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9

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

12 In the Matter of the Accusation Against:  
13 KRISTAL R. MCDONALD  
6367 Jack Hill Drive  
14 Oroville, CA 95966  
15 Pharmacy Technician Reg. No. TCH 33305  
16 Respondent.

Case No. 3255

**DEFAULT DECISION  
AND ORDER**

[Gov. Code, §11520]

17  
18 **FINDINGS OF FACT**

- 19 1. On or about March 19, 2009, Complainant Virginia Herold, in her official  
20 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs,  
21 filed Accusation No. 3255 against Kristal R. McDonald (Respondent) before the Board of  
22 Pharmacy.
- 23 2. On or about May 18, 2000, the Board of Pharmacy (Board) issued  
24 Pharmacy Technician Registration No. TCH 33305 to Respondent. The Pharmacy Technician  
25 Registration was in full force and effect at all times relevant to the charges brought herein and  
26 will expire on October 31, 2009, unless renewed.
- 27 3. On or about March 27, 2009, Charlette Sheppard, an employee of the  
28 Department of Justice, served by Certified and First Class Mail a copy of the Accusation

1 No. 3255, Statement to Respondent, Notice of Defense, Request for Discovery, and Government  
2 Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board,  
3 which was and is:

4 6367 Jack Hill Drive  
5 Oroville, CA 95966.

6 A copy of the Accusation is attached as Exhibit A, and is incorporated herein by reference.

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

9 5. On or about April 2, 2009, the Domestic Return Receipt for the documents  
10 served by certified mail was returned by the U.S. Postal Service indicating that the Accusation  
11 was delivered to Respondent's address of record on March 31, 2009.

12 6. Government Code section 11506 states, in pertinent part:

13 (c) The respondent shall be entitled to a hearing on the merits if the  
14 respondent files a notice of defense, and the notice shall be deemed a specific  
15 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.

16 7. Respondent failed to file a Notice of Defense within 15 days after service  
17 upon her of the Accusation, and therefore waived her right to a hearing on the merits of  
18 Accusation No. 3255.

19 8. California Government Code section 11520 states, in pertinent part:

20 (a) If the respondent either fails to file a notice of defense or to appear at  
21 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  
22 without any notice to respondent.

23 9. Pursuant to its authority under Government Code section 11520, the Board  
24 finds Respondent is in default. The Board will take action without further hearing and, based on  
25 the evidence on file herein, finds that the allegations in Accusation No. 3255 are true.

26 10. The total cost for investigation and enforcement in connection with the  
27 Accusation are \$2,779.25 as of April 27, 2009.

28 ///

1 DETERMINATION OF ISSUES

2 1. Based on the foregoing findings of fact, Respondent Kristal R. McDonald  
3 has subjected her Pharmacy Technician Registration No. TCH 33305 to discipline.

4 2. A copy of the Accusation is attached.

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

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

8 a. Respondent is subject to disciplinary action under section 4301,  
9 subdivision (f) of the Code in that on or about May 14, 2007 and November 19, 2007, while  
10 working as a pharmacy technician, Respondent admitted stealing controlled substances and  
11 dangerous drugs from her employer, Costco, using fraud, deceit, and dishonesty, conduct  
12 substantially related to the qualifications, functions, and duties of a pharmacy technician.

13 b. Respondent is subject to disciplinary action under section 4301,  
14 subdivision (j) of the Code in that on or about May 14, 2007 and November 19, 2007, while  
15 working as a pharmacy technician, Respondent knowingly violated Business and Professions  
16 Code sections 4022, 4059, and 4060 in that she furnished to herself and was in possession of  
17 controlled substances and dangerous drugs without a prescription, conduct substantially related  
18 to the qualifications, functions, and duties of a pharmacy technician.

19 c. Respondent is subject to disciplinary action under section 4301,  
20 subdivision (h) of the Code in that on or about May 14, 2007 and November 19, 2007, while  
21 working as a pharmacy technician, Respondent self-administered controlled substances and  
22 dangerous drugs, and admitted that she was addicted to prescription medications, conduct  
23 substantially related to the qualifications, functions, and duties of a pharmacy technician.

24 d. Respondent is subject to disciplinary action under section 4301,  
25 subdivision (o) of the Code in that on or about May 14, 2007 and November 19, 2007, while  
26 working as a pharmacy technician, Respondent violated Title 21 United States Code section 843,  
27 subdivision (a)(3), Board of Pharmacy Regulations (California Code of Regulations, Title 16,  
28 Section 1700, et seq.), and the California Uniform Controlled Substances Act (Health and Safety

1 Code 11000, et seq.), conduct substantially related to the qualifications, functions, and duties of  
2 a pharmacy technician.

3 ORDER

4 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 33305,  
5 heretofore issued to Respondent Kristal R. McDonald, is revoked.


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

11 This Decision shall become effective on August 14, 2009.

12  
13 It is so ORDERED July 15, 2009

14  
15 BOARD OF PHARMACY  
16 DEPARTMENT OF CONSUMER AFFAIRS  
17 STATE OF CALIFORNIA

18  
19 By

  
20 \_\_\_\_\_  
KENNETH H. SCHELL  
Board President

21  
22  
23  
24  
25 80355970.wpd  
26 DOJ docket number:SD2009803480

27  
28 Attachment: Exhibit A: Accusation No. 3255

Exhibit A  
Accusation No. 3255



**Cost-of-Suit Summary**

As Of 04/27/2009

Matter ID: SD2009803480

Date Opened: 01/09/2009

Description McDonald, Kristal R., TCH

Total Legal Costs: \$688.25  
Cost-of-Suit: \$0.00  
Grand Total: \$688.25

**Matter Time Activity Summary**

Rate	Hrs Wrkd	Amount
Professional Type: Attorney		
FY: 2008-2009		
\$158.00	1.00	\$158.00
FY 2008-2009 Total:		\$158.00
Attorney Total:		\$158.00

**Professional Type: Paralegal**

FY: 2008-2009		
\$101.00	5.25	\$530.25
FY 2008-2009 Total:		\$530.25
Paralegal Total:		\$530.25

**Total Legal Costs: \$688.25**

**Cost-of-Suit**

Entry #	Journal Date	Vendor #	Vendor	Schedule	Reference	Amount
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Client Agency:

FY:

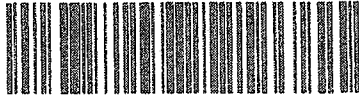
**Component Description:**

Total:	\$0.00
FY Total:	\$0.00
Client Agency Total:	\$0.00

Cost-of-Suit: \$0.00

\* Denotes soft costs which are not included in totals

2. Article #



7160 3901 9848 2000 5470

**COMPLETE THIS SECTION ON DELIVERY**

A. Received by (Please Print Clearly) *Sharon McDonald* B. Date of Delivery *3/31/05*

C. Signature *Sharon McDonald*  Agent  Addressee

D. Is delivery address different from item 1?  Yes  No  
If YES, enter delivery address below:

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee)  Yes

1. Article Addressed to:

Kristal R. McDonald  
6367 Jack Hill Drive  
Orville, CA 95966

*SD2009803480  
Accusation Packet  
Amanda Dodds*

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15 Pharmacy Technician Reg. No. TCH 33305  
16 Respondent.

Case No. 3255  
**ACCUSATION**

18 Complainant alleges:

19 PARTIES

- 20 1. Virginia Herold (Complainant) brings this Accusation solely in her  
21 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer  
22 Affairs.  
23 2. On or about May 18, 2000, the Board of Pharmacy issued Pharmacy  
24 Technician Registration Number TCH 33305 to Kristal R. McDonald (Respondent). The  
25 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges  
26 brought herein and will expire on October 31, 2009, unless renewed.

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1 JURISDICTION

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

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

9 STATUTORY PROVISIONS

10 5. Section 4300, subdivision (a) of the Code states that "every license issued  
11 may be suspended or revoked."

12 6. Section 4301 of the Code states:

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

17 .....

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

21 .....

22 (h) The administering to oneself, of any controlled substance, or the use of  
23 any dangerous drug or of alcoholic beverages to the extent or in a manner as to be  
24 dangerous or injurious to oneself, to a person holding a license under this chapter,  
25 or to any other person or to the public, or to the extent that the use impairs the  
26 ability of the person to conduct with safety to the public the practice authorized  
27 by the license.

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

1 pharmacy, including regulations established by the board or by any other state or  
2 federal regulatory agency.

3  
4 7. Section 4022 of the Code states

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

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

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

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

15 8. Section 4059 of the Code states, in pertinent part, that a person may not  
16 furnish any dangerous drug except upon the prescription of a physician, dentist, podiatrist,  
17 optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not  
18 furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist,  
19 optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

20 9. Section 4060 of the Code states:

21 No person shall possess any controlled substance, except that furnished to  
22 a person upon the prescription of a physician, dentist, podiatrist, optometrist,  
23 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished  
24 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section  
25 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant  
26 pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or  
27 a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause  
28 (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.

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1 16. On or about November 20, 2007, Respondent met with various Costco  
2 loss prevention personnel at the store. Respondent admitted that she had been abusing  
3 prescription medications and was interested in the employee assistance program. Respondent  
4 admitted that she had stolen approximately 200 tablets of carisoprodol (Soma) and 150 tablets of  
5 hydrocodone products from Costco for her personal use.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Unprofessional Conduct - Commission of Acts Involving Moral Turpitude,  
8 Dishonesty, Fraud, Deceit & Corruption)**

9 17. Respondent is subject to disciplinary action under section 4301,  
10 subdivision (f) of the Code in that on or about May 14, 2007 and November 19, 2007, while  
11 working as a pharmacy technician, Respondent admitted stealing controlled substances and  
12 dangerous drugs from her employer, Costco, using fraud, deceit, and dishonesty, as detailed in  
13 paragraphs 14-16, above.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Unprofessional Conduct - Possession of Controlled Substances & Dangerous Drugs)**

16 18. Respondent is subject to disciplinary action under section 4301,  
17 subdivision (j) of the Code in that on or about May 14, 2007 and November 19, 2007, while  
18 working as a pharmacy technician, Respondent knowingly violated Business and Professions  
19 Code sections 4022, 4059, and 4060 in that she furnished to herself and was in possession of  
20 controlled substances and dangerous drugs without a prescription, as detailed in paragraphs 14-  
21 16, above.

22 **THIRD CAUSE FOR DISCIPLINE**

23 **(Self-Administration of Controlled Substances and Dangerous Drugs)**

24 19. Respondent is subject to disciplinary action under section 4301,  
25 subdivision (h) of the Code in that on or about May 14, 2007 and November 19, 2007, while  
26 working as a pharmacy technician, Respondent self-administered controlled substances and  
27 dangerous drugs, and admitted that she was addicted to prescription medications, as detailed in  
28 paragraphs 14-16, above.

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FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Violating Federal & State Laws  
& Regulations Governing Pharmacy)

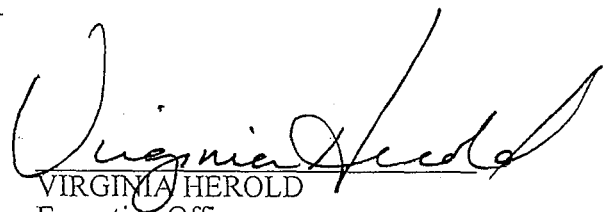
20. Respondent is subject to disciplinary action under section 4301, subdivision (o) of the Code in that on or about May 14, 2007 and November 19, 2007, while working as a pharmacy technician, Respondent violated Title 21 United States Code section 843, subdivision (a)(3), Board of Pharmacy Regulations (California Code of Regulations, Title 16, Section 1700, et seq.), and the California Uniform Controlled Substances Act (Health and Safety Code 11000, et seq.), as detailed in paragraphs 14-16, above.

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 33305, issued to Kristal R. McDonald;
2. Ordering Kristal R. McDonald 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: 3/19/09



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