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

In the Matter of the Accusation Against:

GEARL DEAN STEVENS
3000 Whisper Oak Way
Bakersfield, CA 93311
Pharmacy Technician Registration No. TCH
73620

Respondent.

Case No. 4921

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about March 12, 2014, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4921 against Gearl Dean Stevens (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about October 4, 2007, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 73620 to Respondent. The Pharmacy Technician Registration expired on May 31, 2013, and has not been renewed.

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1 3. On or about March 20, 2014, Respondent was served by Certified and First Class
2 Mail copies of the Accusation No. 4921, 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 3000 Whisper Oak Way
8 Bakersfield, CA 93311.

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 March 28, 2014, the aforementioned documents were returned by the
13 U.S. Postal Service marked "Forwarding Address Expired." The address on the documents was
14 the same as the address on file with the Board. Respondent failed to maintain an updated address
15 with the Board and the Board has made attempts to serve the Respondent at the address on file.
16 Respondent has not made herself available for service and therefore, has not availed herself of her
17 right to file a notice of defense and appear at hearing.

18 6. On or about May 6, 2014, Respondent was served by Certified and First Class Mail
19 copies of the Accusation No. 4921, Statement to Respondent, Notice of Defense, Request for
20 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
21 Respondent's forwarding address as provided by the United States Postal Service:

22 10006 Grand View Summit Dr.
23 Bakersfield, CA 93311.

24 7. Service of the Accusation was effective as a matter of law under the provisions of
25 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
26 124. On or about may 12, 2014, a certified mail receipt for the accusation and accompanying
27 documents was returned with Respondent's signature.

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1 8. Government Code section 11506 states, in pertinent part:

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

7 9. Respondent failed to file a Notice of Defense within 15 days after service upon her of
8 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 4921.

9 10. California Government Code section 11520 states, in pertinent part:

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

14 11. Pursuant to its authority under Government Code section 11520, the Board finds
15 Respondent is in default. The Board will take action without further hearing and, based on the
16 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
17 taking official notice of all the investigatory reports, exhibits and statements contained therein on
18 file at the Board's offices regarding the allegations contained in Accusation No. 4921, finds that
19 the charges and allegations in Accusation No. 4921, are separately and severally, found to be true
20 and correct by clear and convincing evidence.

21 12. Taking official notice of its own internal records, pursuant to Business and
22 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
23 and Enforcement is \$5,092.00 as of July 28, 2014.

24 DETERMINATION OF ISSUES

25 1. Based on the foregoing findings of fact, Respondent Gearl Dean Stevens has
26 subjected her Pharmacy Technician Registration No. TCH 73620 to discipline.

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

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

///

1 a. Business and Professions Code section 4301, subdivision (f), for the commission of
2 an act involving dishonesty, fraud, or deceit.

3 b. Business and Professions Code section 4301, subdivision (j) for violating Health and
4 Safety Code section 11173, subdivision (a) by obtaining controlled substances by fraud, deceit,
5 misrepresentation, or subterfuge or by the concealment of a material fact.

6 c. Business and Professions Code section 4301, subdivision (j) for violating Business
7 and Professions Code section 4060 by possessing controlled substances without a prescription.

8 d. Business and Professions Code section 4301, subdivision (j) for violating Business
9 and Professions Code section 4059, subdivision (a) by furnishing dangerous drugs without a
10 prescription.

11 ORDER

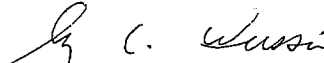
12 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 73620, heretofore
13 issued to Respondent Gearl Dean Stevens, is revoked.

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

18 This Decision shall become effective on October 9, 2014.

19 It is so ORDERED September 9, 2014.

20 BOARD OF PHARMACY
21 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

22 By 
23 STAN C. WEISSER
24 Board President

25 51500956.DOC
26 DOJ Matter ID:LA2013510342

27 Attachment:
28 Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 M. TRAVIS PEERY
Deputy Attorney General
4 State Bar No. 261887
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-0962
6 Facsimile: (213) 897-2804
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. 4921

11 **GEARL DEAN STEVENS**
12 **3000 Whisper Oak Way**
13 **Bakersfield, CA 93311**

A C C U S A T I O N

14 **Pharmacy Technician Registration No. TCH**
15 **73620**

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 October 4, 2007, the Board of Pharmacy issued Pharmacy Techniciari
22 Registration Number TCH 73620 to Gearl Dean Stevens (Respondent). The Pharmacy
23 Technician Registration expired on May 31, 2013, and has not been renewed.

24 **JURISDICTION**

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

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1 4. Section 4300 of the Code states, in pertinent part:

2 "(a) Every license issued may be suspended or revoked.

3 "(b) The board shall discipline the holder of any license issued by the board, whose default
4 has been entered or whose case has been heard by the board and found guilty, by any of the
5 following methods:

6 "(1) Suspending judgment.

7 "(2) Placing him or her upon probation.

8 "(3) Suspending his or her right to practice for a period not exceeding one year.

9 "(4) Revoking his or her license.

10 "(5) Taking any other action in relation to disciplining him or her as the board in its
11 discretion may deem proper."

12 5. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
13 surrender, or cancellation of a license shall not deprive the Board/Registrar/Director of
14 jurisdiction to proceed with a disciplinary action during the period within which the license may
15 be renewed, restored, reissued or reinstated.

16 **STATUTORY PROVISIONS**

17 6. Section 4301 of the Code states:

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

21 ...

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

25 ...

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

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7. Section 4059, subdivision (a) of the Code states:

(a) A person may not furnish any dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian. A person may not furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian.

8. Section 4060 of the Code states:

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

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

9. Section 11173, subdivision (a) of the California Health and Safety Code states:

"(a) 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

10. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to direct a licensee 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.

DRUGS

11. **Lortab 7.5-500**, a brand name for Hydrocodone/apap, is a narcotic Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4), and is a dangerous drug pursuant to Business and Professions Code section 4022. Hydrocodone is used as a narcotic analgesic in the relief of severe pain.

1 12. Fioricet, a brand name for Butalbital-Caffeine-Acetaminophen, is a dangerous drug
2 pursuant to Business and Professions Code section 4022 and is used to treat migraine headaches.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct in the Commission of an Act Involving Dishonesty, Fraud, Deceit)**

5 13. Respondent is subject to disciplinary action under Business and Professions Code
6 section 4301, subdivision (f) for committing an act involving moral turpitude, dishonesty, fraud or
7 deceit in that Respondent obtained dangerous drugs and controlled substances without a
8 prescription when she diverted approximately 20 pills of hydrocodone/apap 7.5-500mg tablets
9 and approximately 330 pills of generic Fioricet, both for her own use, while working as a
10 pharmacy technician at CVS Pharmacy in Bakersfield from August 1, 2011 to July 20, 2012.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Unprofessional Conduct-Violation of Health and Safety Code section 11173(a))**

13 14. Respondent is subject to disciplinary action under Business and Professions Code
14 section 4301, subdivision (j) for violating Health and Safety Code section 11173(a) in that
15 Respondent obtained controlled substances by fraud, deceit, misrepresentation, or subterfuge or
16 by the concealment of a material fact when Respondent diverted approximately 20 pills of
17 hydrocodone/apap 7.5-500mg tablets while working as a pharmacy technician at CVS Pharmacy
18 in Bakersfield from August 1, 2011 to July 20, 2012.

19 **THIRD CAUSE FOR DISCIPLINE**

20 **(Unprofessional Conduct-Unlawful Possession of a Controlled Substance)**

21 15. Respondent is subject to disciplinary action under Business and Professions Code
22 section 4301, subdivision (j) for violating Business and Professions Code section 4060 in that
23 Respondent possessed controlled substances without a prescription when she diverted
24 approximately 20 pills of hydrocodone/apap 7.5-500mg tablets while working as a pharmacy
25 technician at CVS Pharmacy in Bakersfield from August 1, 2011 to July 20, 2012.

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FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Furnishing Dangerous Drugs Without a Prescription)

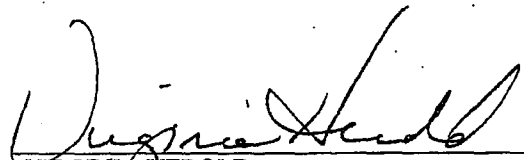
16. Respondent is subject to disciplinary action under Business and Professions Code section 4301, subdivision (j) for violating Business and Professions Code section 4059(a) in that she furnished dangerous drugs without a prescription when she diverted approximately 20 pills of hydrocodone/apap 7.5-500mg tablets and approximately 330 pills of generic Fioricet, both for her own use, while working as a pharmacy technician at CVS Pharmacy in Bakersfield from August 1, 2011 to July 20, 2012.

PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 73620, issued to Gearl Dean Stevens;
2. Ordering Gearl Dean Stevens 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; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 3/12/14


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

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