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

In the Matter of the Accusation Against:

HEATHER IRENE SUMMERS
2200 Jewel Lane #2
Redding, CA 96001

Pharmacy Technician Registration No. TCH
122094

Respondent.

Case No. 4988

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about November 24, 2015, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4988 against Heather Irene Summers (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about April 2, 2012, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 122094 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 4988, expired on March 31, 2014, and has been cancelled. This expiration and cancellation of

1 licensure, however, does not deprive the Board of its authority to institute or continue these
2 disciplinary proceedings, pursuant to Business and Professions Code section 118(b).

3 3. On or about December 1, 2015, Respondent was served by Certified and First Class
4 Mail copies of the Accusation No. 4988, Statement to Respondent, Notice of Defense, Request
5 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
6 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
7 section 4100, is required to be reported and maintained with the Board. Respondent's address of
8 record was and is: 2200 Jewel Lane #2, Redding, CA 96001.

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 Business & Professions Code section 124.

11 5. On or about December 17, 2015, the aforementioned certified copy of these
12 documents were returned by the U.S. Postal Service marked "Return to Sender." However, the
13 documents served by regular U.S. Mail have not been returned. On January 11, 2016,
14 Respondent called the Office of the Attorney General and spoke with Deputy Attorney General
15 Phillips and indicated that she was not interested in keeping her pharmacy technician license, and
16 would not be returning the Notice of Defense.

17 6. Government Code section 11506(c) states, in pertinent part:

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

23 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
24 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 4988.

25 8. California Government Code section 11520(a) states, in pertinent part:

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

9 Pursuant to its authority under Government Code section 11520, the Board finds
Respondent is in default. The Board will take action without further hearing and, based on the

1 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
2 taking official notice of all the investigatory reports, exhibits and statements contained therein on
3 file at the Board's offices regarding the allegations contained in Accusation No. 4988, finds that
4 the charges and allegations in Accusation No. 4988, are separately and severally, found to be true
5 and correct by clear and convincing evidence.

6 10. Taking official notice of its own internal records, pursuant to Business and
7 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
8 and Enforcement is \$4,343.50 as of May 30, 2016.

9 DETERMINATION OF ISSUES

10 1. Based on the foregoing findings of fact, Respondent Heather Irene Summers has
11 subjected her Pharmacy Technician Registration No. TCH 122094 to discipline.

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

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

16 a. Respondent is subject to disciplinary action under Business and Professions Code
17 section 4301, subdivision (f) for committing an act involving moral turpitude, dishonesty, fraud
18 or deceit in that during the period from about May 2013 through on or about August 2, 2013,
19 while Respondent was employed as a pharmacy technician at Wal-Mart Pharmacy on South Main
20 Street, Red Bluff, California, Respondent diverted approximately 3,000 dosage unites of

21 Hydrocodone/ acetaminophen 10/325mg, 500 dosage units of alprazolam 2 mgn 100 dosage
22 unites of clonazepam 2mg, and 45 dosage unites of Suboxone for the purpose of selling to trade
23 for heroin and for self-administration.

24 b. Respondent is subject to disciplinary action under Business and Professions Code
25 sections 4301((h)(j) for violating Business and Professions Code section 4059(a) and section
26 4060 and Health & Safety Code section 11170 in that Respondent obtained controlled substances
27 without a prescription for self-administration.

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1 c. Respondent is subject to disciplinary action under Business and Professions Code
2 section 4301, subdivision (j)(o) for violating Business and Professions Code section 4060 in that
3 Respondent possessed controlled substances without a prescription

4 d. Respondent is subject to disciplinary action under Business and Professions Code
5 sections 4301((h)(j) for violating Business and Professions Code section 4059(a) and section
6 4060 and Health & Safety Code section 11171 in that Respondent obtained controlled substances
7 without a prescription for the purpose of selling to trade for heroin.

8 e. Respondent has subjected her license to discipline pursuant to Code section 4301,
9 subdivision (l), in that Respondent was convicted of crimes that are substantially related to the
10 qualifications, functions, and duties of a pharmacy technician, as follows:

11 1. On October 21, 2013, in the case of People v. Heather Irene Summers, Superior
12 Court of Tehama County Case No. NCR 87738, Respondent was convicted by her plea of no
13 contest of second degree burglary in violation of Penal Code section 459, a felony. Respondent
14 admitted to the Red Bluff Police that she diverted approximately 3,000 dosage unites of
15 Hydrocodone/ acetaminophen 10/325mg, 500 dosage units of alprazolam 2 mgn 100 dosage
16 unites of clonazepam 2mg, and 45 dosage unites of Suboxone for the purpose of selling to trade
17 for heroin and for self-administration.

18 2. On January 28, 2015, in the case of People v. Heather Irene Summers, Superior
19 Court of Shasta County Case No. MC RE CRF 140007420, Respondent was convicted by her
20 plea of guilty to violating Penal Code section 647(H) (Loitering), a misdemeanor. Respondent
21 admitted to a Redding Police Officer that she was in a neighborhood using a stolen baby stroller
22 to transport stolen items from the yards in the neighborhood.

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ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 122094, heretofore issued to Respondent Heather Irene Summers, 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 at 5:00 p.m. on August 12, 2016.

It is so ORDERED on July 13, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____
Amy Gutierrez, Pharm.D.
Board President

Attachment: Exhibit A: Accusation

Exhibit A

Accusation

(HEATHER IRENE SUMMERS)

1 KAMALA D. HARRIS.
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 JEFFREY M. PHILLIPS
Deputy Attorney General
4 State Bar No. 154990
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-6292
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 4988

12 **HEATHER IRENE SUMMERS**

13 **2200 Jewell Lane, #2**
14 **Redding, CA 96001**

ACCUSATION

15 **Pharmacy Technician Registration No. TCH**
16 **122094**

Respondent.

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 April 2, 2012, the Board of Pharmacy issued Pharmacy Technician
22 Registration Number TCH 122094 to Heather Irene Summers (Respondent). The Pharmacy
23 Technician Registration was in full force and effect at all times relevant to the charges brought
24 herein and expired on March 31, 2014. The registration is currently cancelled.

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1 JURISDICTION

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

5 4. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
6 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
7 disciplinary action during the period within which the license may be renewed, restored, reissued
8 or reinstated.

9 STATUTORY PROVISIONS

10 5. Section 4022 of the Code states

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

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

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

17 (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.

18 5. Section 4301 of the Code states:

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

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

25
26 (h) The administering to oneself, of any controlled substance, or the use of any
27 dangerous drug or of alcoholic beverages to the extent or in a manner as to be
28 dangerous or injurious to oneself, to a person holding a license under this chapter, or
to any other person or to the public, or to the extent that the use impairs the ability of
the person to conduct with safety to the public the practice authorized by the license.

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

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

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

8 7. Section 4060 of the Code states:

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

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

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

25 "(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt
26 to procure the administration of or prescription for controlled substances, (1) by fraud, deceit,
27 misrepresentation, or subterfuge; or (2) by the concealment of a material fact."

28 COST RECOVERY

9. 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

10. **Alprazolam**, the generic name for Xanax, is a Schedule IV controlled substance
under California Health and Safety Code section 11057(d)(1), and is classified as a dangerous

1 drug pursuant to Business and Professions Code section 4022. Alprazolam tablets are indicated
2 for the management of anxiety disorder or the short-term relief of symptoms of anxiety.

3 11. **"Hydrocodone"** Hydrocodone bitartate/acetaminophen, also known by the brand
4 names Vicodin, Norco, Zydone, Maxidone, Lortab, Lorcet, Hydrocet, Co-Gesic, and Anexsia, is a
5 narcotic Schedule III controlled substance as designated by Health and Safety Code section
6 11056(e)(4), and is a dangerous drug pursuant to Business and Professions Code section 4022.
7 Hydrocodone is used as a narcotic analgesic in the relief of pain.

8 12. **"Clonazepam"** is a Schedule IV controlled substance as designated by Health and
9 Safety Code section 11057, subdivision (d)(7).

10 13. **"Suboxone"**, a combination drug containing buprenorphine and naloxone, is
11 classified as a Schedule III controlled substance.

12 14. **"Heroin"** is a Schedule I controlled substance as designated by Health and Safety
13 Code section 11054(c)(11).

14 COST RECOVERY

15 15. Code section 125.3 provides, in pertinent part, that the Board may request the
16 administrative law judge to direct a licensee found to have committed a violation or violations of
17 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
18 enforcement of the case.

19 FIRST CAUSE FOR DISCIPLINE

20 (Unprofessional Conduct – Theft of Controlled Substances)

21 16. Respondent is subject to disciplinary action under Business and Professions Code
22 section 4301, subdivision (f) for committing an act involving moral turpitude, dishonesty, fraud or
23 deceit in that during the period from about May 2013 through on or about August 2, 2013, while
24 Respondent was employed as a pharmacy technician at Wal-Mart Pharmacy on South Main
25 Street, Red Bluff, California, Respondent diverted approximately 3,000 dosage units of
26 Hydrocodone/ acetaminophen 10/325mg, 500 dosage units of alprazolam 2 mg/100 dosage
27 units of clonazepam 2mg, and 45 dosage units of Suboxone for the purpose of selling to trade
28 for heroin and for self-administration. This was a violation of pharmacy Law. On or about

1 August 2, 2013, Respondent was fired from Wal-Mart as a Pharmacy Technician and arrested by
2 the Red Bluff Police.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct – Unlawful Possession of Controlled Substances)**

5 17. Respondent is subject to disciplinary action under Business and Professions Code
6 section 4301, subdivision (j)(o) for violating Business and Professions Code section 4060 in that
7 Respondent possessed controlled substances without a prescription, as more fully set forth in
8 paragraphs 15, above.

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct – Unlawful Self-Administration of Controlled Substances)**

11 18. Respondent is subject to disciplinary action under Business and Professions Code
12 sections 4301((h)(j) for violating Business and Professions Code section 4059(a) and section 4060
13 and Health & Safety Code section 11170 in that Respondent obtained controlled substances
14 without a prescription for self-administration, as more fully set forth in paragraph 16, above.

15 **FOURTH CAUSE FOR DISCIPLINE**

16 **(Unprofessional Conduct – Unlawful Furnishing of a Controlled Substances)**

17 19. Respondent is subject to disciplinary action under Business and Professions Code
18 sections 4301((h)(j) for violating Business and Professions Code section 4059(a) and section 4060
19 and Health & Safety Code section 11171 in that Respondent obtained controlled substances
20 without a prescription for the purpose of selling to trade for heroin, as more fully set forth in
21 paragraph 16, above.

22 **FIFTH CAUSE FOR DISCIPLINE**

23 **(Conviction of Crime)**

24 20. Respondent has subjected her license to discipline pursuant to Code section 4301,
25 subdivision (l), on the grounds of unprofessional conduct, in that Respondent was convicted of
26 crimes that are substantially related to the qualifications, functions, and duties of a pharmacy
27 technician, as follows:
28

1 a. On or about October 21, 2013, in the case of *People v. Heather Irene Summers*,
2 Superior Court of Tehama County Case No. NCR 87738, Respondent was convicted by her plea
3 of no contest of second degree burglary in violation of Penal Code section 459, a felony. The
4 circumstances of the crime are that on or about August 2, 2013, Respondent did unlawfully enter
5 a commercial building occupied by Wal-Mart with the intent to commit larceny and a felony.
6 Respondent admitted to the Red Bluff Police that she diverted approximately 3,000 dosage unites
7 of Hydrocodone/ acetaminophen 10/325mg, 500 dosage units of alprazolam 2 mgn 100 dosage
8 unites of clonazepam 2mg, and 45 dosage unites of Suboxone for the purpose of selling to trade
9 for heroin and for self-administration.

10 b. On or about January 28, 2015, in the case of *People v. Heather Irene Summers*,
11 Superior Court of Shasta County Case No. MC RE CRF 140007420, Respondent was convicted
12 by her plea of guilty to violating Penal Code section 647(H) (Loitering), a misdemeanor. The
13 circumstances of the crime are that on or about December 4, 2014, Respondent did willfully and
14 unlawfully loiter, prowl and wander upon the private property of another without visible business
15 with the owner and occupant thereof. Respondent admitted to a Redding Police Officer that she
16 was in a neighborhood using a stolen baby stroller to transport stolen items from the yards in the
17 neighborhood.

18 **SIXTH CAUSE FOR DISCIPLINE**

19 **(Act Involving Moral Turpitude)**

20 21. Respondent has subjected her license to discipline pursuant to Code section 4301,
21 subdivision (f), on the grounds of unprofessional conduct, in that on or about September 14, 2010,
22 Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption, as
23 set forth in paragraphs 16 through 20.

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25 **PRAYER**

26 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
27 and that following the hearing, the Board of Pharmacy issue a decision:
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1. Revoking or suspending Pharmacy Technician Registration Number TCH 122094, issued to Heather Irene Summers.;
2. Ordering Heather Irene Summers 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;
3. Taking such other and further action as deemed necessary and proper.

DATED: 11/24/15 Virginia Herold
VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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