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

In the Matter of the Accusation Against:

DARRYL LOUIS WARNER
1601 C Street
Antioch, CA 94509

**Pharmacy Technician License No. TCH
55243**

Respondent.

Case No. 4086

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about May 29, 2012, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4086 against Darryl Louis Warner (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)
2. On or about March 3, 2004, the Board of Pharmacy (Board) issued Pharmacy Technician License No. TCH 55243 to Respondent. The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought in Accusation No. 4086 and will expire on September 30, 2013, unless renewed.
3. On or about June 7, 2012, Respondent was served by Certified and First Class Mail copies of the Accusation No. 4086, 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,

1 is required to be reported and maintained with the Board. Respondent's address of record was
2 and is:

3 1601 C Street, Antioch, CA 94509.

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/or Business & Professions Code section
6 124.

7 5. On or about July 3, 2012, the aforementioned documents were returned by the U.S.
8 Postal Service marked "Unclaimed."

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 4086.

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. 4086, finds that
28 the charges and allegations in Accusation No. 4086, are separately and severally, found to be true
and correct by clear and convincing evidence.

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ORDER

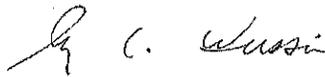
IT IS SO ORDERED that Pharmacy Technician License No. TCH 55243, heretofore issued to Respondent Darryl Louis Warner, is revoked.

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 October 22, 2012.

It is so ORDERED ON September 21, 2012

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA


By _____
STANLEY C. WEISSER
Board President

default decision_LIC.rtf
DOJ Matter ID:SF2011202117

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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2 FRANK H. PACOE
Supervising Deputy Attorney General
3 CHAR SACHSON
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6 Facsimile: (415) 703-5480
Attorneys for Complainant

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

10 In the Matter of the Accusation Against:
11 **DARRYL LOUIS WARNER**
12 **1601 C Street**
13 **Antioch, CA 94509**
14 **Pharmacy Technician License No. TCH**
55243
15 Respondent.

Case No. 4086

ACCUSATION

16
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 March 3, 2004, the Board of Pharmacy issued Pharmacy Technician
22 License Number TCH 55243 to Darryl Louis Warner (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 September 30, 2013, unless renewed.

25 **JURISDICTION**

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

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

3 "(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without
4 prescription," "Rx only," or words of similar import.

5 "(b) Any device that bears the statement: "Caution: federal law restricts this device to sale
6 by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled
7 in with the designation of the practitioner licensed to use or order use of the device.

8 "(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
9 prescription or furnished pursuant to Section 4006."

10 9. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous
11 drug or dangerous device except upon the prescription of an authorized prescriber.

12 10. Section 4060 of the Code states:

13 "No person shall possess any controlled substance, except that furnished to a person upon
14 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
15 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
16 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
17 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
18 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
19 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
20 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
21 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
22 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
23 labeled with the name and address of the supplier or producer.

24 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a
25 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs
26 and devices."

27 11. California Code of Regulations, title 16, section 1770, states:
28

1 "For the purpose of denial, suspension, or revocation of a personal or facility license
2 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
3 crime or act shall be considered substantially related to the qualifications, functions or duties of a
4 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
5 licensee or registrant to perform the functions authorized by his license or registration in a manner
6 consistent with the public health, safety, or welfare."

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

11 13. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess
12 any narcotic drug listed in Schedules III-V, absent a valid prescription.

13 14. Health and Safety Code section 11351, in pertinent part, makes it unlawful to possess
14 for sale or purchase for sale any controlled substance classified in Schedule III, IV, or V (Health
15 and Safety Code sections 11056, 11057, or 11058) which is a narcotic drug.

16 15. Health and Safety Code section 11352, in pertinent part, makes it unlawful to sell,
17 transport, furnish, administer, or give away, any controlled substance classified in Schedule III,
18 IV, or V which is a narcotic drug, unless upon written prescription of a authorized prescriber.

19 16. Section 125.3 of the Code states, in pertinent part, that the Board may request the
20 administrative law judge to direct a licentiate found to have committed a violation or violations of
21 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
22 enforcement of the case.

23 DRUGS

24 17. Norco is a brand name for a compound of acetaminophen and hydrocodone bitartrate,
25 a Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4)
26 and a dangerous drug as designated by Business and Professions Code section 4022, used for pain
27 relief.

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1 FACTUAL BACKGROUND

2 18. On or about March 8, 2010, Respondent was arrested for theft of Norco while
3 working at Raley's Pharmacy located at 3632 Lone Tree Way in Antioch, California. Pharmacy
4 video surveillance showed Respondent opening pill bottles, pouring pills into his hand, and
5 placing the pills in his pocket. On March 8, 2010, Respondent was found to have 74 Norco pills
6 on his person. He admitted that he had been stealing Norco from the pharmacy for approximately
7 one year, and had sold the pills for approximately \$12,000.00.

8 FIRST CAUSE FOR DISCIPLINE

9 (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

10 19. Respondent is subject to discipline under section 4301(f) of the Code, in that
11 Respondent, as described in paragraph 18 above, committed numerous acts involving moral
12 turpitude, dishonesty, fraud, deceit, or corruption.

13 SECOND CAUSE FOR DISCIPLINE

14 (Furnishing of Controlled Substance(s))

15 20. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
16 4059 of the Code, in that Respondent, as described in paragraph 18 above, furnished to himself or
17 another without a valid prescription, and/or conspired to furnish, and/or assisted or abetted
18 furnishing of, a controlled substance.

19 THIRD CAUSE FOR DISCIPLINE

20 (Possession of Controlled Substance(s))

21 21. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
22 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described
23 in paragraph 18 above, possessed, conspired to possess, and/or assisted in or abetted possession
24 of, a controlled substance, without a prescription.

25 FOURTH CAUSE FOR DISCIPLINE

26 (Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

27 22. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
28 and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraph 18

1 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a controlled
2 substance, by fraud, deceit, subterfuge, or concealment of material fact.

3 FIFTH CAUSE FOR DISCIPLINE

4 (Possession or Purchase of Controlled Substance(s) for Sale)

5 23. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
6 and/or Health and Safety Code section 11351, in that Respondent, as described in paragraph 18
7 above, possessed or purchased for sale, conspired to possess or purchase for sale, and/or assisted
8 in or abetted the possession or purchase for sale, of a controlled substance.

9 SIXTH CAUSE FOR DISCIPLINE

10 (Unprofessional Conduct)

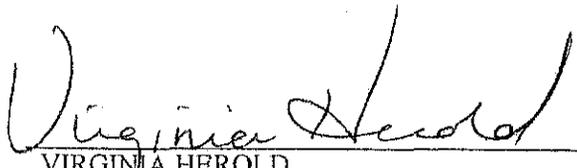
11 24. Respondent is subject to discipline under section 4301 of the Code in that
12 Respondent, as described in paragraph 18 above, engaged in unprofessional conduct.

13 PRAYER

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

- 16 1. Revoking or suspending Pharmacy Technician License Number TCH 55243, issued
17 to Darryl Louis Warner;
- 18 2. Ordering Darryl Louis Warner to pay the Board of Pharmacy the reasonable costs of
19 the investigation and enforcement of this case, pursuant to Business and Professions Code section
20 125.3;
- 21 3. Taking such other and further action as deemed necessary and proper.

22
23
24 DATED: 5/29/12


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

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