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

In the Matter of the Accusation Against:

**MARK JON ELIX
29609 Deal Court
Temecula, CA 92591**

**Pharmacy Technician Registration No. TCH
71805**

Respondent.

Case No. 3935

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about February 25, 2011, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 3935 against Mark Jon Elix (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about September 8, 2006, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 71805 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2011, unless renewed.

3. On or about March 4, 2011, Respondent was served by Certified and First Class Mail copies of the Accusation No. 3935, Statement to Respondent, blank 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

1 section 4100, is required to be reported and maintained with the Board, which was and is: 29609
2 Deal Court, Temecula, CA 92591.

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

6 5. On or about March 17, 2011, the domestic return receipt card, reflecting service of
7 the Certified Mail, was returned by the U.S. Postal Service and was signed by Respondent on
8 March 16, 2011.

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

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

15 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
16 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
17 3935.

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

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

23 9. Pursuant to its authority under Government Code section 11520, the Board finds
24 Respondent is in default. The Board will take action without further hearing and, based on the
25 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
26 taking official notice of all the investigatory reports, exhibits and statements contained therein on
27 file at the Board's offices regarding the allegations contained in Accusation No. 3935, finds that
28 the charges and allegations in Accusation No. 3935, are separately and severally, found to be true
and correct by clear and convincing evidence.

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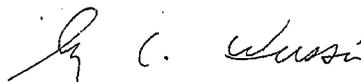
ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 71805, heretofore issued to Respondent Mark Jon Elix, 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 June 22, 2011.

It is so ORDERED May 23, 2011.



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

80478986.DOC
DOJ Matter ID:SD2010703534

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
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2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 NICOLE R. COOK
Deputy Attorney General
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P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2143
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

Case No. 3935

11
12 In the Matter of the Accusation Against:

13 **MARK JON ELIX**
29609 Deal Court
14 Temecula, CA 92591

A C C U S A T I O N

15 **Pharmacy Technician Registration No. TCH**
71805

16 Respondent.
17

18
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 8, 2006, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 71805 to Mark Jon Elix (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 December 31, 2011, unless renewed:

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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:

(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.

....

(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.

....

9. Health and Safety Code section 11170 provides that no person shall prescribe, administer, or furnish a controlled substance for himself.

10. Health and Safety Code section 11173(a) provides that no person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

COST RECOVERY

11. 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.

///

///

1 DRUG

2 12. Norco, a brand name for hydrocodone with acetaminophen, is a dangerous drug
3 pursuant to section 4022, and a Schedule III controlled substance as designated by Health and
4 Safety Code section 11056(e)(4).

5 FACTUAL ALLEGATIONS

6 13. Respondent was employed as a pharmacy technician at Prescription Solutions
7 located in Carlsbad, California. As part of his duties, Respondent had privileged access to
8 Prescription Solutions' controlled substances vault, for Automated Processing System (APS)
9 duties, which included processing of all the new and outgoing drugs in the system, physical
10 inventory, and Return to Stock (RTS) drugs to stock.

11 14. On October 1, 2009, Respondent was not assigned to APS/RTS duties. At
12 approximately 5:30 a.m. on October 1, 2009, an eyewitness observed Respondent in the narcotics
13 vault, taking tablets of controlled substances from a stock bottle and concealing it in his pants.
14 The incident was reported and an internal investigation ensued. The pharmacist-in-charge
15 interviewed Respondent later that day. Respondent denied taking the lid off of the controlled
16 substance container, denied pouring it into his hand and denied putting any medication into his
17 pocket. The pharmacist-in-charge concluded that Respondent disguised his activities from fellow
18 technicians and pharmacists by pretending to check stock while simultaneously pouring
19 medication into his hand and putting it in his pocket.

20 15. Video surveillance captured Respondent taking the tablets of controlled substances
21 on the following dates and times: August 10, 2009 at 6:04 a.m.; August 28, 2009 at 8:12 a.m.;
22 September 3, 2009 at 5:33 a.m.; September 4, 2009 at 5:43 a.m.; September 11, 2009 at 12:16
23 p.m.; September 14, 2009 at 5:38 a.m.; September 14, 2009 at 9:13 a.m.; September 15, 2009 at
24 10:31 a.m.; September 16, 2009 at 6:52 a.m.; September 16, 2009 at 11:51 a.m.; September 17,
25 2009 at 5:44 a.m.; September 18, 2009 at 7:00 a.m.; September 18, 2009 at 12:09 a.m.;
26 September 21, 2009 at 5:31 a.m.; September 23, 2009 at 5:50 a.m.; September 24, 2009 at 6:08
27 a.m.; September 25, 2009 at 6:03 a.m.; September 30, 2009 at 5:34 a.m.; and October 1, 2009 at
28

1 5:33 a.m. Hydrocodone/APAP 10/325 mg was stored in the area where Respondent was captured
2 taking controlled substances.

3 16. On October 1, 2009, Respondent was suspended from his employment at Prescription
4 Solutions. Respondent was subsequently terminated on October 5, 2009. Thereafter, the
5 pharmacist-in-charge reviewed each and every purchase of hydrocodone/APAP and determined a
6 loss of 3,786 tablets of hydrocodone/APAP.

7 **FIRST CAUSE FOR DISCIPLINE**

8 (Unprofessional Conduct – Dishonesty and Deceit)

9 17. Respondent is subject to disciplinary action for unprofessional conduct under section
10 4301(f) of the Code in that Respondent's theft detailed in paragraphs 13-16, incorporated herein
11 by reference, constitutes dishonesty and deceit.

12 **SECOND CAUSE FOR DISCIPLINE**

13 (Unprofessional Conduct – Violation of Chapter)

14 18. Respondent is subject to disciplinary action for unprofessional conduct under section
15 4301(o) of the Code in that he violated the Pharmacy Act by furnishing dangerous drugs to
16 himself in violation of Code section 4059, and illegally possessing controlled substances in
17 violation of Code section 4060, and by violating Health and Safety Code section 11173, as
18 detailed in paragraphs 13-16 above, incorporated herein by reference.

19 **THIRD CAUSE FOR DISCIPLINE**

20 (Unprofessional Conduct – Violating Laws Regulating Controlled Substances)

21 19. Respondent is subject to disciplinary action for unprofessional conduct under section
22 4301(j) of the Code in that he violated the California Uniform Controlled Substances Act (Health
23 and Safety Code Sections 11000, et. seq.), as set forth in paragraphs 13-16 above, incorporated
24 herein by reference.

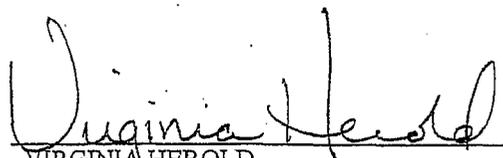
25 **PRAYER**

26 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
27 and that following the hearing, the Board of Pharmacy issue a decision:
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1. Revoking or suspending Pharmacy Technician Registration Number TCH 71805, issued to Mark Jon Elix;
2. Ordering Mark Jon Elix 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: 2/25/11



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

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