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

In the Matter of the Accusation Against: LARRY DARNELL MCKENZIE 525 E. Camden Ave., #13 El Cajon, CA 92020 Pharmacy Technician Registration No. TCH 56107 Respondent.	Case No. 3133 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about February 15, 2008, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 3133 against Larry Darnell McKenzie (Respondent) before the Board of Pharmacy.

2. On or about April 20, 2004, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 56107 to Respondent. The Pharmacy Technician Registration expired on November 30, 2007, and has not been renewed. On or about March, 2, 2008, the Board canceled Respondent's Pharmacy Technician Registration.

3. On or about February 21, 2008, Kim Cooney, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation

No. 3133, 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: 525 E. Camden Ave., #13, El Cajon, CA 92020. 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. Business and Professions Code section 118 states, in pertinent part:

> (b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the license on any such ground.

6. 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.

7. 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. 3133.

8. California 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.

9. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the evidence on file herein, finds that the allegations in Accusation No. 3133 are true.

10. The total cost for investigation and enforcement in connection with the Accusation are **$3,519.50** as of March 27, 2008.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Larry Darnell McKenzie has subjected his Pharmacy Technician Registration No. TCH 56107 to discipline.

2. A copy of the Accusation is attached.

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

4. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician Registration based upon the following violations alleged in the Accusation:

a. Respondent subjected his license to discipline under sections 490 and 4301, subdivision (l) of the Code in that on or about June 7, 2007, in a criminal proceeding entitled *People v. Larry D. McKenzie,* in San Diego County Superior Court, case number CD206172, Respondent was convicted on his plea of guilty of two counts of violating Health and Safety Code section 11173, subdivision (a), obtaining prescriptions by fraud/deceit.

b. Respondent subjected his license to discipline under section 4301, subdivision (f) of the Code in that he admitted to and was convicted of obtaining controlled substances by fraud and deceit.

c. Respondent subjected his license to discipline under section 4060 of the Code in that he admitted to, and was documented by in-store surveillance cameras, possessing controlled substances without a valid prescription. Acetaminophen with codeine is Schedule III controlled substance as designated by Health and Safety Code Section 11056, and is a dangerous drug pursuant to Business and Professions Code section 4022.

d. Respondent subjected his license to discipline under section 4059 of the Code in that he conspired to furnish controlled substances without a valid prescription.

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ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 56107, heretofore issued to Respondent Larry Darnell McKenzie, 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 May 28, 2008.

It is so ORDERED April 28, 2008

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By William Powers
WILLIAM POWERS
Board President

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DOJ docket number:SD2007803177

Attachment: Exhibit A: Accusation No. 3133

Exhibit A

Accusation No. 3133

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BEFORE THE
BOARD OF PHARMACY
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STATE OF CALIFORNIA

In the Matter of the Accusation Against: LARRY DARNELL McKENZIE 525 E. Camden Avenue #13 El Cajon, CA 92020 Pharmacy Tech. Registration No. TCH 56107 Respondent.	Case No. 3133 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about April 20, 2004, the Board of Pharmacy issued Pharmacy Technician Registration Number TCH 56107 to Larry Darnell McKenzie (Respondent). The Pharmacy Technician Registration expired on November 30, 2007, and has not been renewed.

JURISDICTION

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

4. Section 477 of the Code states:

As used in this division:

(a) "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency."

(b) "License" includes certificate, registration or other means to engage in a business or profession regulated by this code.

5. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

6. Section 490 of the Code states:

A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

7. Section 492 of the Code states:

Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

. . . .

8. Section 4301 of the Code states:

The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. 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.

. . . .

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. . . .

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, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

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. . . .

11. 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.

12. California Code of Regulations, title 16 (CCR), 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.

13. CCR section 1769, states:

. . . .

(b) When considering the suspension or revocation of a facility or a personal license on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) Evidence, if any, of rehabilitation submitted by the licensee.

FIRST CAUSE FOR DISCIPLINE

(June 7, 2007 Criminal Conviction for Obtaining Prescriptions by Fraud/Deceit)

14. Respondent has subjected his license to discipline under sections 490 and 4301, subdivision (l) of the Code in that he was convicted of a crime that is substantially related to the qualifications, duties, and functions of a Pharmacy Technician. The circumstances are as follows:

a. On or about June 7, 2007, in a criminal proceeding entitled *People v. Larry D. McKenzie*, in San Diego County Superior Court, case number CD206172, Respondent was convicted on his plea of guilty of two counts of violating Health and Safety Code section 11173, subdivision (a), obtaining prescriptions by fraud/deceit. The convictions were reduced to misdemeanors by motion of Respondent's attorney.

b. As a result of the conviction, on or about July 23, 2007, Respondent was sentenced to two days in the county jail, with credit for two days served, three years summary probation, payment of court fees and fines, and restitution to the pharmacy.

c. The facts that lead to the conviction were that on or about January 9, 2007, the Loss Prevention Manager for a San Diego CVS Pharmacy conducted an internal investigation of a pharmacy clerk. During an interview, the clerk implicated Respondent (who was a co-worker at the CVS Pharmacy), in a scheme to input and dispense fraudulent prescriptions. The Loss Prevention Manager notified the Drug Enforcement Administration (DEA) and a Diversion Investigator was assigned to the case. As a result of the investigation, it was determined that Respondent fraudulently obtained two controlled substance prescriptions, each for 240 tablets of acetaminophen with codeine, with the assistance of the pharmacy clerk.

The prescriptions were authorized by inputting information for a fictitious medical doctor. Respondent was captured on in-store video surveillance picking up the fraudulent prescriptions on November 12, 2006, and December 10, 2006.

SECOND CAUSE FOR DISCIPLINE

(Commission of Acts Constituting Fraud and Deceit)

15. Respondent has subjected his license to discipline under section 4301, subdivision (f) of the Code in that he admitted to and was convicted of obtaining controlled substances by fraud and deceit, as detailed in paragraph 14, above.

THIRD CAUSE FOR DISCIPLINE

(Illegal Possession of Controlled Substances)

16. Respondent has subjected his license to discipline under section 4060 of the Code in that he admitted to, and was documented by in-store surveillance cameras, possessing controlled substances without a valid prescription, as detailed in paragraph 14, above. Acetaminophen with codeine is Schedule III controlled substance as designated by Health and Safety Code Section 11056, and is a dangerous drug pursuant to Business and Professions Code section 4022.

FOURTH CAUSE FOR DISCIPLINE

(Furnishing a Controlled Substance Without a Prescription)

17. Respondent has subjected his license to discipline under section 4059 of the Code in that he conspired to furnish controlled substances without a valid prescription, as detailed in paragraph 14, above.

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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 56107, issued to Larry Darnell McKenzie;

2. Ordering Larry Darnell McKenzie 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: 2/15/08

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

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