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

In the Matter of the Accusation Against:

Case No. 4985

DAVID ANTHONY WHITE
12686 Kestrel Street
San Diego, CA 92129

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

**Pharmacy Technician Registration
No. TCH 11147**

Respondent.

FINDINGS OF FACT

1. On or about April 9, 2014, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4985 against David Anthony White (Respondent) before the Board of Pharmacy. (A copy of the Accusation is attached as Exhibit A.)

2. On or about December 23, 1993, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 11147 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 4985 and will expire on May 31, 2015, unless renewed.

3. On or about April 24, 2014, Respondent was served by Certified and First Class Mail copies of the Accusation No. 4985, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at

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

4 12686 Kestrel Street
5 San Diego, CA 92129

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. On or about April 25, 2014, the Domestic Return Receipt for the aforementioned
10 documents served by Certified Mail was signed indicating service of the Accusation.

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

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

17 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
18 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
19 4985.

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

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

25 9. Pursuant to its authority under Government Code section 11520, the Board finds
26 Respondent is in default. The Board will take action without further hearing and, based on the
27 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
28 taking official notice of all the investigatory reports, exhibits and statements contained therein on
file at the Board's offices regarding the allegations contained in Accusation No. 4985, finds that
the charges and allegations in Accusation No. 4985, are separately and severally, found to be true
and correct by clear and convincing evidence.

ORDER

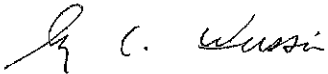
IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 11147, heretofore issued to Respondent David Anthony White, is revoked.

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 August 1, 2014.

It is so ORDERED July 2, 2014

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By 
STAN C. WEISSER
Board President

DOJ Matter ID: SD2013706257

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 4985

13 **DAVID ANTHONY WHITE**
12686 Kestrel Street
14 San Diego, CA 92129

A C C U S A T I O N

15 **Pharmacy Technician Registration**
16 **No. TCH 11147**

Respondent.

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19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about December 23, 1993, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 11147 to David Anthony White (Respondent). The Pharmacy
25 Technician Registration was in full force and effect at all times relevant to the charges brought
26 herein and will expire on May 31, 2015, unless renewed.

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JURISDICTION

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

4. Section 4300, subdivision (a) of the Code states "Every license issued may be suspended or revoked."

5. Section 4300.1 of the Code states:

The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.

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STATUTORY PROVISIONS

6. Section 492 of the Code states:

Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division.

7. 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.

1 8. Section 4059 of the Code provides, in pertinent part, that a person may not furnish
2 any dangerous drug or dangerous device except upon the prescription of a physician, dentist,
3 podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

4 9. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
5 controlled substance, except that furnished to a person upon the prescription of a physician,
6 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor.

7 10. Section 4301 of the Code states:

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

12

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

16

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

19

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

24

25 11. United States Code, title 21, section 843 states, in pertinent part:

26 (a) It shall be unlawful for any person knowingly or intentionally –

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28 (3) to acquire or obtain possession of a controlled substance by
misrepresentation, fraud, forgery, deception, or subterfuge;

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1 **REGULATORY PROVISIONS**

2 12. California Code of Regulations, title 16, section 1769, states:

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4 (b) When considering the suspension or revocation of a facility or a personal
5 license on the ground that the licensee or the registrant has been convicted of a crime, the
6 board, in evaluating the rehabilitation of such person and his present eligibility for a
7 license will consider the following criteria:

8 (1) Nature and severity of the act(s) or offense(s).

9 (2) Total criminal record.

10 (3) The time that has elapsed since commission of the act(s) or offense(s).

11 (4) Whether the licensee has complied with all terms of parole, probation,
12 restitution or any other sanctions lawfully imposed against the licensee.

13 (5) Evidence, if any, of rehabilitation submitted by the licensee.

14 13. California Code of Regulations, title 16, section 1770, states:

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

22 **COSTS**

23 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
24 administrative law judge to direct a licentiate found to have committed a violation or violations of
25 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
26 enforcement of the case, with failure of the licentiate to comply subjecting the license to not
27 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs
28 may be included in a stipulated settlement.

DRUG

15 15. Hydrocodone/APAP, sold commercially as Norco, is a Schedule III controlled
16 substance as designated by Health and Safety Code section 11056, subdivision (e)(4), and is a
17 dangerous drug pursuant to Business and Professions Code section 4022.

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1 **FACTUAL ALLEGATIONS**

2 16. On or about August 1, 2013, the Regional Loss Prevention Manager for CVS
3 Pharmacy met with a Task Force Officer (TFO) with the Drug Enforcement Administration
4 (DEA) regarding the suspected theft of Norco from one of its San Diego pharmacies. The
5 missing Norco was discovered during an audit on May 16, 2013. The timeframe of the audit
6 included dates between October 7, 2012 and May 15, 2013. From that point forward, the CVS
7 pharmacy conducted a daily count of its inventory.

8 17. Respondent's pharmacy technician registration expired on May 31, 2013, and CVS
9 assigned him to cashier duty. He was directed not to handle or dispense medications until his
10 registration was reinstated.

11 18. On June 9, 2013, CVS installed covert surveillance cameras in the pharmacy to
12 monitor its activities. From May 29, 2013 to June 24, 2013, no loss of Norco was recorded. On
13 the same day Respondent's pharmacy technician registration was reinstated, on June 26, 2013,
14 the pharmacy's inventory count showed a loss of 100 tablets of Norco from the previous day.
15 Surveillance cameras captured video on June 25, 2013 wherein Respondent was recorded taking a
16 bottle of Norco from the main shelving unit (a.k.a. "end cap") and walking out of view.
17 Respondent was not authorized to be in the pharmacy because his registration was not valid. The
18 daily inventory revealed that no Norco had been dispensed on June 25, 2013.

19 19. In an inventory count conducted on July 1, 2013, a shortage of 160 tablets of Norco
20 was reported between June 28 and July 1. On June 30, 2013, closed circuit surveillance video
21 showed Respondent selecting a bottle of Norco from the end cap and walking out of the cameras'
22 view. The daily inventory revealed that no Norco had been dispensed on June 30, 2013.

23 20. On July 20, 2013, a shortage of 120 tablets of Norco was reported. The missing
24 tablets were from a "returned to stock" bottle for a prescription that had been filled on July 19,
25 2013. The Pharmacy Manager stated that she saw the bottle of Norco on the end cap, but only
26 noticed it missing after Respondent's shift ended and he had left the pharmacy. A review of the
27 covert video surveillance showed Respondent taking the bottle of Norco and turning away from
28 the camera. When he turned back to the camera, the bottle was gone. The daily inventory report

1 for July 20, 2013 showed that 150 tablets of Norco had been dispensed and witnessed by the
2 Pharmacy Manager.

3 21. Based on its investigation, CVS estimated that between October 7, 2012 and July 24,
4 2013, 3,473 tablets of Norco, with an estimated value of \$2,709.00, had gone missing. On or
5 about August 2, 2013, the Regional Loss Prevention Manager for CVS attempted to conduct an
6 interview with Respondent when he arrived for his shift. Respondent was uncooperative and
7 tried to leave the store, but he was intercepted and arrested by the DEA.

8 22. As a result of the arrest, on or about August 6, 2013, a felony complaint was filed in
9 San Diego County Superior Court, case number CD249864, charging Respondent with three
10 counts of violating Health and Safety Code section 11350, subdivision (a), possession of a
11 controlled substance, to wit, hydrocodone; Penal Code section 508, embezzlement by a
12 clerk/agent/servant; and Penal Code section 484, petty theft.

13 23. On or about October 2, 2013, Respondent entered a plea of guilty to one count of
14 violating Health and Safety Code section 11350, subdivision (a). The court deferred entry of
15 judgment for 18 months, and Respondent was ordered to enroll in a substance abuse treatment
16 program. The remaining counts were dismissed by the court pursuant to the plea agreement.

17 **FIRST CAUSE FOR DISCIPLINE**

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

19 24. Respondent has subjected his registration to discipline under section 4301,
20 subdivision (j) of the Code in that he illegally possessed hydrocodone on or about June 25, 2013,
21 June 30, 2013, and July 20, 2013, as described in paragraphs 16-21, above, a violation of Health
22 and Safety Code section 11350, subdivision (a), Title 21 U.S.C. section 843, subdivision (a)(3),
23 Board of Pharmacy Regulations (California Code of Regulations, Title 16, Section 1700, et seq.),
24 and the California Uniform Controlled Substances Act (Health and Safety Code 11000, et seq.).

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1 Vehicle Code section 23103, alcohol-related reckless driving, a misdemeanor, a count substituted
2 for the original charges of driving under the influence of alcohol (Veh. Code, § 23152(a)), and
3 driving with a BAC of .08 percent or more (Veh. Code, § 23152(b)), pursuant to Vehicle Code
4 section 23103.5, subdivision (a).

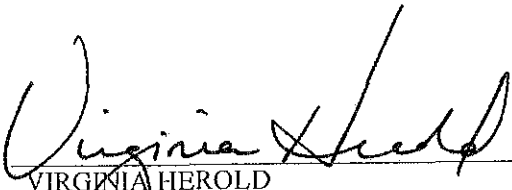
5 c. As a result of the conviction, on or about July 27, 2012, the Board issued
6 Citation number CI 2011 51800 to Respondent. The Citation alleged that Respondent's
7 unprofessional conduct violated Business and Professions Code section 4301, subdivision (h) in
8 that he used an alcoholic beverage to a dangerous extent; and section 4301, subdivision (l), in that
9 he was convicted of a crime substantially related to the practice of pharmacy. Respondent was
10 assessed a fine in the amount of \$150.

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 11147,
15 issued to David Anthony White;
- 16 2. Ordering David Anthony White to pay the Board of Pharmacy the reasonable costs of
17 the 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
22 DATED: 4/9/14


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

SD2013706257