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

In the Matter of the Accusation Against:
EZEQUIEL MENDOZA
134 N. Third Street
Salinas, CA 93906
**Pharmacy Technician Registration No. TCH
105387**

Respondent.

Case No. 5601

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about December 5, 2016, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 5601 against Ezequiel Mendoza (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about August 16, 2010, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 105387 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 5601 and will expire on February 28, 2018, unless renewed.

1 3. On or about December 13, 2016, Respondent was served by Certified and First Class
2 Mail copies of the Accusation No. 5601, Statement to Respondent, Notice of Defense, Request
3 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
4 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
5 section 4100, is required to be reported and maintained with the Board. Respondent's address of
6 record was and is:

7 134 N. Third Street
8 Salinas, CA 93906.

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

11 5. Government Code section 11506(c) states, in pertinent part:

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

17 6. Respondent failed to file a Notice of Defense within 15 days after service upon him
18 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
19 5601.

20 7. California Government Code section 11520(a) states, in pertinent part:

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

25 8. Pursuant to its authority under Government Code section 11520, the Board finds
26 Respondent to be in default. The Board will take action without further hearing and, based on the
27 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
28 taking official notice of all the investigatory reports, exhibits and statements contained therein on
file at the Board's offices regarding the allegations contained in Accusation No. 5601, finds that
the charges and allegations in Accusation No. 5601 are, separately and severally, true and correct
by clear and convincing evidence.

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ORDER

IT IS ORDERED that Pharmacy Technician Registration No. TCH 105387, heretofore issued to Respondent Ezequiel Mendoza, is revoked.

Pursuant to Government Code section 11520(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 at 5:00 p.m. on May 17, 2017.

It is so ORDERED on April 17, 2017.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____

Amy Gutierrez, Pharm.D.
Board President

41709642.DOC
DOJ Matter ID:SF2015402905

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

(EZEQUIEL MENDOZA)

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2 JOSHUA A. ROOM
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Attorneys for Complainant
7

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

10 In the Matter of the Accusation Against:

Case No. 5601

11 **EZEQUIEL MENDOZA**
12 **134 N. Third Street**
13 **Salinas, CA 93906**

A C C U S A T I O N

14 **Pharmacy Technician Registration No. TCH**
15 **105387**

Respondent.

16
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 August 16, 2010, the Board issued Pharmacy Technician Registration
22 Number TCH 105387 to Ezequiel Mendoza (Respondent). The Pharmacy Technician
23 Registration was in full force and effect at all times relevant to the charges brought herein and
24 will expire on February 28, 2018, unless renewed.

25 **JURISDICTION**

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

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

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

5 ". . . .

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

8 8. Section 4301 of the Code states:

9 "The board shall take action against any holder of a license who is guilty of unprofessional
10 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

11 Unprofessional conduct shall include, but is not limited to, any of the following:

12 ". . . .

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

16 ". . . .

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

22 ". . . .

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

25 ". . . .

26 "(l) The conviction of a crime substantially related to the qualifications, functions, and
27 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
28 (commencing with Section 801) of Title 21 of the United States Code regulating controlled

1 substances or of a violation of the statutes of this state regulating controlled substances or
2 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
3 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
4 The board may inquire into the circumstances surrounding the commission of the crime, in order
5 to fix the degree of discipline or, in the case of a conviction not involving controlled substances or
6 dangerous drugs, to determine if the conviction is of an offense substantially related to the
7 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
8 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
9 of this provision. The board may take action when the time for appeal has elapsed, or the
10 judgment of conviction has been affirmed on appeal or when an order granting probation is made
11 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
12 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
13 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
14 indictment.

15 "....

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

20 "...."

21 9. Section 4059(a) of the Code states:

22 "A person may not furnish any dangerous drug, except upon the prescription of a physician,
23 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A
24 person may not furnish any dangerous device, except upon the prescription of a physician, dentist,
25 podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7."

26 10. Section 4060 of the Code states:

27 "No person shall possess any controlled substance, except that furnished to a person upon
28 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor

1 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
2 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
3 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
4 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
5 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
6 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
7 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
8 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
9 labeled with the name and address of the supplier or producer."

10 11. Health and Safety Code section 11350(a) provides, in pertinent part:

11 "Except as otherwise provided in this division, every person who possesses (1) any
12 controlled substance specified in subdivision (b), (c), (e), or paragraph (1) of subdivision (f) of
13 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or
14 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section
15 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic
16 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian
17 licensed to practice in this state, shall be punished by imprisonment in a county jail for not more
18 than one year"

19 12. Health and Safety Code section 11352(a) provides that selling, furnishing, or giving
20 away of any narcotic drug, unless upon the prescription of a physician, shall constitute a felony.

21 13. Health and Safety Code section 11352.1(b) provides that furnishing a dangerous drug
22 or controlled substance without a license is a misdemeanor.

23 14. Code section 490(a) provides, in pertinent part, that a board may suspend or revoke a
24 license on the ground that the licensee has been convicted of a crime substantially related to the
25 qualifications, functions, or duties of the business or profession for which the license was issued.

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1 COSTS

2 15. Section 125.3 of the Code states, in pertinent part, that the Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.

6 DRUGS

7 16. Phenergan with Codeine Syrup is a brand name for promethazine with codeine, a
8 Schedule V controlled substance as designated by Health and Safety Code section 11058(c)(1),
9 and a dangerous drug as designated by Code section 4022. It is an antihistamine/antitussive,
10 narcotic analgesic, and sleep aid.

11 17. Norco is a brand name for a compound of varying dosages of acetaminophen (aka
12 APAP) and hydrocodone, a Schedule III controlled substance as designated by Health and Safety
13 Code section 11056(e)(4), and dangerous drug as designated by Code section 4022. Effective
14 October 6, 2014, hydrocodone combination drugs such as Norco were changed at the federal level
15 from Schedule III (21 C.F.R. § 1308.13(e)(1)(iii) and (iv)) to Schedule II (21 C.F.R. §
16 1308.12(b)(1)) controlled substances.

17 18. Tussionex Suspension is a brand name for a hydrocodone/ chlorpheniramine
18 suspension, a Schedule III controlled substance as designated by Health and Safety Code section
19 11056, and a dangerous drug under Code section 4022. It is used as a cough suppressant and
20 antihistamine.

21 19. Viagra is a brand name for sildenafil and is a dangerous drug as designated by Code
22 section 4022. It is used for erectile dysfunction.

23 20. Cialis is a brand name for tadalafil and is a dangerous drug as designated by Code
24 section 4022. It is used for erectile dysfunction.

25 21. Tobradex Suspension is a brand name for tobramycin/ dexamethasone eye drops and
26 is a dangerous drug as designated by Code section 4022. It is used for eye inflammation and
27 infection.

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1 **DIVERSION BACKGROUND**

2 22. Between 2013 and June 2015, while working as a pharmacy technician for CVS,
3 Respondent diverted over twenty thousand dollars worth of controlled substances and dangerous
4 drugs. He stole promethazine with codeine, Cialis, Viagra, and Norco. Respondent generally
5 removed the drugs by placing them in garbage bags or his pockets and leaving the pharmacy with
6 them.

7 23. Respondent furnished these medications to other individual(s).

8 24. On at least one occasion, Respondent sold prescription medication (Tobradex
9 Suspension) to a customer but did not enter the transaction in the cash register. Respondent kept
10 the money from the sale.

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(Possess Controlled Substance)**

13 25. Respondent is subject to disciplinary action under Code section 4301(j) and/or
14 4301(o), in conjunction with Code section 4060 and/or Health and Safety Code section 11350(a),
15 in that Respondent possessed a controlled substance and/or narcotic drug without a valid
16 prescription. The circumstances are described above in "Diversion Background."

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Furnish Dangerous Drug and/or Controlled Substance)**

19 26. Respondent is subject to disciplinary action under Code section 4301(j) and/or
20 4301(o), in conjunction with Code section 4059 and/or Health and Safety Code sections 11352(a)
21 and/or 11352.1(b), in that Respondent illegally furnished, sold, or gave away a dangerous drug
22 and/or controlled substance to another person. The circumstances are described above in
23 "Diversion Background."

24 **THIRD CAUSE FOR DISCIPLINE**

25 **(Act Involving Dishonesty)**

26 27. Respondent is subject to disciplinary action under Code section 4301(f) in that
27 Respondent did an act involving moral turpitude, dishonesty, fraud, deceit, or corruption. The
28 circumstances are described above in "Diversion Background."

1 **CONVICTION BACKGROUND**

2 28. On or about March 9, 2015, in the Superior Court of California for the County of
3 Monterey, in the case entitled *The People of the State of California v. Ezequiel Mendoza*, Case
4 No. MS327211A, Respondent pled guilty to and was convicted of violating Vehicle Code section
5 23103.5 (alcohol related driving offense). The circumstances of the conviction were that on or
6 about December 24, 2014, police observed Respondent driving his vehicle above the speed limit
7 and following at an unsafe distance. When pulled over, Respondent was discovered to be under
8 the influence of alcohol. Respondent registered blood alcohol concentrations of .08% and .10%.

9 **FOURTH CAUSE FOR DISCIPLINE**

10 **(Criminal Conviction)**

11 29. Respondent is subject to disciplinary action under Code sections 490(a) and/or
12 4301(l) in that Respondent was convicted of an offense substantially related to the duties,
13 functions, or qualifications of a licensee. The circumstances are described above in "Conviction
14 Background."

15 **FIFTH CAUSE FOR DISCIPLINE**

16 **(Dangerous Use of Alcohol)**

17 30. Respondent is subject to disciplinary action under Code section 4301(h) in that
18 Respondent used alcohol to an extent or in a manner dangerous or injurious to himself, to another
19 person, or to the public. The circumstances are described above in "Conviction Background."

20 **PRAAYER**

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

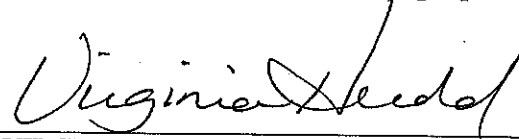
- 23 1. Revoking or suspending Pharmacy Technician Registration Number TCH 105387,
24 issued to Ezequiel Mendoza;
- 25 2. Ordering Ezequiel Mendoza to pay the Board of Pharmacy the reasonable costs of the
26 investigation and enforcement of this case, pursuant to Business and Professions Code section
27 125.3; and,

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

DATED: 12/15/16



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

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