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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. 5434

12 **TIMOTHY JOSEPH O'HARA**  
1522 N Street, #202  
13 Sacramento, California 95814

**A C C U S A T I O N**

14 **Pharmacy Technician Registration No.**  
15 **TCH 115814**

16 Respondent.

17 Virginia Herold ("Complainant") alleges:

18 **PARTIES**

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

21 **Pharmacy Technician Registration**

22 2. On or about September 7, 2011, the Board issued Pharmacy Technician Registration  
23 Number TCH 115814 to Timothy Joseph O'Hara ("Respondent"). The pharmacy technician  
24 registration was in full force and effect at all times relevant to the charges brought herein and will  
25 expire on June 30, 2017, unless renewed.

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1 JURISDICTION

2 3. Business and Professions Code ("Code") section 4300 states, in pertinent part:

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

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

7 (1) Suspending judgment.

8 (2) Placing him or her upon probation.

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

10 (4) Revoking his or her license.

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

13 4. Code section 4300.1 states:

14 The expiration, cancellation, forfeiture, or suspension of a board-issued license  
15 by operation of law or by order or decision of the board or a court of law, the  
16 placement of a license on a retired status, or the voluntary surrender of a license by a  
17 licensee shall not deprive the board of jurisdiction to commence or proceed with any  
18 investigation of, or action or disciplinary proceeding against, the licensee or to render  
19 a decision suspending or revoking the license.

20 STATUTORY PROVISIONS

21 5. Code section 4301 states, in pertinent part:

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

26 . . .

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

. . .

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

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

3 ...

4 (o) Violating or attempting to violate, directly or indirectly, or assisting in or  
5 abetting the violation of or conspiring to violate any provision or term of this chapter  
6 or of the applicable federal and state laws and regulations governing pharmacy,  
7 including regulations established by the board or by any other state or federal  
8 regulatory agency . . . .

9 6. Code section 4059(a) states that, "A person may not furnish any dangerous drug,  
10 except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or  
11 naturopathic doctor pursuant to Section 3640.7."

12 7. Code section 4060 states, in pertinent part:

13 A person shall not possess any controlled substance, except that furnished to a  
14 person upon the prescription of a physician, dentist, podiatrist, optometrist,  
15 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant  
16 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a  
17 nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to  
18 Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist  
19 pursuant to Section 4052.1, 4052.2, or 4052.6. . . .

20 8. Code section 4022 states:

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

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

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

(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.

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

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

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

1 11. Health and Safety Code section 11350(a), states:

2 Except as otherwise provided in this division, every person who possesses  
3 (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of  
4 subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of  
5 subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section  
6 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled  
7 substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon  
8 the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to  
9 practice in this state, shall be punished by imprisonment pursuant to subdivision (h)  
10 of Section 1170 of the Penal Code.

#### 7 COST RECOVERY

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

#### 14 DRUG/CONTROLLED SUBSTANCE

15 13. *Marijuana* is a Schedule I controlled substance as designated by Health and Safety  
16 Code section 11054(d)(13), and is a dangerous drug within the meaning of Code section 4022, in  
17 that it requires a lawful prescription.

18 14. *Tramadol*, a centrally acting synthetic opioid analgesic, is a dangerous drug within  
19 the meaning of Code section 4022, in that it requires a lawful prescription.<sup>1</sup>

#### 20 BACKGROUND

21 15. At all times relevant to the charges brought herein, Respondent was employed as a  
22 registered pharmacy technician at U.C. Davis Medical Center, Pharmacy Department (UCDP),  
23 license No. HPE 37803, located at 2315 Stockton Boulevard, Stockton, California.

24 16. Between on or about May 31 and June 18, 2014, UCDP staff reported to UCDP  
25 management that while on duty as a pharmacy technician, Respondent appeared to be

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27 <sup>1</sup> Effective August 18, 2014, Code of Federal Regulations, title 21, section 1308.14(b)(3)  
28 designated *Tramadol* as a controlled substance.

1 sleepy or sleeping while standing, his behavior was unusual and odd, his speech occasionally  
2 mumbled or slurred, and he was making medication errors.

3 17. On or about June 18, 2014, in the course of an investigation by UCDP management  
4 into Respondent's above-described behaviors, Respondent stated that he had taken around fifty  
5 Tramadol tablets from UCDP supplies over a ninety day period. Respondent stated that he  
6 usually took two 50 mg. tablets of Tramadol for back pain while he worked, but did not take them  
7 daily. Respondent also stated that he smoked marijuana in the evening to help him sleep.

8 18. On or about August 18, 2014, Respondent's employment with UCDP was terminated.

9 **FIRST CAUSE FOR DISCIPLINE**

10 (Violation of State Laws Regulating Controlled Substances)

11 19. Paragraphs 14 through 17 are incorporated herein as though set forth at length.  
12 Respondent is subject to disciplinary action pursuant to Code section 4301(j), for unprofessional  
13 conduct, in that Respondent violated the following statutes governing controlled substances  
14 and/or dangerous drugs:

15 a. **Code section 4060 and Health and Safety Code Section 11350(a)**: Respondent  
16 possessed marijuana, a controlled substance, without a valid prescription from a physician,  
17 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor.

18 b. **Health and Safety Code Section 11170**: Respondent self-administered marijuana, a  
19 controlled substance.

20 c. **Code section 4059**: Respondent furnished Tramadol, a dangerous drug, to himself  
21 without a valid prescription.

22 **SECOND CAUSE FOR DISCIPLINE**

23 (Self-Administration of a Dangerous Drug in a Manner Dangerous or Injurious)

24 20. Paragraphs 14 through 17 are incorporated herein as though set forth at length.  
25 Respondent is subject to disciplinary action pursuant to Code section 4301(h), for unprofessional  
26 conduct, in that at times between on or about May 31 and June 18, 2014, while working as a  
27 pharmacy technician for UCDP, Respondent administered to himself Tramadol, a dangerous  
28 drug, to an extent or in a manner as to be dangerous or injurious to himself, to a person holding a

1 license under this chapter, or to any other person or to the public, or to the extent that such use  
2 impaired his ability to conduct with safety to the public the practice authorized by his license.

3 **THIRD CAUSE FOR DISCIPLINE**

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

5 21. Paragraphs 14 through 17 are incorporated herein as though set forth at length.  
6 Respondent is subject to disciplinary action pursuant to Code section 4301(f), for unprofessional  
7 conduct, in that between in or around March and June 2014, Respondent committed acts of moral  
8 turpitude, dishonesty, fraud, deceit, or corruption, when he stole approximately fifty Tramadol  
9 tablets from UCDP.

10 **FOURTH CAUSE FOR DISCIPLINE**

11 (Violation of the Pharmacy Law)

12 22. Respondent is subject to disciplinary action pursuant to Code section 4301(o), for  
13 unprofessional conduct, in that Respondent violated laws governing pharmacy, as set forth in  
14 paragraphs 19 through 21, above.

15 **PRAYER**

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

- 18 1. Revoking or suspending Pharmacy Technician Registration Number TCH 115814,  
19 issued to Timothy Joseph O'Hara;
- 20 2. Ordering Timothy Joseph O'Hara to pay the Board of Pharmacy the reasonable costs  
21 of the investigation and enforcement of this case, pursuant to Business and Professions Code  
22 section 125.3; and,
- 23 3. Taking such other and further action as deemed necessary and proper.

24 DATED: \_\_\_\_\_

8/10/15

*Virginia Herold*

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

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