

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

In the Matter of the Accusation Against:

Case No. 3654

DALE HERZ

15231 Magnolia #220
Sherman Oaks, CA 91403

Pharmacy Technician Registration No.
TCH 22940

Respondent.

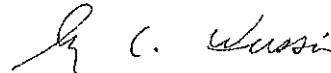
DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on July 8, 2013.

It is so ORDERED on June 7, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

1 KAMALA D. HARRIS
Attorney General of California
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7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:
11
12 **DALE CURTIS HERZ**
15231 Magnolia #220
13 Sherman Oaks, CA 91403
14 **Pharmacy Technician License No.**
TCH 22940
15
16 Respondent.

Case No. 3654
OAH No. L-2011120662
**STIPULATED SURRENDER OF
LICENSE AND ORDER**

17 **IT IS HEREBY STIPULATED AND AGREED** by and between the parties in this
18 proceeding that the following matters are true:

19 **PARTIES**

20 1. Virginia Herold ("Complainant") is the Executive Officer of the Board of Pharmacy.
21 She brought this action solely in her official capacity and is represented in this matter by Kamala
22 D. Harris, Attorney General of the State of California, by Alvaro Mejia, Deputy Attorney
23 General.

24 2. Dale Curtis Herz ("Respondent") is represented in this proceeding by attorney Sharen
25 H. Ghatan, whose address is 9025 Wilshire Blvd., Suite 301, Beverly Hills, CA 90211.

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1 negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order
2 may not be altered, amended, modified, supplemented, or otherwise changed except by a writing
3 executed by an authorized representative of each of the parties.

4 15. In consideration of the foregoing admissions and stipulations, the parties agree that
5 the Board may, without further notice or formal proceeding, issue and enter the following Order:

6 **ORDER**

7 IT IS HEREBY ORDERED that Pharmacy Technician License No. TCH 22940, issued to
8 Respondent Dale Curtis Herz, is surrendered and accepted by the Board of Pharmacy.

9 1. The surrender of Respondent's Pharmacy Technician License and the acceptance of
10 the surrendered license by the Board shall constitute the imposition of discipline against
11 Respondent. This stipulation constitutes a record of the discipline and shall become a part of
12 Respondent's license history with the Board of Pharmacy.

13 2. Respondent shall lose all rights and privileges as a Pharmacy Technician in California
14 as of the effective date of the Board's Decision and Order.

15 3. Respondent shall cause to be delivered to the Board his pocket license and, if one was
16 issued, his wall certificate on or before the effective date of the Decision and Order.

17 4. Respondent may not apply, reapply, or petition for any licensure or registration of the
18 Board for three (3) years from the effective date of the Decision and Order.

19 5. If he ever applies for licensure or petitions for reinstatement in the State of California,
20 the Board shall treat it as a new application for licensure. Respondent must comply with all the
21 laws, regulations and procedures for licensure in effect at the time the application or petition is
22 filed, and all of the charges and allegations contained in Accusation No. 3654 shall be deemed to
23 be true, correct and admitted by Respondent when the Board determines whether to grant or deny
24 the application or petition.

25 6. Respondent shall pay the agency its costs of investigation and enforcement in the
26 amount of \$5,000.00 prior to issuance of a new or reinstated license.

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Exhibit A

Accusation No. 3654

1 KAMALA D. HARRIS,
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2 MARC D. GREENBAUM
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7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 3654

13 **DALE CURTIS HERZ**
15231 Magnolia #220
Sherman Oaks, CA 91403

ACCUSATION

14 Pharmacy Technician License No. TCH 22940

15 Respondent.

16
17
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, Department of Consumer Affairs.

22 2. On or about June 25, 1997, the Board of Pharmacy (Board) issued Pharmacy
23 Technician License No. TCH 22940 to Dale Curtis Herz (Respondent). The Pharmacy
24 Technician License was in full force and effect at all times relevant to the charges brought herein
25 and will expire on December 31, 2012.

26 **JURISDICTION**

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

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

4

5 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous
6 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
7 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
8 to the extent that the use impairs the ability of the person to conduct with safety to the public the
9 practice authorized by the license.

10

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

13

14 “(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
15 violation of or conspiring to violate any provision or term of this chapter or of the applicable
16 federal and state laws and regulations governing pharmacy, including regulations established by
17 the board or by any other state or federal regulatory agency.”

18 9. Health and Safety Code section 11350, subdivision (a), states:

19 “Except as otherwise provided in this division, every person who possesses (1) any
20 controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of
21 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or
22 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section
23 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic
24 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian
25 licensed to practice in this state, shall be punished by imprisonment in the state prison.”

26 COST RECOVERY

27 10. Section 125.3 states, in pertinent part, that the Board may request the administrative
28 law judge to direct a licentiate found to have committed a violation or violations of the licensing

1 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
2 case.

3 11. **CONTROLLED SUBSTANCES**

4 a. "Adderall," is the brand name for Amphetamine. It is a Schedule II controlled
5 substance as defined in Health and Safety Code section 11055, subdivision (d)(1) and is
6 categorized as a dangerous drug pursuant to section 4022.

7 b. "Alprazolam," is the generic name for Xanax. It is a Schedule IV controlled
8 substance as defined in Health and Safety Code section 11057, subdivision (d)(1) and is
9 categorized as a dangerous drug pursuant to section 4022.

10 c. "Oxycontin," is a Schedule II controlled substance as defined in Health and Safety
11 Code section 11055(b)(1)(N) and is categorized as a dangerous drug pursuant to section 4022.

12 **FIRST CAUSE FOR DISCIPLINE**

13 **(Obtained or Possessed a Controlled Substance)**

14 12. Respondent is subject to disciplinary action under section 4301, subdivisions (j) and
15 (o), in that the Respondent was found to be in possession of controlled substances, in violation of
16 section 4060 and Health and Safety Code section 11350, subdivision (a). At all times relevant
17 herein, Respondent was employed as a pharmacy technician at Maxson's Drugs, in Sherman
18 Oaks, CA. The circumstances of the violations are as follows:

19 13. On or about October 26, 2009, the Los Angeles Police Department found 40 tablets of
20 OxyContin in various strengths in Respondent's car and 13 additional pills identified as follows:
21 six 40mg. OxyContin tablets, three 80mg. OxyContin tablets, three Adderall tablets, one
22 Aprazolam tablet and one unidentified capsule in Respondent's pant's pocket. Respondent did
23 not have a valid prescription for the controlled substances.

24 14. Respondent admitted that he unlawfully took the OxyContin tablets from his
25 pharmacy employer without permission to do so. He had taken OxyContin tablets from work on
26 a weekly basis for at "least a couple of months" Respondent stole the pills for himself and also
27 provided them to friends.
28

1. 15. Respondent was arrested for violating Health and Safety Code section 11352,
2 subdivision (a) [transportation/furnishing a controlled substance]. He was subsequently charged
3 in the criminal case *The People of the State of California v. Dale C. Herz* (LA Superior Court
4 Case # LA063635) Respondent entered into the deferred entry of judgment program on July 7,
5 2010.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Use/Under Influence of a Controlled Substance)**

8 16. Respondent is subject to disciplinary action under section 4301, subdivisions (h) and
9 (j), in that on or before October 26, 2009, Respondent, used and/or was under the influence of a
10 controlled substance. Complainant refers to, and by this reference incorporates, the allegations
11 set forth above in paragraphs 13-15, as though set forth fully.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Furnishing Dangerous Drugs Without a Prescription)**

14 18. Respondent is subject to disciplinary action under section 4301, subdivisions (j) and
15 (o), for violating section 4059, in that on or before October 26, 2009, Respondent unlawfully took
16 or received OxyContin pills from his pharmacy employer, without a valid prescription therefore.
17 Complainant refers to, and by this reference incorporates, the allegations set forth above in
18 paragraphs 13-15, as though set forth fully.

19 **FOURTH CAUSE FOR DISCIPLINE**

20 **(Dishonest Acts)**

21 19. Respondent is subject to disciplinary action under section 4301, subdivision (f), in
22 that on or before October 26, 2009, Respondent committed dishonest acts by stealing dangerous
23 drugs from Maxon's Drugs, which he furnished to friends and himself. Complainant refers to, and
24 by this reference incorporates, the allegation set forth above in paragraphs 13-15, as though set
25 forth fully.

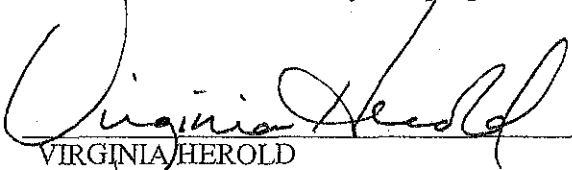
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PRAYER

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

1. Revoking or suspending Pharmacy Technician License No. TCH 22940, issued to Respondent;
2. Ordering Respondent to pay the Board reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 4/18/11


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

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