted
21 the controlled substances Lorazepam, Norco, Tylenol with Codeine, and Vicodin and the
22 dangerous drugs Levothyroxine and Amlodipine for self-administration, as set forth in paragraphs
23 18 and 19, above, incorporated herein by reference.

24 b. In and between January 2013 and July 24, 2013, Respondent stole CVS Extra
25 Care rewards points from customers, as set forth in paragraphs 18 and 19, above, incorporated
26 herein by reference.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Self-Administration of Controlled Substances)**

3 23. Respondent is subject to disciplinary action pursuant to Code section 4301,
4 subdivision (h), for unprofessional conduct, in that in and between January 2013 and July 24,
5 2013, while employed as a pharmacy technician at CVS/Pharmacy #09971, Respondent self-
6 administered the controlled substances Lorazepam, Norco, Tylenol with Codeine, and Vicodin,
7 and the dangerous drugs Levothyroxine, Amlodipine, and Zoloft to an extent or in a manner
8 dangerous or injurious to himself, others, and/or the public, as set forth in paragraphs 19 and 20,
9 above, incorporated herein by reference.

10 **THIRD CAUSE FOR DENIAL**

11 **(Violations of State Laws Regulating Controlled Substances)**

12 24. Respondent is subject to disciplinary action pursuant to Code section 4301,
13 subdivision (j), for unprofessional conduct, in that in and between January 2013 and July 24,
14 2013, while employed as a pharmacy technician at CVS/Pharmacy #09971:

15 a. Respondent possessed the controlled substances Lorazepam, Norco, Tylenol
16 with Codeine, and Vicodin without valid prescriptions from a physician, dentist, podiatrist,
17 optometrist, veterinarian, or naturopathic doctor, in violation of Code section 4060, as set forth in
18 paragraphs 19 and 20, above, incorporated herein by reference.

19 b. Respondent self-administered the controlled substances Lorazepam, Norco,
20 Tylenol with Codeine, and Vicodin, in violation of Health and Safety Code section 11170, as set
21 forth in paragraphs 19 and 20, above, incorporated herein by reference.

22 c. Respondent furnished the controlled substances Lorazepam, Norco, Tylenol
23 with Codeine, and Vicodin to himself, in violation of Health and Safety Code section 11170, as
24 set forth in paragraphs 19 and 20, above, incorporated herein by reference.

25 **FOURTH CAUSE FOR DENIAL**

26 **(Violations of the Pharmacy Law)**

27 25. Respondent is subject to disciplinary action pursuant to Code section 4301,
28 subdivision (o), for unprofessional conduct, in that in and between January 2013 and July 24,

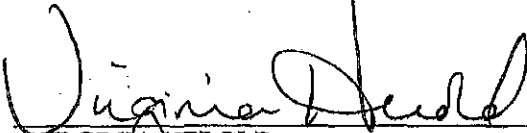
1 2013, while employed as a pharmacy technician at CVS/Pharmacy #09971, Respondent violated
2 or attempted to violate, directly or indirectly, a provision or term of the Pharmacy Law (Bus. &
3 Prof. Code § 4300, et seq.), specifically, Code section 4060, as set forth in paragraphs 22, 23, and
4 24, above, incorporated herein by reference.

5 **PRAYER**

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

- 8 1. Revoking or suspending Pharmacy Technician Registration Number TCH 128933,
9 issued to Carlos Jesus Ruiz;
- 10 2. Ordering Carlos Jesus Ruiz to pay the Board of Pharmacy the reasonable costs of the
11 investigation and enforcement of this case, pursuant to Business and Professions Code section
12 125.3;
- 13 3. Taking such other and further action as deemed necessary and proper.

14
15 DATED: 12/3/14


16 VIRGINIA HEROLD
17 Executive Officer
18 Board of Pharmacy
19 Department of Consumer Affairs
20 State of California
21 Complainant

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