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

11
12 Case No. 5829

13 In the Matter of the Accusation Against:

14 **ROBERT JAMES PRESTON**
25335 Delphinium Avenue
Moreno Valley, CA 92553

A C C U S A T I O N

15 **Pharmacy Technician Registration No. TCH**
141009

16
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 (Board), Department of Consumer Affairs.

22 2. On or about August 1, 2014, the Board issued Pharmacy Technician Registration
23 Number TCH 141009 to Robert James Preston (Respondent). The Pharmacy Technician
24 Registration expired on February 29, 2016, and has not been renewed.

25 **JURISDICTION**

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

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7. Section 4059 of the Code states:

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

....

8. Section 4060 of the Code states:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

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

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 1171 states that no person shall prescribe, administer, or furnish a controlled substance except under the conditions and in the manner provided by this division.

COST RECOVERY

11. 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.

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1 **DRUGS**

2 12. Alprazolam is a Schedule IV controlled substance pursuant to Health and Safety Code
3 section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code
4 section 4022.

5 13. Promethazine with codeine is a Schedule V controlled substance pursuant to Health
6 and Safety Code section 11058(c) and is a dangerous drug pursuant to Code section 4022.

7 **FACTUAL ALLEGATIONS**

8 14. Respondent was employed as a pharmacy technician at CVS Pharmacy in Rialto,
9 California. In October 2015, the CVS Pharmacy Diversion Manager conducted an audit of
10 promethazine with codeine (promethazine) for the dates of May 1, 2015 through September 23,
11 2015. The audit reflected a loss of 2,494 units of promethazine during that timeframe.
12 Thereafter, CVS conducted a full internal investigation, which included interviewing employees.
13 On November 10, 2015, Respondent was interviewed about the loss of promethazine. During the
14 interview, Respondent admitted to taking promethazine with codeine and alprazolam in order to
15 sell it to his friends. He stated that he used the money from these sales to help him pay bills.
16 Respondent also admitted to taking alprazolam 2 mg for his personal use.

17 15. After CVS notified the Board of Pharmacy of Respondent's diversion, the Board
18 initiated an investigation, including an audit of alprazolam and promethazine. The audit revealed
19 that between May 1, 2015 and November 10, 2015, CVS had a total loss 1,437 tablets of
20 alprazolam 2 mg, 4 tablets of alprazolam ER 2 mg, 2,668 ml of promethazine with codeine syrup,
21 and 599 ml of promethazine VC-codeine syrup.

22 16. CVS employees who worked with Respondent were also interviewed. Several
23 employees reported observing Respondent act in an unusual manner. One technician reported
24 that Respondent appeared "dazed" at work. Another technician reported that on two occasions,
25 Respondent appeared "altered," his speech was slurred, and his eyes were dilated. On one of
26 those occasions, this technician was asked to "keep an eye" on Respondent and not to let him
27 work with drugs. Respondent was sent home. The Pharmacist-in-Charge reported that
28 Respondent occasionally exhibited "erratic" behavior and appeared "out of it."

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Dishonest Act)**

3 17. Respondent has subjected his license to disciplinary action under section 4301,
4 subdivision (f) of the Code in that Respondent committed acts involving dishonesty, fraud, deceit,
5 or corruption, in that Respondent stole controlled substances from CVS, as detailed in paragraphs
6 14 through 16, above, which are incorporated herein by reference.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Use of Controlled Substances in Dangerous Manner)**

9 18. Respondent has subjected his license to disciplinary action under section 4301,
10 subdivision (h) of the Code in that Respondent administered to himself controlled substances to
11 the extent or in a manner as to be dangerous or injurious to himself or the public, as detailed in
12 paragraphs 14 through 16, above, and which are incorporated herein by reference.

13 **THIRD CAUSE FOR DISCIPLINE**

14 **(Violating Statutes Regulating Controlled Substances)**

15 19. Respondent has subjected his license to disciplinary action under section 4301,
16 subdivision (j) of the Code for violation of Health and Safety Code sections 11170 and 11171 in
17 that Respondent illegally obtained and administered controlled substances to himself and others,
18 as detailed in paragraphs 14 through 16, above, and which are incorporated herein by reference.

19 **FOURTH CAUSE FOR DISCIPLINE**

20 **(Violating Laws Governing Pharmacy)**

21 20. Respondent has subjected his license to disciplinary action under section 4301,
22 subdivision (o) of the Code for violation of Code sections 4059 and 4060 in that Respondent
23 illegally furnished controlled substances to himself and others, and illegally possessed controlled
24 substances without a legitimate prescription, as detailed in paragraphs 14 through 16, above, and
25 which are incorporated herein by reference.

26 **PRAYER**

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

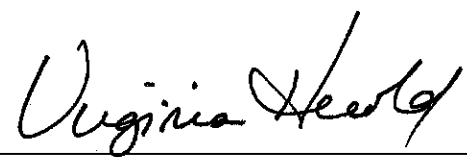
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1. Revoking or suspending Pharmacy Technician Registration Number TCH 141009,
issued to Robert James Preston;

2. Ordering Robert James Preston 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;

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

DATED: 6/9/16



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

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