

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

In the Matter of the Accusation Against:

**PHILIP ANTHONY ACOSTA
2661 Holt Avenue
Sanger, CA 93657**

**Pharmacy Technician Registration No.
TCH 99539**

Respondent.

Case No.5798

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on May 25, 2017.

It is so ORDERED on April 25, 2017.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

1 XAVIER BECERRA
Attorney General of California
2 JANICE K. LACHMAN
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7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 5798

12 **PHILIP ANTHONY ACOSTA**

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

13 2661 Holt Ave.
14 Sanger, CA 93657

15 **Pharmacy Technician Registration No.
TCH99539**

16 Respondent.

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 PARTIES

21 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy
22 (Board). She brought this action solely in her official capacity and is represented in this matter by
23 Xavier Becerra, Attorney General of the State of California, by Anahita S. Crawford, Deputy
24 Attorney General.

25 2. Philip Anthony Acosta (Respondent) is representing himself in this proceeding and
26 has chosen not to exercise his right to be represented by counsel.
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1 2. The surrender of Respondent's license and the acceptance of the surrendered license
2 by the Board shall constitute the imposition of discipline against Respondent. This decision
3 constitutes a record of discipline and shall become a part of Respondent's license history with the
4 Board.

5 3. Respondent understands and agrees that if he ever files an application for licensure or
6 a petition for reinstatement in the State of California, the Board shall treat it as a new application
7 for licensure.

8 4. Respondent may not apply for any license, permit, or registration from the Board for
9 three (3) years from the effective date of this decision. Respondent stipulates that should he apply
10 for any license from the Board on or after the effective date of this decision, all allegations set
11 forth in the Accusation shall be deemed to be true, correct and admitted by Respondent when the
12 Board determines whether to grant or deny the application. Respondent shall satisfy all
13 requirements applicable to that license as of the date the application is submitted to the Board,
14 including, but not limited to certification by a nationally recognized body prior to the issuance of
15 a new license. Respondent is required to report this surrender as disciplinary action.

16 5. Respondent stipulates that should he apply for any license from the Board on or after
17 the effective date of this decision, investigation and prosecution costs in the amount of \$6,631.25
18 shall be paid to the Board prior to issuance of the license.

19 6. If Respondent should ever apply or reapply for a new license or certification, or
20 petition for reinstatement of a license, by any other health care licensing agency in the State of
21 California, all of the charges and allegations contained in Accusation No. 5798 shall be deemed to
22 be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any
23 other proceeding seeking to deny or restrict licensure.

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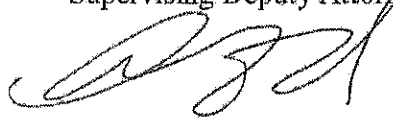
ACCEPTANCE

I have carefully read the Stipulated Surrender of License and Order. I understand the stipulation and the effect it will have on my Pharmacy Technician Registration. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 3-10-17 
PHILIP ANTHONY ACOSTA
Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated: 3.16.17 Respectfully submitted,
XAVIER BECERRA
Attorney General of California
JANICE K. LACHMAN
Supervising Deputy Attorney General

ANAHITA S. CRAWFORD
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 5798

1 KAMALA D. HARRIS
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9 **BOARD OF PHARMACY**
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11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 5798

13 **PHILIP ANTHONY ACOSTA**
2661 Holt Ave.
14 Sanger, CA 93657

ACCUSATION

15 **Pharmacy Technician Registration No.**
TCH 99539

16 Respondent.

17
18 Virginia Herold ("Complainant") alleges:

19 **PARTIES**

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

22 2. On or about March 22, 2010, the Board issued Pharmacy Technician Registration
23 Number TCH99539 to Philip Anthony Acosta ("Respondent"). The registration expired on
24 November 30, 2015, and was cancelled on March 6, 2016.

25 **JURISDICTION**

26 3. Business and Professions Code ("Code") section 4300(a) states that every license
27 issued may be suspended or revoked.

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1 4. Code section 4011 states:

2 The board shall administer and enforce this chapter and the Uniform
3 Controlled Substances Act (Division 10 (commencing with Section 11000) of the
4 Health and Safety Code).

5 5. Code section 4300.1 states:

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

12 STATUTORY PROVISIONS

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

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

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

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

23 (l) The conviction of a crime substantially related to the qualifications,
24 functions, and duties of a licensee under this chapter. The record of conviction of a
25 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
26 States Code regulating controlled substances or of a violation of the statutes of this
27 state regulating controlled substances or dangerous drugs shall be conclusive
28 evidence of unprofessional conduct. In all other cases, the record of conviction shall
be conclusive evidence only of the fact that the conviction occurred. The board may
inquire into the circumstances surrounding the commission of the crime, in order to
fix the degree of discipline or, in the case of a conviction not involving controlled
substances or dangerous drugs, to determine if the conviction is of an offense
substantially related to the qualifications, functions, and duties of a licensee under this
chapter. A plea or verdict of guilty or a conviction following a plea of nolo
contendere is deemed to be a conviction within the meaning of this provision. The
board may take action when the time for appeal has elapsed, or the judgment of
conviction has been affirmed on appeal or when an order granting probation is made
suspending the imposition of sentence, irrespective of a subsequent order under
Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
dismissing the accusation, information, or indictment.

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1 7. Code section 4060 states, in part:

2 A person shall not possess any controlled substance, except that furnished
3 to a person upon the prescription of a physician, dentist, podiatrist, optometrist,
4 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant
5 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a
6 nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to
7 Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist
8 pursuant to Section 4052.1, 4052.2, or 4052.6. This section does not apply to the
9 possession of any controlled substance by a manufacturer, wholesaler, third-party
10 logistics provider, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist,
11 veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or
12 physician assistant, if in stock in containers correctly labeled with the name and
13 address of the supplier or producer.

14 8. Health and Safety Code section 11170 states that no person shall prescribe,
15 administer, or furnish a controlled substance for himself.

16 9. Health and Safety Code section 11173(a) states:

17 No person shall obtain or attempt to obtain controlled substances, or
18 procure or attempt to procure the administration of or prescription for controlled
19 substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the
20 concealment of a material fact.

21 COST RECOVERY

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

26 DRUGS

27 11. "Norco" is a brand name for certain strengths of the combination product of
28 hydrocodone, originally a Schedule III controlled substance per Health and Safety Code
11056(e)(4) and a dangerous drug per Business and Professions Code 4022, and acetaminophen.
All hydrocodone combination products were federally rescheduled to Schedule II on October 5,
2014, by the US Drug Enforcement Agency (DEA).

12. "Diazepam", is the generic name for brand name Valium, a benzodiazepine, a
Schedule IV controlled substance per Health and Safety Code 11057(d)(9) and a dangerous drug
per Business and Professions Code 4022.

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1 13. "Percocet," is a brand name for the combination product of oxycodone, a Schedule II
2 controlled substance per Health and Safety Code 11055(b)(1) (M) and a dangerous drug per
3 Business and Professions Code 4022, and acetaminophen.

4 14. "Xanax," is a brand name for alprazolam, a benzodiazepine, a Schedule IV controlled
5 substance per Health and Safety Code 11057(d)(1) and a dangerous drug per Business and
6 Professions Code 4022.

7 15. "Vicodin" is a brand name for certain strengths of the combination product of
8 hydrocodone, originally a Schedule III controlled substance per Health and Safety Code
9 11056(e)(4) and a dangerous drug per Business and Professions Code 4022, and acetaminophen.
10 All hydrocodone combination products were federally rescheduled to Schedule II on October 5,
11 2014, by the US Drug Enforcement Agency (DEA).

12 **BACKGROUND INFORMATION**

13 16. On and between February 24, 2015, and March 10, 2015, while employed as a
14 pharmacy technician at Wal-Mart Neighborhood Market located in Clovis, California,
15 Respondent embezzled controlled substances¹ for his own personal use by taking medication
16 from orders that had been completed/filled for customers. Furthermore, during Respondent's
17 arrest on or about March 13, 2015, an officer located a Vicodin tablet on his person for which he
18 did not have a prescription.

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(Conviction of a Crime)**

21 17. Respondent is subject to discipline pursuant to Code section 4301(i), in that on or
22 about June 15, 2015, in the case of *People v. Philip Acosta*, (Super. Ct. Fresno County, 2015,
23 Case No. M15919325), Respondent was convicted by the Court on his plea of no contest of
24 violating Penal Code section 508 (embezzlement by clerk, agent, or servant), a misdemeanor.
25 The circumstances of the crime were that on and between February 24, 2015, and March 10,
26 2015, while working as a pharmacy technician at Wal-Mart Neighborhood Market, located in

27 ¹ Xanax .5mg. (1 tablet); Xanax 1mg. (18 tablets); Norco 10/325mg. (15 tablets); Valium
28 10mg. (42 tablets); Valium 2mg. (2 tablets); and Percocet 5/325mg. (4 tablets).

1 Clovis, California, Respondent took controlled substances from orders that had been
2 completed/filled for customers, as more particularly set forth above in paragraph 16.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct - Violation of State Laws Regulating Controlled Substances)**

5 18. Respondent is subject to discipline under Code section 4301(j), on the grounds of
6 unprofessional conduct, in that while employed as a pharmacy technician at Wal-Mart
7 Neighborhood Market, located in Clovis, California, Respondent did the following:

8 **On and between February 24, 2015, and March 10, 2015**

9 a. Respondent obtained Xanax, Norco, Valium, and Percocet, controlled substances, by
10 fraud, deceit, misrepresentation or subterfuge or by the concealment of a material fact in violation
11 of Health and Safety Code section 11173(a) when, while on duty, Respondent took the
12 medication from orders that had been completed/filled for customers for his own personal use.

13 b. Respondent possessed Xanax, Norco, Valium, and Percocet, controlled substances, in
14 violation of Code section 4060, in that he did not have a prescription for those controlled
15 substances.

16 c. Respondent self-administered Xanax, Norco, Valium, and Percocet, controlled
17 substances, in violation of Health and Safety Code section 11170.

18 **March 13, 2015**

19 d. Respondent possessed Vicodin, a controlled substance, in violation of Code section
20 4060, in that he did not have a prescription for that controlled substance.

21 **THIRD CAUSE FOR DISCIPLINE**

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

23 19. Respondent is subject to discipline pursuant to Code section 4301(f), on the grounds
24 of unprofessional conduct, in that he committed acts involving dishonesty, fraud, deceit, or
25 corruption, as more particularly set forth above in paragraphs 16-18.

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PRAYER

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


1. Revoking or suspending Pharmacy Technician Registration Number TCH 99539, issued to Philip Anthony Acosta;

2. Ordering Philip Anthony Acosta to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

DATED:

11/9/17



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

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