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

In the Matter of the Accusation Against:
TRAVIS CASEY MUSSER
669 Carnation Street
Palm Springs, CA 92262
Pharmacy Technician Registration No.
TCH 95466
Respondent.

Case No. 4478
DEFAULT DECISION AND ORDER
[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about January 18, 2013, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4478 against Travis Casey Musser (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about October 30, 2009, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 95466 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 4478 and will expire on February 28, 2013, unless renewed.

3. On or about January 24, 2013, Respondent was served by Certified and First Class Mail copies of the Accusation No. 4478, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and

1 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
2 section 4100, and title 16, California Code of Regulations, section 1704, is required to be reported
3 and maintained with the Board. Respondent's address of record was and is:

4 669 Carnation Street
5 Palm Springs, CA 92262.

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

9 5. 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 6. 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 4478.

18 7. 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 8. 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. 4478, finds that
28 the charges and allegations in Accusation No. 4478, are separately and severally, found to be true
and correct by clear and convincing evidence.

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Exhibit A

Accusation

1 KAMALA D. HARRIS
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2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 ADRIAN R. CONTRERAS
Deputy Attorney General
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8 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 4478

13 **TRAVIS CASEY MUSSER**
14 **669 Carnation Street**
Palm Springs, CA 92262

A C C U S A T I O N

15 **Pharmacy Technician Registration No.**
16 **TCH 95466**

17 Respondent.

18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about October 30, 2009, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 95466 to Travis Casey Musser (Respondent). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought
25 herein and will expire on February 28, 2013, unless renewed.

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1 9. Section 4060 of the Code states:

2 "No person shall possess any controlled substance, except that furnished to a person upon
3 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
4 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
5 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
6 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
7 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
8 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
9 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
10 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
11 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
12 labeled with the name and address of the supplier or producer.

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

16 10. Section 4301 of the Code states:

17 "The board shall take action against any holder of a license who is guilty of unprofessional
18 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
19 Unprofessional conduct shall include, but is not limited to, any of the following:

20 ". . .

21 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
22 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
23 whether the act is a felony or misdemeanor or not.

24 ". . .

25 "(j) The violation of any of the statutes of this state, or any other state, or of the United
26 States regulating controlled substances and dangerous drugs.

27 ". . .

28 "(p) Actions or conduct that would have warranted denial of a license.

1 record and log. A new log was provided to the GI Lab every day and the balance of narcotics
2 would be verified by a nurse and transcribed onto a new sheet. A nurse would manually count all
3 narcotics at the change of shift and at the close of the day, after the last procedure was completed.

4 17. On January 30, 2012, a shift count was performed for narcotics and the count was
5 accurate at about 5:30 p.m. The next morning, a narcotic count revealed that one ampule (250
6 mcg/5ml) of Fentanyl was missing. Later that day, a second ampule of Fentanyl was discovered
7 missing. The pharmacy inside of the facility was notified, and security reviewed the facility's
8 internal video surveillance footage to determine if any information could be found to explain why
9 the two ampules were missing.

10 18. Surveillance footage revealed that on January 30, at about 6:18 p.m., Respondent
11 went into the GI Lab wearing scrubs, even though he was not scheduled to work that day, and left
12 at 6:22 p.m. No other individual was seen entering the GI Lab until the next day.

13 19. At 7:48 a.m. the following morning, Respondent entered the inpatient GI Lab and left
14 at 8:13 a.m. At 8:15 a.m., Respondent told his supervisor that he was not feeling well, and the
15 supervisor advised Respondent not to return to work for at least two days because at the time the
16 hospital had an outbreak of enterococcus infections and any employee suspected of having this
17 infection was instructed to stay off work. At 8:20 a.m., Respondent clocked out for the day. At
18 about 5:00 p.m., the supervisor saw Respondent come out of the GI Lab restroom.

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(Unprofessional Conduct - Act of Moral Turpitude or Dishonesty)**

21 20. Respondent is subject to disciplinary action under Code section 4301, subdivision (f)
22 in that Respondent stole the controlled substance Fentanyl from his place of employment, an act
23 of moral turpitude or dishonesty. The circumstances are described in paragraphs 15-19, above,
24 and are hereby incorporated as if fully set forth herein.

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1 SECOND CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct - Violation of Law Regulating Controlled Substances
3 and Dangerous Drugs)

4 21. Respondent is subject to disciplinary action under Code section 4301, subdivision (j)
5 in that Respondent possessed the controlled substance and dangerous drug Fentanyl in violation
6 of the law, including Code section 4060; and Health and Safety Code sections 11170 and 11350.
7 The circumstances are described in paragraphs 15-20, above, and are hereby incorporated as if
8 fully set forth herein.

9 THIRD CAUSE FOR DISCIPLINE

10 (Unprofessional Conduct - Act Warranting Denial of Licensure)

11 22. Respondent is subject to disciplinary action under section 4301, subdivision (p), in
12 that he committed an act that would have warranted denial of a license by stealing the controlled
13 substance Fentanyl from his place of employment, an act enumerated in Code section 480,
14 subdivision (a)(2), which is cause for denial of a license to an applicant who committed an act of
15 dishonesty with the intent to substantially benefit himself or substantially injure another. The
16 circumstances are described in paragraphs 15-21, above, and are hereby incorporated as if fully
17 set forth herein.

18 **PRAYER**

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

21 1. Revoking or suspending Pharmacy Technician Registration Number TCH 95466,
22 issued to Travis Casey Musser;

23 2. Ordering Travis Casey Musser to pay the Board of Pharmacy the reasonable costs of
24 the investigation and enforcement of this case, pursuant to Business and Professions Code section
25 125.3; and

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

DATED: 1/18/13



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

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