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

In the Matter of the Accusation Against:  
**SHELLEY MACIEL**  
**19235 Standish Avenue**  
**Hayward, CA 94541**  
**Pharmacy Technician License No. TCH 53763**  
Respondent.

Case No. 4110  
**DEFAULT DECISION AND ORDER**  
[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about March 24, 2012, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4110 against Shelley Maciel (Respondent) before the Board of Pharmacy. (A copy of the Accusation is attached as Exhibit A.)
2. On or about January 29, 2004, the Board of Pharmacy issued Pharmacy Technician License Number TCH 53763 to Shelley Maciel (Respondent). The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought in Accusation No. 4110. The License expired on October 31, 2011, and has not been renewed. It is in delinquent status. This lapse in licensure, however, pursuant to Business and Professions Code section 118(b), does not deprive the Board of its authority to institute or continue this disciplinary proceeding.

1           3.    On or about April 19, 2012, Respondent was served by Certified and First Class Mail  
2 with copies of: Accusation No. 4110; a Statement to Respondent, a Notice of Defense; a Request  
3 for Discovery; and Discovery Statutes (Gov.Code, §§ 11507.5, 11507.6, 11507.7) at Respondent's  
4 address of record, which was and is: 19235 Standish Avenue, Hayward, CA 94541.

5           4.    Pursuant to Business and Professions Code section 136 and/or 4100, and/or California  
6 Code of Regulations, title 16, section 1704, Respondent's address of record, and any changes  
7 thereto, are required to be reported and maintained with the Board of Pharmacy (Board).

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

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

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

16          7.    Respondent failed to file a Notice of Defense within 15 days after service upon her of  
17 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 4110.

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. 4110, finds that  
28 the charges and allegations in Accusation No. 4110 are, separately and severally, found to be true  
and correct by clear and convincing evidence.

///

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1 e. Respondent's License is subject to revocation pursuant to Business and Professions  
2 Code section 4301(j) and/or (o), and/or Health and Safety Code section 11173(a), in that  
3 Respondent, as described above, obtained, conspired to obtain, and/or assisted in or abetted the  
4 obtaining of a controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

5 f. Respondent's License is subject to revocation pursuant to Business and Professions  
6 Code section 4301, in that Respondent, as described above, engaged in unprofessional conduct.

7  
8 ORDER

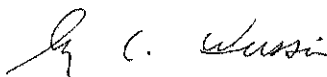
9 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 53763, heretofore  
10 issued to Respondent Shelley Maciel, is revoked.

11 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a  
12 written motion requesting that the Decision be vacated and stating the grounds relied on within  
13 seven (7) days after service of the Decision on Respondent. The agency in its discretion may  
14 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

15 This Decision shall become effective on November 26, 2012.

16 It is so ORDERED ON October 25, 2012

17 BOARD OF PHARMACY  
18 DEPARTMENT OF CONSUMER AFFAIRS  
19 STATE OF CALIFORNIA

20   
21 By \_\_\_\_\_  
22 STANLEY C. WEISSER  
23 Board President

24 40594110.DOC  
25 DOJ Matter ID:SF2011202816

26 Attachment:  
27 Exhibit A: Accusation  
28

# Exhibit A

Accusation

1 KAMALA D. HARRIS  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 JOSHUA A. ROOM  
Deputy Attorney General  
4 State Bar No. 214663  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
Telephone: (415) 703-1299  
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:

Case No. 4110

11 **SHELLEY MACIEL**  
12 **19235 Standish Avenue**  
13 **Hayward, CA 94541**

**ACCUSATION**

14 **Pharmacy Technician License No. TCH 53763**

15 Respondent.

16 Complainant alleges:

17 PARTIES

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

20 2. On or about January 29, 2004, the Board of Pharmacy issued Pharmacy Technician  
21 License Number TCH 53763 to Shelley Maciel (Respondent). The Pharmacy Technician License  
22 was in full force and effect at all times relevant to the charges brought herein. The License  
23 expired on October 31, 2011, and has not been renewed. It is in delinquent status.

24  
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 (Code) unless otherwise indicated.



1 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
2 violation of or conspiring to violate any provision or term of this chapter or of the applicable  
3 federal and state laws and regulations governing pharmacy, including regulations established by  
4 the board or by any other state or federal regulatory agency.

5 8. California Code of Regulations, title 16, section 1770, states:

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

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

14 10. Section 4060 of the Code provides, in pertinent part, that no person shall possess any  
15 controlled substance, except that furnished upon a valid prescription/drug order.

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

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

22 13. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess  
23 any controlled substance listed in Schedule II (Health and Safety Code section 11055),  
24 subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

25 14. Health and Safety Code section 11377, in pertinent part, makes it unlawful to possess  
26 any controlled substance listed in Schedule II (Health and Safety Code section 11055),  
27 subdivision (d), or any non-narcotic drug in Schedules III-V, absent a valid prescription.

28 ///



1 COST RECOVERY

2 15. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
3 administrative law judge to direct a licentiate found to have committed a violation of the licensing  
4 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.  
5

6 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

7 16. Section 4021 of the Code states:

8 “Controlled substance’ means any substance listed in Chapter 2 (commencing with Section  
9 11053) of Division 10 of the Health and Safety Code.”

10 17. Section 4022 of the Code states, in pertinent part:

11 “Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use,  
12 except veterinary drugs that are labeled as such, and includes the following:

13 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without  
14 prescription,’ ‘Rx only,’ or words of similar import.

15 ...

16 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on  
17 prescription or furnished pursuant to Section 4006.”

18 18. **Norco, Vicodin, Vicodin ES, Lortab, and Lorcet** are among the brand names for  
19 compounds of varying dosages of acetaminophen (aka APAP) and **hydrocodone**, a Schedule III  
20 controlled substance as designated by Health and Safety Code section 11056(e)(4) and dangerous  
21 drug as designated by Business and Professions Code section 4022. The varying compounds are  
22 also known generically as **Hydrocodone with APAP**. These are all narcotic pain drugs.

23 19. **Methylin** and **Ritalin** are among the brand names for **methylphenidate**, a Schedule  
24 II controlled substance as designated by Health and Safety Code section 11055(d)(6) and a  
25 dangerous drug as designated by Business and Professions Code section 4022. It is a stimulant  
26 drug used most commonly for treatment of ADHD and other hyperactivity symptoms.

27 ///

28 ///

1 FACTUAL BACKGROUND

2 20. From an unknown start date until on or about January 28, 2010, Respondent worked  
3 as a pharmacy technician at Lodi Memorial Hospital West (HSP 36742) in Lodi, CA, where by  
4 virtue of her employment she had access to controlled substances and dangerous drugs.

5 21. During the tenure of her employment with the hospital pharmacy, Respondent used  
6 her access to divert/steal controlled substances and dangerous drugs, including **Norco** or other  
7 **Hydrocodone with APAP** drugs, and **Methylin**, **Ritalin**, or other **methylphenidate** drugs.

8 22. The exact number of instances of diversion/theft by Respondent, and the full quantity  
9 of controlled substances or dangerous drugs diverted/stolen, are not known, but in the course of  
10 investigations by Lodi Memorial Hospital and by the Board, the following was discovered:

11 a. On or about January 12, 2010, Respondent's co-worker(s) noted that she had a  
12 disheveled and/or disorderly appearance, seemed to be slurring her words, and could not focus or  
13 productively perform her work tasks. Over the next few days, Respondent's co-worker(s) noted  
14 that Respondent's behavior was altered, as she appeared hyperactive and overly voluble.

15 b. On or about January 19, 2010, Respondent's co-worker(s) noticed her going  
16 back and forth to her coat to get something out of her pockets, going to her purse, and going to  
17 the bathroom more than normal. She seemed nervous. One or more of her co-worker(s) checked  
18 the pocket(s) of her coat, and discovered nine (9) tablets of **Methylin 5mg**.

19 c. On or about January 20, 2010, a physical inventory was performed of (some or  
20 all) controlled substances in the pharmacy. Respondent kept asking why an inventory was being  
21 done, and seemed nervous. In the inventory and/or a subsequent audit, shortages in the following  
22 quantities were found: fifteen (15) tablets of **Methylin 5mg**, fifty-nine (59) tablets of **Ritalin**  
23 **5mg**, and two hundred four (204) tablets of **Hydrocodone with APAP 10/325** (generic **Norco**).

24 d. On or about January 28, 2010, Respondent was confronted/interviewed by Lodi  
25 Memorial Hospital staff. Respondent admitted to diverting and self-administering **Ritalin 5mg**  
26 (and/or its generic equivalent(s)) and **Norco** (and/or its generic equivalent(s)). Respondent did  
27 not specify a time frame or total quantity for her diversion and self-use.

28 ///

1 f. On or about March 3, 2010, Respondent admitted to Board Inspector(s) that she  
2 had diverted/self-used at least thirty (30) tablets of **Ritalin 5mg**, and "some" **Norco**.

3  
4 FIRST CAUSE FOR DISCIPLINE

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

6 23. Respondent is subject to discipline under section 4301(f) of the Code, in that  
7 Respondent, as described in paragraphs 20 to 22 above, committed numerous acts involving  
8 moral turpitude, dishonesty, fraud, deceit, or corruption.

9  
10 SECOND CAUSE FOR DISCIPLINE

11 (Self-Administration of Controlled Substance)

12 24. Respondent is subject to discipline under section 4301(h) of the Code, in that  
13 Respondent, as described in paragraphs 20 to 22 above, administered one or more controlled  
14 substances to herself, including **methylphenidate** and **Hydrocodone with APAP** products.

15  
16 THIRD CAUSE FOR DISCIPLINE

17 (Furnishing of Controlled Substance(s))

18 25. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section  
19 4059 of the Code, and/or Health and Safety Code section 11170, in that Respondent, as described  
20 in paragraphs 20 to 22 above, furnished to herself or another, and/or conspired to furnish, and/or  
21 assisted or abetted furnishing of, a controlled substance/dangerous drug, without a prescription.

22  
23 FOURTH CAUSE FOR DISCIPLINE

24 (Possession of Controlled Substance(s))

25 26. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section  
26 4060 of the Code, and/or Health and Safety Code section(s) 11350 and/or 11377, in that  
27 Respondent, as described in paragraphs 20 to 22 above, possessed, conspired to possess, and/or  
28 assisted in or abetted possession of, one or more controlled substance(s), without a prescription.

1 FIFTH CAUSE FOR DISCIPLINE

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

3 27. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,  
4 and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs  
5 20 to 22 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a  
6 controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

7  
8 SIXTH CAUSE FOR DISCIPLINE

9 (Unprofessional Conduct)

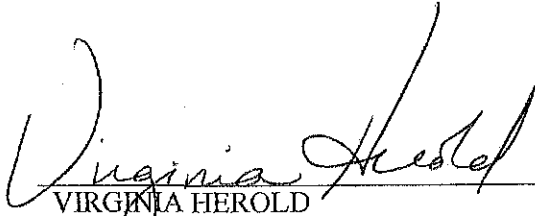
10 28. Respondent is subject to discipline under section 4301 of the Code in that  
11 Respondent, as described in paragraphs 20 to 27 above, engaged in unprofessional conduct.

12  
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 53763, issued  
17 to Shelley Maciel (Respondent);
- 18 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and  
19 enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 20 3. Taking such other and further action as is deemed necessary and proper.

21  
22  
23 DATED: 3/24/12

24   
25 VIRGINIA HEROLD  
26 Executive Officer  
27 Board of Pharmacy  
28 Department of Consumer Affairs  
State of California  
Complainant

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