

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Senior Assistant Attorney General
3 GREGORY J. SALUTE
Supervising Deputy Attorney General
4 State Bar No. 164015
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2617
7 Facsimile: (619) 645-2106
Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 5386

13 **DIMITRI DEON ARCHIBALD**
14 **13772 Goldenwest Street, #140**
Westminster, CA 92683

A C C U S A T I O N

15 **Pharmacy Technician Registration No. TCH**
16 **119075**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

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

23 2. On March 22, 2012, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 119075 to Dimitri Deon Archibald (Respondent). The Pharmacy
25 Technician Registration was in full force and effect at all times relevant to the charges brought
26 herein and will expire on April 30, 2017, unless renewed.

27 ///

28 ///

1 **JURISDICTION**

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

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

8 5. Section 4300, subdivision (a), of the Code provides that every license issued by
9 the Board may be suspended or revoked.

10 6. Section 4300.1 of the Code states:

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

15 **STATUTORY PROVISIONS**

16 7. Section 4022 of the Code states

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

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

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

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

24 8. Section 4059, subdivision (a) of the Code states in pertinent part:

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

27 ///

28 ///

1 9. Section 4060 of the Code states:

2 No person shall possess any controlled substance, except that furnished to
3 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
4 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
5 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
6 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant
7 pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or
8 a pharmacist pursuant to either Section 4052.1 or 4052.2. This section shall not
9 apply to the possession of any controlled substance by a manufacturer,
10 wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist,
11 veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or
12 physician assistant, when in stock in containers correctly labeled with the name
13 and address of the supplier or producer.

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

17 10. Section 4301 of the Code 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
20 misrepresentation or issued by mistake. Unprofessional conduct shall include,
21 but is not limited to, any of the following:

22

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

27

28 (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.

 (o) Violating or attempting to violate, directly or indirectly, or assisting in
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
pharmacy, including regulations established by the board or by any other state or
federal regulatory agency.

11. Health & Safety Code section 11170 states:

 No person shall prescribe, administer, or furnish a controlled substance
for himself.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

12. Health & Safety Code section 11350 states:

Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code.

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

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

14. United States Code, title 21, section 843 states, in pertinent part:

- (a) It shall be unlawful for any person knowingly or intentionally –
 -
 - (3) to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge;

COST RECOVERY

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

DRUGS AT ISSUE

16. Diazepam is a Schedule IV controlled substance as designated by Health and Safety Code, section 11057, subdivision (d)(9) and is a dangerous drug under section 4022.

1 17. Viagra is a brand name for sildenafil, a dangerous drug as designated under
2 section 4022. It is an erectile-dysfunction treatment drug.

3 **FACTUAL ALLEGATIONS**

4 18. At all times mentioned herein, Respondent was employed as a pharmacy
5 technician at CVS Pharmacy Permit Number 9497 located in Irvine, California.

6 19. Four to five months prior to March 12, 2014, while on duty as a pharmacy
7 technician, Respondent diverted or stole 22 tablets of diazepam 2 milligrams from CVS
8 Pharmacy Permit Number 9497 by taking the tablets out of the container and hiding them in his
9 pocket. Respondent did not have a prescription for possessing diazepam.

10 20. Approximately two weeks prior to March 12, 2014, Respondent diverted or stole
11 one Viagra tablet from CVS Pharmacy Permit Number 9497. Respondent did not have a
12 prescription for possessing the Viagra.

13 **FIRST CAUSE FOR DISCIPLINE**

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

15 21. Respondent has subjected his Pharmacy Technician Registration to discipline
16 under Code section 4301, subdivision (f), in that he committed acts involving moral turpitude,
17 dishonesty, fraud, deceit, or corruption, as set forth in paragraphs 18 through 20, above, which
18 are incorporated herein by reference.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Violations of Drug Laws)**

21 22. Respondent has subjected his Pharmacy Technician Registration to discipline
22 under Code section 4301, subdivision (j), for violating statutes regulating controlled substances
23 and dangerous drugs, including Health and Safety Code sections 11170 and 11350, subdivision
24 (a), in that he possessed a controlled substance without a prescription, as set forth in paragraphs
25 18 through 20, above, which are incorporated herein by reference.

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THIRD CAUSE FOR DISCIPLINE

(Violations of Pharmacy Law)

23. Respondent has subjected his Pharmacy Technician Registration to discipline under Code section 4301, subdivision (o) for violating Pharmacy Law, in that Respondent possessed a controlled substance without a prescription in violation of Code section 4060, as set forth in paragraphs 18 through 20, above, which are incorporated herein by reference.

FOURTH CAUSE FOR DISCIPLINE

(Possession of Controlled Substance without a Prescription)

24. Respondent has subjected his Pharmacy Technician Registration to discipline under Code section 4022 and 4059, subdivision (a), in that Respondent possessed a dangerous drug and/or controlled substance without a prescription, as set forth in paragraphs 18 through 20, above, which are incorporated herein by reference.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

25. Respondent is subject to disciplinary action under Code section 4301 for unprofessional conduct in that he engaged in the activities described in paragraphs 18 through 20, above, which are incorporated herein by reference.

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 119075, issued to Dimitri Deon Archibald;
- 2. Ordering Dimitri Deon Archibald 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

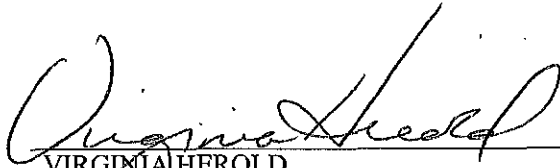
///
///
///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

DATED:

11/4/15



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

SD2015700278
71070813.doc