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

In the Matter of the Accusation Against:

**ELISA D. MARQUEZ
1600 Yulupa Ave. #19
Santa Rosa, CA 95405
Pharmacy Technician Registration No. TCH
68753**

Respondent.

Case No. 5932

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about May 1, 2017, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 5932 against Elisa D. Marquez (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)
2. On or about May 3, 2006, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 68753 to Respondent. The Pharmacy Technician Registration expired on July 31, 2015, and has not been renewed.

1 3. On or about May 9, 2017, Respondent was served by Certified and First Class Mail
2 copies of the Accusation No. 5932, 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 1600 Yulupa Ave. #19
8 Santa Rosa, CA 95405.

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. Government Code section 11506, subdivision (c) states, in relevant part:

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

18 6. The Board takes official notice of its records and the fact that Respondent failed to
19 file a Notice of Defense within 15 days after service upon her of the Accusation, and therefore
20 waived her right to a hearing on the merits of Accusation No. 5932.

21 7. California Government Code section 11520, subdivision (a) states, in relevant part:

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

26 8. Pursuant to its authority under Government Code section 11520, the Board finds
27 Respondent is in default. The Board will take action without further hearing and, based on the
28 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
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. 5932, finds that

1 the charges and allegations in Accusation No. 5932, are separately and severally, found to be true
2 and correct by clear and convincing evidence.

3 9. Taking official notice of its own internal records, pursuant to Business and
4 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
5 and Enforcement is \$4,630.25 as of July 24, 2017.

6 DETERMINATION OF ISSUES

7 1. Based on the foregoing findings of fact, Respondent Elisa D. Marquez has subjected
8 her Pharmacy Technician Registration No. TCH 68753 to discipline.

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

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

13 a. Violation of Bus. & Prof Code, § 4301, subd. (f) (Unprofessional Conduct-Dishonest
14 Act);

15 b. Violation of Bus. & Prof Code, § 4060 (Possession of Controlled Substance without a
16 Prescription);

17 c. Violation of Bus. & Prof Code, § 4059, subd. (a) (Furnishing Dangerous Drugs
18 without a Prescription);

19 d. Violation of Bus. & Prof Code, § 4301, subd. (q) (Unprofessional Conduct-Engaging
20 in Conduct that Subverts Investigation);

21 e. Violation of Bus. & Prof Code, § 4301, subd. (j) (Violation of Laws Relating to
22 Controlled Substance).

23 ORDER

24 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 68753, heretofore
25 issued to Respondent Elisa D. Marquez, is revoked.

26 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
27 written motion requesting that the Decision be vacated and stating the grounds relied on within
28

1 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
2 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

3 This Decision shall become effective at 5:00 p.m. on September 27, 2017.

4 It is so ORDERED on August 28, 2017.

5
6 BOARD OF PHARMACY
7 DEPARTMENT OF CONSUMER AFFAIRS
8 STATE OF CALIFORNIA

9 

10 By _____
11 Amy Gutierrez, Pharm.D.
12 Board President

13 90823376.DOC
14 DOJ Matter ID:SF2016201478

15 Attachment:
16 Exhibit A: Accusation

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Exhibit A

Accusation No. 5932

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 TIMOTHY J. McDONOUGH
Deputy Attorney General
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7 E-mail: Tim.McDonough@doj.ca.gov
Attorneys for Complainant
8

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

11 In the Matter of the Accusation Against:

Case No. 5932

12 **ELISA D. MARQUEZ, A.K.A. ELISA**
13 **VALENTINE**
14 1600 Yulupa Ave. #19
Santa Rosa, CA 95405

ACCUSATION

15 Pharmacy Technician Registration No. TCH
16 68753

17 Respondent.

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 May 3, 2006, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 68753 to Elisa D. Marquez, also known as Elisa Valentine
24 (Respondent). The Pharmacy Technician Registration expired on July 31, 2015,¹ and has not
25 been renewed.

26 JURISDICTION

27 ¹ The Registration was cancelled on November 1, 2015, pursuant to Business and
28 Professions Code section 4402, subdivision (e).

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

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

7 5. Section 4300 of the Code states, in relevant part:

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

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

12 "(1) Suspending judgment.

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

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

15 "(4) Revoking his or her license.

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

18 ...

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

24 6. Section 4300.1 of the Code states:

25 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by
26 operation of law or by order or decision of the board or a court of law, the placement of a license
27 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
28

1 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
2 proceeding against, the licensee or to render a decision suspending or revoking the license."

3 STATUTES/REGULATIONS

4 7. Section 4301 of the Code states:

5 "The board shall take action against any holder of a license who is guilty of unprofessional
6 conduct or whose license has been issued by mistake. Unprofessional conduct shall include, but is
7 not limited to, any of the following:

8 ...

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

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

14 "(q) Engaging in any conduct that subverts or attempts to subvert an investigation of the
15 board."

16 8. California Code of Regulations, title 16, section 1770, states:

17 "For the purpose of denial, suspension, or revocation of a personal or facility license
18 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
19 crime or act shall be considered substantially related to the qualifications, functions or duties of a
20 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
21 licensee or registrant to perform the functions authorized by his license or registration in a manner
22 consistent with the public health, safety, or welfare."

23 9. Section 4059, subdivision (a), of the Code states:

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

28 ///

1 10. 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 11. Section 11171 of the Health and Safety Code states:

17 "No person shall prescribe, administer, or furnish a controlled substance except under the
18 conditions and in the manner provided by this division."

19 12. 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 DRUGS

2 13. Code section 4021 states:

3 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
4 11053) of Division 10 of the Health and Safety Code.”

5 14. Norco is a brand name for hydrocodone/acetaminophen. Hydrocodone is a Schedule
6 II controlled substance as designated by Health and Safety Code section 11055, subdivision
7 (b)(1)(I), and a dangerous drug as designated by Business and Professions Code section 4022.

8 15. Ambien is a brand name for zolpidem. Zolpidem is a Schedule IV controlled
9 substance as designated by Health and Safety Code section 11057, subdivision (d)(32), and a
10 dangerous drug as designated by Business and Professions Code section 4022.

11 16. Suboxone is a brand name for buprenorphine. Buprenorphine is a Schedule III
12 controlled substance as designated by Health and Safety Code section 11056, subdivision (e), and
13 a dangerous drug as designated by Business and Professions Code section 4022.

14 17. Xanax is a brand name for alprazolam. Alprazolam is a Schedule IV controlled
15 substance as designated by Health and Safety Code section 11057, subdivision (d)(1), and a
16 dangerous drug as designated by Business and Professions Code section 4022.

17 COST RECOVERY

18 18. Section 125.3 of the Code provides, in relevant part, that the Board may request the
19 administrative law judge to direct a licensee found to have committed a violation or violations of
20 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
21 enforcement of the case, with failure of the licensee to comply subjecting the license to not being
22 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
23 included in a stipulated settlement.

24 BACKGROUND

25 19. On or about October 10, 2014, the Board received a DEA 106 report from CVS
26 Pharmacy No. 1173 located in Healdsburg, California, which indicated a loss of several controlled
27 substances including zolpidem, alprazolam, buprenorphine, and hydrocodone/acetaminophen.

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SECOND CAUSE FOR DISCIPLINE
(Possession of Controlled Substance without a Prescription)
(Bus. & Prof. Code, § 4060)

25. Respondent has subjected her Pharmacy Technician Registration to disciplinary action under Code section 4060, in that she illegally possessed zolpidem, alprazolam, buprenorphine, and hydrocodone/apap, controlled substances, without a prescription. The circumstances are more fully explained in paragraphs 19 through 22, above.

THIRD CAUSE FOR DISCIPLINE
(Furnishing Dangerous Drugs without a Prescription)
(Bus. & Prof. Code, § 4059, subdivision (a))

26. Respondent has subjected her Pharmacy Technician Registration to disciplinary action under Code section 4059, subdivision (a), in that she furnished controlled substances and dangerous drugs without a prescription. Specifically, from July 2014 to February 2015, she furnished zolpidem, alprazolam, buprenorphine, and hydrocodone/acetaminophen to her ex-husband. The circumstances are more fully explained in paragraphs 19 through 22, above.

FOURTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Engaging in Conduct that Subverts Investigation)
(Bus. & Prof. Code 4301, subd. (q))

27. Respondent has subjected her Pharmacy Technician Registration to disciplinary action under Code section 4301, subdivision (q), in that she failed to properly respond to numerous requests from the Board's Inspector to meet and discuss the investigation regarding her theft of medications from CVS Pharmacy No. 1173. The circumstances are more fully explained in paragraph 23, above.

FIFTH CAUSE FOR DISCIPLINE
(Violation of Laws Relating to Controlled Substance)
(Bus. & Prof. Code, § 4301, subd. (j))

28. Respondent has subjected her Pharmacy Technician Registration to disciplinary action under Code section 4031, subdivision (j), in that she violated state laws relating to controlled substances, including Health and Safety Code, sections 11171, when she stole controlled substances from her employer and furnished them to her ex-husband. The circumstances are more fully explained in paragraphs 19 through 22, above.

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PRAYER

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

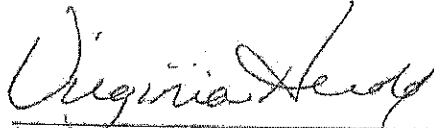
1. Revoking or suspending Pharmacy Technician Registration Number TCH 68753, issued to Elisa D. Marquez;

2. Ordering Elisa D. Marquez 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:

5/11/17



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

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