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

In the Matter of the Accusation Against: **Kimberly Rene Hodges** **3487 Cortland Avenue** **Fresno, CA 93726** **Pharmacy Technician Registration** **No. TCH 67493** Respondent.	Case No. 3863 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about November 28, 2011, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 3863 against Kimberly Rene Hodges (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about March 17, 2006, the Board of Pharmacy (Board) issued Pharmacy Technician License No. TCH 67493 to Respondent. The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought in Accusation No. 3863 and expired on September 30, 2011, and has not been renewed. This lapse in licensure, however, does not deprive the Board of its authority to institute or continue this disciplinary proceeding, pursuant to Business and Professions Code section 118(b).

3. On or about November 8, 2011, Respondent was served by Certified and First Class Mail copies of the Accusation No. 3863, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and

11507.7) at Respondent's address of record which, pursuant to Business and Professions Code section 4100, is required to be reported and maintained with the Board, which was and is:

3487 Cortland Avenue, Fresno, CA 93726

4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505 (c) and/or Business & Professions Code section 124.

5. On or about November 18, 2011, the green return receipt postcard for the certified mail sent in paragraph three (3) was returned by the U.S. Postal Service to the Office of the Attorney General, bearing the signature of Terry Hodges, with a date of November 16, 2011.

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 her of the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 3863.

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 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the Board's offices regarding the allegations contained in Accusation No. 3863, finds that the charges and allegations in Accusation No. 3863, are separately and severally, found to be true and correct by clear and convincing evidence.

10. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement is $2,295.00 as of March 28, 2012.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Kimberly Rene Hodges has subjected her Pharmacy Technician License No. TCH 67493 to discipline.

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

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

a. Respondent is subject to disciplinary action under section 4301, subsection (f) in that she committed acts involving moral turpitude, dishonesty, fraud, deceit, and/or corruption. On or about from January 2009 to February 2010, Respondent, while working as a registered pharmacy technician, and while employed by Target Pharmacy T0358, located at 900 Shaw Avenue, Clovis, CA, fraudulently, dishonestly, with deceit and/ or corruption appropriated approximately 22,000 tablets of controlled substances containing hydrocodone, a Schedule III controlled substance and narcotic. On or about February 6, 2010, Respondent was arrested for stealing Hydrocodone from her employer, Target Pharmacy T0358. During her interview with the police, Respondent admitted to removing six (6) 500 count bottles of Hydrocodone (total of 3,000 pills) from her employer, Target Pharmacy, and provided them to "J," without authorization or consent from her employer, in exchange for U.S. currency.

b. Respondent is also subject to discipline pursuant to Code section 4301, subdivisions (k) and (l), on the grounds of unprofessional conduct, in that Respondent has been convicted of the following crimes that are substantially related to the qualifications, functions, and duties of a registered pharmacy technician: On or about November 17, 2010, in the Superior Court, County of Fresno, California, in the matter entitled *People vs. Kimberly Rene Hodges*, Case No. F10900639, Respondent was convicted by the court following her plea of no contest to a violation of Health and Safety Code section 11352(a) (sale or offer to sell controlled substances), a felony.

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ORDER

IT IS SO ORDERED that Pharmacy Technician License No. TCH 67493, heretofore issued to Respondent Kimberly Rene Hodges, 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 September 26, 2012.

It is so ORDERED on August 27, 2012.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By _____
STANLEY C. WEISSER
Board President

default decision_LIC.rtf
DOJ Matter ID:SA2010102848

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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

In the Matter of the Accusation Against: **Kimberly Renee Hodges** **3487 Cortland Ave.** **Fresno, CA 93726** **Pharmacy Technician Registration** **No. TCH 67493** Respondent.	Case No. 3863 **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 March 17, 2006, the Board of Pharmacy issued Pharmacy Technician License Number TCH 67493 to Kimberly Rene Hodges (Respondent). The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2011, unless 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 480 of the Business and Professions Code provides, in pertinent part, that a board may deny a license if the applicant has been convicted of a crime substantially related to the qualifications, functions or duties of the business or profession for which application is made, has committed any act involving dishonesty, fraud or deceit, has committed any act which if done by a licentiate would be grounds for suspension or revocation of a license, or has knowingly made a false statement of fact required to be revealed in the application.

5. 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.

. . .

"(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.

"(k) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances.

"(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. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances

or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action 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 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

. . .

"(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.

6. Section 125.3 of the Code provides, 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

7. **Hydrocodone** - Hydrocodone bitartrate is semisynthetic narcotic analgesic, a dangerous drug as defined in section 4022, a Schedule III controlled substance and narcotic as defined by section 11056, subdivision (e) of the Health and Safety Code, and a Schedule III controlled substance as defined by section 1308.13 (e) of Title 21 of the Code of Federal Regulations. It is also known by its trade name Vicodin.

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FIRST CAUSE FOR DISCIPLINE

(Corrupt Acts - stealing controlled substances and/or dangerous drugs)

8. Respondent is subject to disciplinary action under section 4301, subsection (f) in that she committed acts involving moral turpitude, dishonesty, fraud, deceit, and/or corruption. The circumstances are as follows:

9. On or about from January 2009 to February 2010, on multiple occasions, with the exact dates of which being unknown, Respondent, while working as a registered pharmacy technician, and while employed by Target Pharmacy T0358, located at 900 Shaw Avenue, Clovis, CA, fraudulently, dishonestly, with deceit and/ or corruption appropriated approximately 22,000 tablets of controlled substances containing hydrocodone, a Schedule III controlled substance and narcotic. On or about February 6, 2010, Respondent was arrested for stealing Hydrocodone from her employer, Target Pharmacy T0358, located at 900 Shaw Avenue, Clovis. During her interview with the police, Respondent admitted that she had been stealing Hydrocodone from the pharmacy and giving it to an acquaintance named "J," in exchange for U.S. currency. Respondent admitted to removing six (6) 500 count bottles of Hydrocodone (total of 3,000 pills) from her employer, Target Pharmacy, and provided them to "J," without authorization or consent from her employer.

SECOND CAUSE FOR DISCIPLINE

(Unlawful Possession of Controlled Substances and/or Dangerous Drugs)

10. Respondent is subject to disciplinary action under section 4032 (j) and (o) in that she violated or attempted to violate and/ or assisting in or abetted the violation of or conspired to violate the statutes of this state and/or the United States regulating controlled substances and dangerous drugs by unlawfully possessing the controlled substance Hydrocodone bitartrate, without a valid authorization, as alleged in paragraph 9.

THIRD CAUSE FOR DISCIPLINE

(Criminal Conviction)

11. Respondent is subject to discipline pursuant to Code section 4301, subdivisions (k) and (l), on the grounds of unprofessional conduct, in that Respondent has been convicted of the

following crimes that are substantially related to the qualifications, functions, and duties of a registered pharmacy technician:

a. On or about November 17, 2010, in the Superior Court, County of Fresno, California, in the matter entitled *People vs. Kimberly Rene Hodges*, Case No. F10900639, Respondent was convicted by the court following her plea of no contest to a violation of Health and Safety Code section 11352(a) (sale or offer to sell controlled substances), a felony. The circumstances of the crime are that on January 19, 2010, Respondent did unlawfully transport, import into this state, sell, furnish, administer or give away, and/or offer to transport, import into the State, sell, furnish, administer or give away a controlled substance, to wit, Hydrocodone Bitartrate (Vicodin).

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 License Number TCH 67493, issued to Kimberly Rene Hodges

2. Ordering Kimberly Rene Hodges 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: 10/28/11

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

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