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

In the Matter of the Accusation Against:

DUSTIN MATTHEW LIKENS
4630 Milano Way
Oceanside, CA 92057

**Pharmacy Technician License No. TCH
83670**

Respondent.

Case No. 3855

**AMENDED DEFAULT DECISION AND
ORDER**

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about February 23, 2011, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 3855 against Dustin Matthew Likens (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about June 2, 2008, the Board of Pharmacy (Board) issued Pharmacy Technician License No. TCH 83670 to Respondent. The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2012, unless renewed.

3. On or about March 8, 2011, Respondent was served by Certified and First Class Mail copies of the Accusation No. 3855, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at

1 Respondent's address, which was believed to be his address of record, at 5030 Gavilan Way, #46,
2 Oceanside, CA 92057.

3 4. No documents were returned as undelivered following service of the Accusation at
4 5030 Gavilan Way, #46, Oceanside, CA 92057. A return receipt signed by Respondent
5 following service of the Accusation via certified mail was received.

6 5. On or about June 27, 2011, after discovering that Respondent's address of record had
7 changed prior to March 8, 2011, Respondent was served by Certified and First Class Mail copies
8 of the Accusation No. 3855, Statement to Respondent, Notice of Defense, Request for Discovery,
9 and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
10 Respondent's address of record which, pursuant to Business and Professions Code section 4100
11 and title 16, California Code of Regulations section 1704, is required to be reported and
12 maintained with the Board, which was and is 4630 Milano Way, Oceanside, CA 92057.

13 6. The Accusation served at 4630 Milano Way, Oceanside, CA 92057 was returned as
14 unclaimed but the Accusation served via First Class Mail has not been returned.

15 7. Service of the Accusation was effective as a matter of law under the provisions of
16 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
17 124.

18 8. Government Code section 11506 states, in pertinent part:

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

24 9. Respondent failed to file a Notice of Defense within 15 days after service upon him
25 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
26 3855.

27 10. California Government Code section 11520 states, in pertinent part:

28 (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.

1 11. Pursuant to its authority under Government Code section 11520, the Board finds
2 Respondent is in default. The Board will take action without further hearing and, based on the
3 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
4 taking official notice of all the investigatory reports, exhibits and statements contained therein on
5 file at the Board's offices regarding the allegations contained in Accusation No. 3855, finds that
6 the charges and allegations in Accusation No. 3855, are separately and severally, found to be true
7 and correct by clear and convincing evidence.

8 12. Taking official notice of its own internal records, pursuant to Business and
9 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
10 and Enforcement is \$3,357.25 as of May 4, 2011.

11 DETERMINATION OF ISSUES

12 1. Based on the foregoing findings of fact, Respondent Dustin Matthew Likens has
13 subjected his Pharmacy Technician License No. TCH 83670 to discipline.

14 2. The agency has jurisdiction to adjudicate this case by default.

15 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
16 License based upon the following violations alleged in the Accusation which are supported by the
17 evidence contained in the Default Decision Evidence Packet in this case:

18 a. Violation of Business and Professions Code sections 4301, subdivisions (j) and (o), in
19 conjunction with section 4060, for unprofessional conduct in that Respondent unlawfully
20 possessed controlled substances, to wit, marijuana and Ecstasy on or about August 15, 2009
21 and/or August 16, 2009.

22 b. Violation of Business and Professions Code section 4301, subdivision (h), for
23 unprofessional conduct in that Respondent unlawfully self-administered a controlled substance, to
24 wit, marijuana and Ecstasy to himself on or about August 15, 2009 and/or August 16, 2009.
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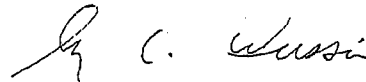
ORDER

IT IS SO ORDERED that Pharmacy Technician License No. TCH 83670, heretofore issued to Respondent Dustin Matthew Likens, 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 November 30, 2011.

It is so ORDERED October 31, 2011.



STANLEY C. WEISSER, BOARD PRESIDENT
FOR THE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS

Attachment: Exhibit A: Accusation

80499141.DOC/DOJ Matter ID:SD2010702691

Exhibit A

Accusation No. 3855

1 KAMALA D. HARRIS
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2 JAMES M. LEDAKIS
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3 MARICHELLE S. TAHIMIC
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7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 3855

12 **DUSTIN MATTHEW LIKENS**
13 **5030 Gavilan Way, #46**
Oceanside, CA 92057

A C C U S A T I O N

14 **Pharmacy Technician License No. TCH**
15 **83670**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about June 2, 2008, the Board of Pharmacy issued Pharmacy Technician
22 License Number TCH 83670 to Dustin Matthew Likens (Respondent). The Pharmacy Technician
23 License was in full force and effect at all times relevant to the charges brought herein and will
24 expire on May 31, 2012, unless renewed.

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1 JURISDICTION

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

5 4. Section 4300 of the Code states:

- 6 (a) Every license issued may be suspended or revoked.
- 7 (b) The board shall discipline the holder of any license issued by the board,
8 whose default has been entered or whose case has been heard by the board and
9 found guilty, by any of the following methods:
 - 10 (1) Suspending judgment.
 - 11 (2) Placing him or her upon probation.
 - 12 (3) Suspending his or her right to practice for a period not exceeding one
13 year.
 - 14 (4) Revoking his or her license.
 - 15 (5) Taking any other action in relation to disciplining him or her as the board
16 in its discretion may deem proper.

17 (e) The proceedings under this article shall be conducted in accordance with
18 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the
19 Government Code, and the board shall have all the powers granted therein. The
20 action shall be final, except that the propriety of the action is subject to review by
21 the superior court pursuant to Section 1094.5 of the Code of Civil Procedure.

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

19 STATUTORY PROVISIONS

20 6. Section 4022 of the Code states:

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

- 23 (a) Any drug that bears the legend: "Caution: federal law prohibits
24 dispensing without prescription," "Rx only," or words of similar import.
- 25 (b) Any device that bears the statement: "Caution: federal law restricts this
26 device to sale by or on the order of a _____," "Rx 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.

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7. 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.

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:

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

COST RECOVERY

9. 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.

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1 DRUGS

2 10. Marijuana is a Schedule I controlled substance as designated by Health and Safety
3 Code section 11054, subdivision (d)(13), and is a dangerous drug pursuant to Business &
4 Professions Code section 4022.

5 11. Methylenedioxymethamphetamine, or Ecstasy, is a Schedule I controlled substance as
6 designated by Health and Safety Code section 11054 and is a dangerous drug pursuant to
7 Business & Professions Code section 4022.

8 FIRST CAUSE FOR DISCIPLINE

9 (Unprofessional Conduct-Possession of Controlled Substance)

10 12. Respondent is subject to disciplinary action under Code sections 4301, subdivisions
11 (j) and (o), in conjunction with section 4060, for unprofessional conduct in that Respondent
12 unlawfully possessed controlled substances, to wit, marijuana and Ecstasy on or about August 15,
13 2009 and/or August 16, 2009. The circumstances are as follows:

14 13. In or about April 2009, K.F., the Pharmacy Manager of Wal-Mart store 10-5075,
15 noted there were missing prescription bottles of Norco, or hydrocodone, a controlled substance.
16 An investigation was initiated that prompted an immediate and unscheduled drug screening of all
17 of the store's employees on Monday, August 17, 2009.

18 14. Respondent was employed at the store as a Pharmacy Technician and was working at
19 the store on August 17, 2009. When Respondent was informed of the investigation and the drug
20 screening, Respondent advised K.F. that he did not want to submit to drug screening because he
21 had "smoked pot" over the weekend and that he chose to resign instead.

22 15. Respondent also admitted to D.M., the Health and Wellness Director of the store, that
23 Respondent had taken Ecstasy and smoked marijuana over the weekend and that he refused to
24 submit to the drug test. Respondent was terminated from his employment on August 17, 2009.

25 SECOND CAUSE FOR DISCIPLINE

26 (Unprofessional Conduct - Unlawful Self-Administration of Controlled Substance)

27 16. Respondent is subject to disciplinary action under Code section 4301, subdivision (h),
28 for unprofessional conduct in that Respondent unlawfully self-administered a controlled

1 substance, to wit, marijuana and Ecstasy to himself on or about August 15, 2009 and/or August
2 16, 2009, as more fully set forth in paragraphs 13-15 above, and incorporated herein as though set
3 forth in full.

4 PRAYER

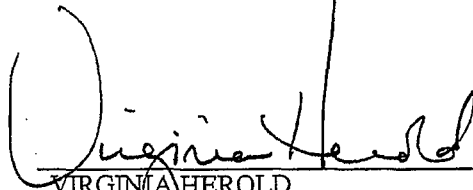
5 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
6 and that following the hearing, the Board of Pharmacy issue a decision:

7 1. Revoking or suspending Pharmacy Technician Number TCH 83670, issued to Dustin
8 Matthew Likens;

9 2. Ordering Dustin Matthew Likens to pay the Board of Pharmacy the reasonable costs
10 of the investigation and enforcement of this case, pursuant to Business and Professions Code
11 section 125.3; and,

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

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14
15 DATED: 2/23/11


16 VIRGINIA HEROLD
17 Executive Officer
18 Board of Pharmacy
19 Department of Consumer Affairs
20 State of California
21 Complainant

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