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

In the Matter of the Accusation Against:  
**DARRELL M. MONTI**  
**2300 Oakdale Road 90**  
**Modesto, CA 95355**  
**Pharmacy Technician Registration No. TCH**  
**84805**  
  
Respondent.

Case No. 4277  
**DEFAULT DECISION AND ORDER**  
  
[Gov. Code, §11520]

**FINDINGS OF FACT**

1. On or about November 2, 2012, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the California State Board of Pharmacy, filed Accusation No. 4277 against Darrell M. Monti (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)
2. On or about July 28, 2008, the California State Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 84805 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 4277 expired on May 31, 2012, and has not been renewed. This lapse in licensure, however, pursuant to Business and Professions Code section 118(b) and/or agency-specific statute does not deprive the [Board] of its authority to institute or continue this disciplinary proceeding.

///

1           3.     On or about November 28, 2012, Respondent was served by Certified and First Class  
2 Mail copies of the Accusation No. 4277, Statement to Respondent, Notice of Defense, Request  
3 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and  
4 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code  
5 section 4100, is required to be reported and maintained with the Board. Respondent's address of  
6 record was and is:

7 2300 Oakdale Road 90  
8 Modesto, CA 95355.

9           4.     Service of the Accusation was effective as a matter of law under the provisions of  
10 Government Code section 11505, subdivision (c) and/or Business & Professions Code section  
11 124.

12           5.     On or about January 9, 2013, the certified mailing of the aforementioned documents  
13 was returned by the U.S. Postal Service marked "Unclaimed."

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

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

20           7.     Respondent failed to file a Notice of Defense within 15 days after service upon him  
21 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.  
22 4277.

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

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

28           9.     Pursuant to its authority under Government Code section 11520, the Board of  
Pharmacy finds Respondent is in default. The Board of Pharmacy 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

1 statements contained therein on file at the Board offices regarding the allegations contained in  
2 Accusation No. 4277, finds that the charges and allegations in Accusation No. 4277, are  
3 separately and severally, found to be true and correct by clear and convincing evidence.

4 10. Taking official notice of its own internal records, pursuant to Business and  
5 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation  
6 and Enforcement is \$\*\*\*Costs\*\*\* as of January 30, 2013.

7 DETERMINATION OF ISSUES

8 1. Based on the foregoing findings of fact, Respondent Darrell M. Monti has subjected  
9 his Pharmacy Technician Registration No. TCH 84805 to discipline.

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

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

14 a. Respondent is subject to disciplinary action for unprofessional conduct under section  
15 4300, subdivision (a) and section 4301, subdivision (f) for committing dishonest acts.

16 b. Respondent is subject to disciplinary action for unprofessional conduct under section  
17 4300, subdivision (a) and section 4301, subdivision (j) in that Respondent obtained controlled  
18 substances in violation of laws regulating controlled substances and dangerous drugs, namely  
19 Health and Safety Code section 11173, subdivision (a).

20 c. Respondent is subject to disciplinary action for unprofessional conduct under section  
21 4300, subdivision (a) and section 4301, subdivision (l) as well as section 490 for having been  
22 convicted of crimes.

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ORDER

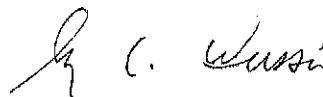
IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 84805, heretofore issued to Respondent Darrell M. Monti, is revoked.

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 May 23, 2013.

It is so ORDERED ON April 23, 2013.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By \_\_\_\_\_  
STANLEY C. WEISSER  
Board President

11035624  
SA2012105559

Attachment:  
Exhibit A: Accusation

# Exhibit A

Accusation

1 KAMALA D. HARRIS  
Attorney General of California  
2 JANICE K. LACHMAN  
Supervising Deputy Attorney General  
3 ANAHITA S. CRAWFORD  
Deputy Attorney General  
4 State Bar No. 209545  
1300 I Street, Suite 125  
5 P.O. Box 944255  
Sacramento, CA 94244-2550  
6 Telephone: (916) 322-8311  
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. 4277

13 **DARRELL M. MONTI**  
2300 Oakdale Road 90  
Modesto, CA 95355

**ACCUSATION**

14 Pharmacy Technician Registration No. TCH 84805

15 Respondent.

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 July 28, 2008, the Board of Pharmacy issued Pharmacy Technician  
22 Registration Number TCH 84805 to Darrell M. Monti (Respondent). The Pharmacy Technician  
23 Registration was in full force and effect at all times relevant to the charges brought herein and  
24 expired on May 31, 2012.

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 (l) The conviction of a crime substantially related to the qualifications,  
2 functions, and duties of a licensee under this chapter. The record of conviction of a  
3 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United  
4 States Code regulating controlled substances or of a violation of the statutes of this  
5 state regulating controlled substances or dangerous drugs shall be conclusive  
6 evidence of unprofessional conduct. In all other cases, the record of conviction shall  
7 be conclusive evidence only of the fact that the conviction occurred. The board may  
8 inquire into the circumstances surrounding the commission of the crime, in order to  
9 fix the degree of discipline or, in the case of a conviction not involving controlled  
10 substances or dangerous drugs, to determine if the conviction is of an offense  
11 substantially related to the qualifications, functions, and duties of a licensee under this  
12 chapter. A plea or verdict of guilty or a conviction following a plea of nolo  
13 contendere is deemed to be a conviction within the meaning of this provision. The  
14 board may take action when the time for appeal has elapsed, or the judgment of  
15 conviction has been affirmed on appeal or when an order granting probation is made  
16 suspending the imposition of sentence, irrespective of a subsequent order under  
17 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of  
18 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or  
19 dismissing the accusation, information, or indictment.

20 ...  
21 (o) Violating or attempting to violate, directly or indirectly, or assisting in or  
22 abetting the violation of or conspiring to violate any provision or term of this chapter  
23 or of the applicable federal and state laws and regulations governing pharmacy,  
24 including regulations established by the board or by any other state or federal  
25 regulatory agency."

26 7. Health and Safety Code section 11173, subdivision (a) states in part:

27 "No person shall obtain or attempt to obtain controlled substances, or procure  
28 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. . . ."

8. Section 4022 of the Code states:

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

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

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

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

9. Section 490 of the Code provides, in pertinent part, that a board may suspend or  
revoke a license on the ground that the licensee has been convicted of a crime substantially



1 related to the qualifications, functions, or duties of the business or profession for which the  
2 license was issued.

3 **COST RECOVERY**

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

8 **DRUG AT ISSUE**

9 • Hydrocodone APAP, is a Schedule III controlled substance as designated by Health and  
10 Safety Code section 11056, subdivision (e)(4).

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(Dishonest Act)**

13 11. Respondent is subject to disciplinary action for unprofessional conduct under section  
14 4300, subdivision (a) and section 4301, subdivision (f) in that Respondent admitted that while  
15 employed at Safeway Pharmacy in Modesto and Turlock, he stole approximately 4000  
16 hydrocodone APAP 10/325 tablets between 2008 through 2010.

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Violation of Law Regulating Controlled Substances)**

19 12. Respondent is subject to disciplinary action for unprofessional conduct under section  
20 4300, subdivision (a) and section 4301, subdivision (j) in that Respondent obtained controlled  
21 substances in violation of laws regulating controlled substances and dangerous drugs, namely  
22 Health and Safety Code section 11173, subdivision (a), as further set forth in paragraph 10,  
23 above.

24 **THIRD CAUSE FOR DISCIPLINE**

25 **(Conviction of Crime)**

26 13. Respondent is subject to disciplinary action for unprofessional conduct under section  
27 4300, subdivision (a) and section 4301, subdivision (l) as well as section 490 in that on  
28 September 14, 2011, Respondent was convicted on his guilty plea to two counts of Penal Code

1 section 487(a) (Grant Theft), felonies. The circumstances are that on or about and between  
2 March 1, 2009 and July 1, 2010, Respondent willfully, unlawfully and feloniously took the  
3 property of Walgreen's Pharmacy, to wit: Hydrocodone APAP 10/325 tablets which exceeded  
4 \$400 in value. Respondent committed these acts while he was employed at the Modesto  
5 Walgreen's and continued his thefts once he was transferred to the Turlock Walgreen's location,  
6 and as set forth above in paragraphs 10-11.

7 **FOURTH CAUSE FOR DISCIPLINE**

8 **(Violation of Pharmacy Laws)**

9 14. Respondent is subject to disciplinary action for unprofessional conduct under section  
10 4300, subdivision (a) and section 4301, subdivision (o) as set forth above in paragraphs 10-12.

11 **PRAYER**

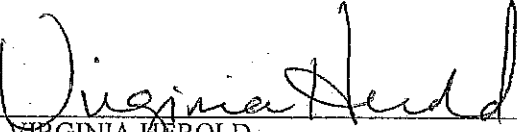
12 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
13 and that following the hearing, the Board of Pharmacy issue a decision:

14 1. Revoking or suspending Pharmacy Technician Registration Number TCH 84805,  
15 issued to Darrell M. Monti.;

16 2. Ordering Darrell M. Monti to pay the Board of Pharmacy the reasonable costs of the  
17 investigation and enforcement of this case, pursuant to Business and Professions Code section  
18 125.3;

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

20  
21 DATED: 11/2/12

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

25 SA2012105559  
26 10951060