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5 **BEFORE THE**
6 **BOARD OF PHARMACY**
7 **DEPARTMENT OF CONSUMER AFFAIRS**
8 **STATE OF CALIFORNIA**

9 In the Matter of the Accusation Against:

Case No. 3864

10 **KATHERINE HIRNING JACOB**

DEFAULT DECISION AND ORDER

11 3110 Christina Avenue
12 Stockton, CA 95204

[Gov. Code, §11520]

13 Pharmacy Technician Registration
14 Number TCH 39354

Respondent.

15 **FINDINGS OF FACT**

16 1. On or about November 17, 2010, Complainant Virginia Herold, in her official
17 capacity as the Executive Officer of the Board of Pharmacy ("Board"), Department of Consumer
18 Affairs, filed Accusation No. 3864 against Katherine Hirning Jacob ("Respondent") before the
19 Board. (A true and correct copy of Accusation No. 3864 is attached hereto, and marked Exhibit
20 A.)

21 2. On or about September 13, 2001, the Board issued Pharmacy Technician License No.
22 TCH 39354 to Respondent. The Pharmacy Technician License was in full force and effect at all
23 times relevant to the charges brought herein and expired on November 30, 2010.

24 3. On or about November 23, 2010, Respondent was served, by Certified and First Class
25 Mail, copies of the Accusation No. 3864 and the Accusation Packet consisting of the Statement to
26 Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Gov. Code §§
27 11507.5, 11507.6, and 11507.7), at Respondent's address of record: 3110 Christina Avenue,
28 Stockton, California, 95204. Pursuant to Business and Professions Code section 136, Respondent

1 is required to notify the Board of any change in her mailing address within thirty (30) days after
2 the address changes. The Board did not receive a notification of change in address from
3 Respondent.

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

6 5. The Accusation and Accusation Packet served by Certified Mail and by First Class
7 Mail were not returned to the Attorney General's Office.

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

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

14 7. Respondent failed to file a Notice of Defense within fifteen (15) days after service
15 upon her of the Accusation, and therefore waived her right to a hearing on the merits of
16 Accusation No. 3864.

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

18 (a) If the respondent either fails to file a notice of defense or to appear at the
19 hearing, the agency may take action based upon the respondent's express admissions
20 or upon other evidence and affidavits may be used as evidence without any notice to
21 respondent.

22 9. Pursuant to its authority under Government Code section 11520, the Board finds
23 Respondent is in default. The Board will take action without further hearing and, based on the
24 relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,
25 as well as taking official notice of all the investigatory reports, exhibits and statements contained
26 therein on file at the Board's offices regarding the allegations contained in Accusation No. 3864,
27 finds that the charges and allegations in Accusation No. 3864, are separately and severally, found
28 to be true and correct by clear and convincing evidence.

10 10. Taking official notice of its own internal records, pursuant to Business and
11 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
12 and Enforcement is \$4,233.00 as of January 26, 2011.

DETERMINATION OF ISSUES

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11. Based on the foregoing findings of fact, Respondent Katherine Hirning Jacob has subjected her Pharmacy Technician License No. TCH 39354 to discipline.

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

13. 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 Investigatory Evidence Packet in this case:

a. On or about January 22, 2010, while employed as a Pharmacy Technician with Omnicare Pharmacy, Lodi, California, Respondent, submitted to a random drug test at Omnicare resulting in positive for Marijuana. Respondent did not have a prescription for Marijuana.

Respondent prepared her handwritten statement in which she admitted she had smoked Marijuana within thirty (30) days of January 22, 2010, and she had ingested one (1) generic Vicodin tablet. She did not have a prescription for generic Vicodin. Omnicare terminated Respondent from her Pharmacy Technician position on or about January 26, 2010, pursuant to its policy on drug use;

b. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (f), of the Code on the grounds of unprofessional conduct in that she committed an act involving moral turpitude, dishonesty, fraud, deceit, or corruption as set forth in paragraph 13, subparagraph a, above, incorporated herein by this reference;

c. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (h), of the Code on the grounds of unprofessional conduct in that she self-administered Marijuana and Vicodin to the extent or in a manner as to be dangerous or injurious to herself, another person, or the public, or to the extent her use impaired her ability to conduct with safety to the public the practice of Pharmacy Technician, as set forth in paragraph 13, subparagraph a, above, incorporated herein by this reference; and

d. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (j), of the Code on the grounds of unprofessional conduct as follows:

1 (1) Respondent violated Health and Safety Code section 11170 in that she
2 self-administered Marijuana and Vicodin, as set forth in paragraph 13, subparagraph a, above,
3 incorporated herein by this reference;

4 (2) Respondent violated Health and Safety Code section 11170 in that she
5 furnished Marijuana and generic Vicodin to herself, as set forth in paragraph 13, subparagraph a,
6 above, incorporated herein by this reference;

7 (3) Respondent violated Health and Safety Code section 11173, subdivision
8 a, in that she obtained or attempted to obtain controlled substances, or procured or attempted to
9 procure the administration controlled substances by fraud, deceit, misrepresentation, or subterfuge
10 or by the concealment of a material fact, as set forth in paragraph 13, subparagraph a, above,
11 incorporated herein by this reference;

12 (4) Respondent violated Health and Safety Code section 11357 and Code
13 section 4060 in that she illegally possessed Marijuana without a prescription, as set forth in
14 paragraph 13, subparagraph a, above, incorporated herein by this reference;

15 (5) Respondent violated Code section 4060 in that she illegally possessed
16 generic Vicodin without a prescription, as set forth in paragraph 13, subparagraph a, above
17 incorporated herein by this reference.

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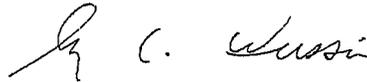
ORDER

IT IS SO ORDERED that Pharmacy Technician License No. TCH 39354, heretofore issued to Respondent Katherine Hirling Jacob, 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 April 15, 2011.

It is so ORDERED March 16, 2011.



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

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Attachment:

Exhibit A: Accusation

Exhibit A
Accusation

1 EDMUND G. BROWN JR.
Attorney General of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 LESLIE A. BURGERMYER
Deputy Attorney General
4 State Bar No. 117576
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-5337
Facsimile: (916) 327-8643
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. 3864

13 **KATHERINE HIRNING JACOB**
3110 Christina Avenue
Stockton, CA 95204

A C C U S A T I O N

14 Pharmacy Technician Registration
Number TCH 39354

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16 Respondent.

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19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about September 13, 2001, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 39354 (license) to Katherine Hirning Jacob (Respondent). The license
25 was in full force and effect at all times relevant to the charges brought herein and will expire on
26 November 30, 2010, unless renewed.

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1 8. Code section 4060 states, in pertinent part:

2 No person shall possess any controlled substance, except that furnished to
3 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
4 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
5 pursuant to a drug order issued by a certified nurse-midwife pursuant to
6 Section 2746.51, or a pharmacist pursuant to either Section 4052.1 or 4052.2.
7 This section shall not apply to the possession of any controlled substance by a
8 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
9 optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
10 practitioner, or physician assistant, when in stock in containers correctly
11 labeled with the name and address of the supplier or producer.

12 9. Health and Safety code section 11170 states that no person shall prescribe,
13 administer, or furnish a controlled substance for herself.

14 10. Health and Safety Code section 11173 states, in pertinent part:

15 (a) No person shall obtain or attempt to obtain controlled substances, or
16 procure or attempt to procure the administration of or prescription for
17 controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge;
18 or (2) by the concealment of a material fact.

19 11. Health and Safety Code section 11357 states, in pertinent part:

20 (a) Except as authorized by law, every person who possesses any
21 concentrated cannabis shall be punished by imprisonment in the county jail
22 for a period of not more than one year or by a fine of not more than five
23 hundred dollars (\$500), or by both such fine and imprisonment, or shall be
24 punished by imprisonment in the state prison.

25 CONTROLLED SUBSTANCES

26 12. **Vicodin** is a combination drug containing hydrocodone bitartrate and
27 acetaminophen and is a Schedule III controlled substance as designated by Health and Safety
28 Code section 11056, subdivision (e)(4), and a dangerous drug in that it is dispensed only on
prescription. Vicodin is a brand of hydrocodone bitartrate.

13. **Marijuana** is a Schedule I controlled substance as designated in Health and
Safety Code section 11054, subdivision (d)(13).

25 COST RECOVERY

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

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

3 **BACKGROUND**

4 15. On or about January 22, 2010, while employed as a Pharmacy Technician with
5 Omnicare Pharmacy, Lodi, California, Respondent, submitted to a random drug test at Omnicare
6 resulting in positive for Marijuana. Respondent did not have a prescription for Marijuana.
7 Respondent prepared her handwritten statement in which she admitted she had smoked Marijuana
8 within 30 days of January 22, 2010, and she had ingested one generic Vicodin tablet. She did not
9 have a prescription for generic Vicodin. Omnicare terminated Respondent from her Pharmacy
10 Technician position on or about January 26, 2010, pursuant to its policy on drug use.

11 **FIRST CAUSE FOR DISCIPLINE**

12 (Act Involving Moral Turpitude, Dishonesty, Fraud,
13 Deceit, or Corruption)

14 16. Respondent is subject to disciplinary action under sections 4300 and 4301,
15 subdivision (f), of the Code on the grounds of unprofessional conduct in that she committed an
16 act involving moral turpitude, dishonesty, fraud, deceit, or corruption as set forth in paragraph 15,
17 above, incorporated herein by this reference.

18 **SECOND CAUSE FOR DISCIPLINE**

19 (Self-Administered Controlled Substances)

20 17. Respondent is subject to disciplinary action under sections 4300 and 4301, sub-
21 division (h), of the Code on the grounds of unprofessional conduct in that she self-administered
22 Marijuana and Vicodin to the extent or in a manner as to be dangerous or injurious to herself,
23 another person, or the public, or to the extent her use impaired her ability to conduct with safety
24 to the public the practice of Pharmacy Technician, as set forth in paragraph 15, above,
25 incorporated herein by this reference.

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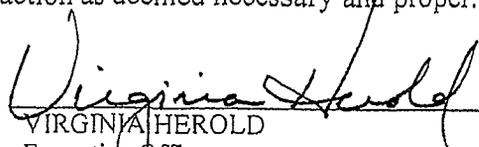
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1 2. Ordering Katherine Hirning Jacob to pay the Board of Pharmacy the reasonable costs
2 of the investigation and enforcement of this case, pursuant to Business and Professions Code
3 section 125.3;

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

5 DATED: 11/17/10



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

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