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

In the Matter of the Accusation Against: JEFFREY J. TURNER P.O, Box 315 Sunol, California 94586-0315 Original Pharmacy Technician Registration No. TCH 50941 Respondent.	Case No. 3049 OAH No. **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about November 7, 2006, Complainant Virginia K. Herold, in her official capacity as the Interim Executive Officer of the California State Board of Pharmacy (Board), filed Accusation No. 3049 against JEFFREY J. TURNER (Respondent).

2. On or about September 8, 2003, the Board issued Original Pharmacy Technician Registration No. TCH 50941 to Respondent. The Original Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein, and expired on January 31, 2007.

3. On or about January 18, 2007, Carol L. Grays, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation No. 3049, Statement to Respondent, Notice of Defense, Request for Discovery, and Government

Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is P.O, Box 315, Sunol, California 94586-0315. A copy of the Accusation is attached as Exhibit A, and is incorporated herein by reference.

4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c).

5. Government Code section 11506 states, in pertinent part:

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

6. Respondent failed to file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 3049.

7. Government Code section 11520 states, in pertinent part:

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

8. Pursuant to its authority under Government Code section 11520, the Board finds that Respondent is in default and has waived his right to a hearing. The Board will take action without further hearing and, based on the evidence on file herein, determines that the allegations in Accusation No. 3049 are true.

9. The total costs for investigation and enforcement are $4,778.25 as of February 16, 2006.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent has subjected his Original Pharmacy Technician Registration No. TCH 50941 to discipline.

2. Service of the Accusation and the related documents was proper and in accordance with the law.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Board is authorized to revoke Respondent's Original Pharmacy Technician Registration No. TCH 50941 based upon the following violations alleged in the Accusation:

a. Business and Professions Code (Code) section 4300 on the grounds of unprofessional conduct, as defined by section 4301(f), in that between on or about December 1, 2004 and on or about December 2, 2005, Respondent, on multiple occasions, while employed as a pharmacy technician at Longs Drugs Store in Lafayette, California, stole merchandise and stole and/or fraudulently and deceitfully diverted from the pharmacy supply the following controlled substances or dangerous drugs, referenced in paragraphs 16 through 20:
Seven hundred sixty eight (768) **Vicodin 5 mg** tablets; One hundred twenty (120) **Wellbutrin** pills; Ten (10) **Zyrtec D** pills; Ten (10) **Zyrtec** pills; and Ninety (90) **Xenical** pills.

The total dollar value of the controlled substances and/or dangerous drugs stolen by Respondent was $840.69. All of said controlled substances and/or dangerous drugs were for self-administration, except for the Wellbutrin and Xenical pills, which Respondent later unlawfully provided to his mother.

b. Section 4300 of the Code on the grounds of unprofessional conduct, as defined by Code section 4301(h), in that on dates which are unknown, from approximately December 2004 to December 2, 2005, on multiple occasions, Respondent, while employed as a pharmacy technician at Longs Drugs Store in Lafayette, California, used Vicodin, a controlled substance, to an extent or in a manner dangerous or injurious to himself or others, and to the extent that his usage impaired his ability to conduct with safety to the public the practice authorized by his license. On said occasions, Respondent sold, dispensed, or compounded dangerous drugs while under the influence of Vicodin.

c. Section 4300 of the Code on the grounds of unprofessional conduct, as defined by Code section 4301(j) (violating statutes regulating controlled substances and dangerous drugs) in that by engaging in the conduct set forth above, Respondent violated sections 4059 and 4060 of the Code, and Health and Safety Code sections 11173(a), 11350(a),

and 11352(a).

d. Section 4300 of the Code on the grounds of unprofessional conduct, as defined by Section 4301(o) (violation of Pharmacy Act) in that by engaging in the conduct set forth above, in selling, dispensing, or compounding dangerous drugs on unknown dates while under the influence of Vicodin, Respondent violated Code section 4327.

ORDER

IT IS SO ORDERED that Original Pharmacy Technician Registration No. TCH 50941, heretofore issued to Respondent JEFFREY J. TURNER, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on April 25, 2007.

It is so ORDERED March 26, 2007

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By William Powers
WILLIAM POWERS
Board President

Attachment:
Exhibit A: Accusation No. 3049

Exhibit A

Accusation No. 3049

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

In the Matter of the Accusation Against: **JEFFREY J. TURNER** P.O, Box 315 Sunol, California 94586-0315 Original Pharmacy Technician Registration No. TCH 50941 Respondent.	Case No. 3049 **ACCUSATION**

Complainant alleges:

PARTIES

1. Virginia K. Herold (Complainant) brings this Accusation solely in her official capacity as the Interim Executive Officer of the California State Board of Pharmacy.

2. On or about September 8, 2003, the California State Board of Pharmacy issued Original Pharmacy Technician Registration Number TCH 50941 to JEFFREY J. TURNER (Respondent). The Original Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2007, unless renewed.

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JURISDICTION

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

STATUTORY PROVISIONS

4. Section 4300 of the Code provides, in pertinent part, that every license issued by the Board may be suspended or revoked.

5. Section 118 of the Code provides that the Board retains jurisdiction to institute or continue disciplinary proceedings, after the expiration or forfeiture of a license by operation of law, during the period in which the license may be renewed, restored, reissued or reinstated.

6. Section 4301 of the Code states, in pertinent part:

"The Board shall take action against any holder of a license who is guilty of unprofessional conduct, . . . Unprofessional conduct shall include, but is not limited to, any of the following:

"(f) The commission of any act involving moral turpitude, dishonesty, fraud, 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.

"(j) The violation of any of the statutes of this 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."

7. Section 4021 of the Code defines controlled substance as follows

"'Controlled substance' means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code."

8. Section 4022 of the Code defines a dangerous drug, as follows:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use, except veterinary drugs that are labeled as such, and includes the following:

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

"(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a _____," "R's only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or 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. Section 4059 of the Code states, in pertinent part, that a person may not furnish any dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian.

10. 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, or veterinarian, 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. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, physician, podiatrist, dentist, veterinarian, 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 mid-wife, a nurse practitioner,

or a physician assistant to order his or her own stock of dangerous drugs and devices."

11. Section 4327 of the Code states:

"Any person who, while on duty, sells, dispenses or compounds any drug while under the influence of any dangerous drug or alcoholic beverages shall be guilty of a misdemeanor."

12. Health and Safety Code section 11173(a) provides, in pertinent part, that no person shall obtain or attempt to obtain controlled substances by fraud, deceit, misrepresentation, subterfuge or by concealment of a material fact.

13. Health and Safety Code section 11350(a) provides, in pertinent part, that no person shall possess any controlled substance, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state.

14. Health and Safety Code section 11352(a), provides, in pertinent part, that no person shall transport, sell, furnish, or give away any controlled substance, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state.

15. Section 125.3 of the Code states, 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.

DRUGS

16. "**Vicodin**" is a Schedule III controlled substance pursuant to Health and Safety Code section 11056(e)(4) and a dangerous drug pursuant to Business and Professions Code section 4022. Vicodin is a brand name for the narcotic substance **Hydrocodone** (a semisynthetic narcotic analgesic and antitussive with multiple actions qualitatively similar to those of codeine) with the non-narcotic substance acetaminophen.

17. "**Wellbutrin**" is the brand name for Bupropion, a dangerous drug pursuant to Code section 4022, in that said drug can be lawfully dispensed only by prescription.

18. "**Zyrtec D**" is the brand name for Cetizine/Pseudophedrine, a dangerous drug pursuant to Code section 4022, in that said drug can be lawfully dispensed only by prescription.

19. "**Zyrtec**" is the brand name for Cetizine, a dangerous drug pursuant to Code section 4022, in that said drug can be lawfully dispensed only by prescription.

20. "**Xenical**" is the brand name for Orlistat, a dangerous drug pursuant to Code section 4022, in that said drug can be lawfully dispensed only by prescription.

FIRST CAUSE FOR DISCIPLINE

(Acts Involving Moral Turpitude, Dishonesty, Fraud and Deceit)

21. Respondent has subjected his license to discipline under Section 4300 of the Code on the grounds of unprofessional conduct, as defined by section 4301(f), in that between on or about December 1, 2004 and on or about December 2, 2005, Respondent, on multiple occasions, while employed as a pharmacy technician at Longs Drugs Store in Lafayette, California, stole merchandise and stole and/or fraudulently and deceitfully diverted from the pharmacy supply the following controlled substances or dangerous drugs, referenced above in paragraphs 16 through 20:

a. Seven hundred sixty eight (768) **Vicodin 5 mg** tablets.

b. One hundred twenty (120) **Wellbutrin** pills.

c. Ten (10) **Zyrtec D** pills.

d. Ten (10) **Zyrtec** pills.

e. Ninety (90) **Xenical** pills.

22. The total dollar value of the controlled substances and/or dangerous drugs stolen by Respondent was $840.69. All of said controlled substances and/or dangerous drugs were for self-administration, except for the Wellbutrin and Xenical pills, which Respondent later unlawfully provided to his mother.

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SECOND CAUSE FOR DISCIPLINE

(Used Controlled Substance to an Extent or in a Manner Dangerous or Injurious to Himself or Others)

23. Complainant realleges the allegations set forth in paragraphs 21 and 22 above, which are herein incorporated by reference as though fully set forth.

24. Respondent has subjected his license to discipline under Section 4300 of the Code on the grounds of unprofessional conduct, as defined by Code section 4301(h), in that on dates which are unknown, from approximately December 2004 to December 2, 2005, on multiple occasions, Respondent, while employed as a pharmacy technician at Longs Drugs Store in Lafayette, California, used Vicodin, a controlled substance, to an extent or in a manner dangerous or injurious to himself or others, and to the extent that his usage impaired his ability to conduct with safety to the public the practice authorized by his license. On said occasions, Respondent sold, dispensed, or compounded dangerous drugs while under the influence of Vicodin.

THIRD CAUSE FOR DISCIPLINE

(Violation of Statutes Regulating Controlled Substances and Dangerous Drugs)

25. Paragraphs 21 through 24 above are herein incorporated by reference as though fully set forth.

26. The conduct of Respondent, as set forth above, constitutes violation of Code sections 4059 and 4060, and Health and Safety Code sections 11173(a), 11350(a), and 11352(a), and accordingly provides grounds for disciplinary action under section 4300 of the Code on the grounds of unprofessional conduct, as defined by Code section 4301(j) (violation of statutes regulating controlled substances and dangerous drugs).

FOURTH CAUSE FOR DISCIPLINE

(Violation of Pharmacy Act)

27. Paragraphs 21 through 24 above are herein incorporated by reference as though fully set forth.

28. The conduct of Respondent, as set forth above, in selling, dispensing, or

compounding dangerous drugs on unknown dates while under the influence of Vicodin, constitutes violation of Code section 4327, and accordingly provides grounds for disciplinary action under Section 4300 of the Code on the grounds of unprofessional conduct, as defined by Code section 4301(o) (violation of Pharmacy Act).

PRAYER

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

a. Revoking or suspending Original Pharmacy Technician Registration Number TCH 50941, issued to JEFFREY J, TURNER;

b. Ordering JEFFREY J, TURNER to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and

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

DATED: 1/11/07

VIRGINIA K. HEROLD
Interim Executive Officer
California State Board of Pharmacy
State of California
Complainant

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