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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. 5123

**ROBERT T. SOMMERS
35825 Rice Canyon Road
Fallbrook, CA 92028**

DEFAULT DECISION AND ORDER

**Pharmacy Technician Registration No. TCH
117407**

[Gov. Code, §11520]

Respondent.

FINDINGS OF FACT

1. On or about May 1, 2014, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 5123 against Robert T. Sommers (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about October 3, 2011, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 117407 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 5123 and will expire on June 30, 2015, unless renewed.

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1 3. On or about August 25, 2014, Respondent was served by Certified and First Class
2 Mail copies of the Accusation No. 5123, 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: 35825 Rice Canyon Road, Fallbrook, CA 92028.

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

10 5. On or about September 3, 2014, a signed certified mail return receipt was received
11 from respondent through the United States Mail regarding the service of the aforementioned
12 documents.

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

14 (c) The respondent shall be entitled to a hearing on the merits if the respondent
15 files a notice of defense, and the notice shall be deemed a specific denial of all parts
16 of the accusation not expressly admitted. Failure to file a notice of defense shall
constitute a waiver of respondent's right to a hearing, but the agency in its discretion
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 5123.

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
respondent.

24 9. Pursuant to its authority under Government Code section 11520, the Board finds
25 Respondent is in default. The Board will take action without further hearing and, based on the
26 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
27 taking official notice of all the investigatory reports, exhibits and statements contained therein on
28 file at the Board's offices regarding the allegations contained in Accusation No. 5123, finds that

1 the charges and allegations in Accusation No. 5123, are separately and severally, found to be true
2 and correct by clear and convincing evidence.

3 10. Taking official notice of its own internal records, pursuant to Business and
4 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
5 and Enforcement is \$4,378.30 as of September 29, 2014.

6 DETERMINATION OF ISSUES

7 1. Based on the foregoing findings of fact, Respondent Robert T. Sommers has
8 subjected his Pharmacy Technician Registration No. TCH 117407 to discipline.

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

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

13 a. Respondent is subject to disciplinary action under Business and Professions Code
14 (Code) section 4301(o) for possession of a controlled substance without a prescription in violation
15 of Code section 4060 when Respondent stole approximately 18,515 tablets and cough syrup that
16 are controlled substances from CVS Pharmacy while working there as a pharmacy technician.

17 b. Respondent is subject to disciplinary action under Code section 4301(h) for the self-
18 administration of controlled substances. Respondent admitted that he self-medicated with the
19 controlled substances that he stole from CVS Pharmacy while he worked there as a pharmacy
20 technician.

21 c. Respondent is subject to discipline for unprofessional conduct under Code section
22 4301(j) for obtaining controlled substances by fraud, deceit, or subterfuge in violation of Health
23 and Safety Code section 11173, when he stole approximately 18,515 controlled substance tablets
24 and cough syrup from CVS Pharmacy from approximately November 19, 2011 through October
25 31, 2013.

26 ORDER

27 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 117407, heretofore
28 issued to Respondent Robert T. Sommers, is revoked.

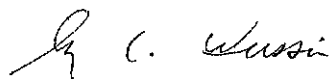
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Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency 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 December 22, 2014.

It is so ORDERED on November 21, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____
STAN C. WEISSER
Board President

70954687.DOC
DOJ Matter ID:SD2014707204

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation No. 5123

1 KAMALA D. HARRIS
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2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 RITA M. LANE
Deputy Attorney General
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7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 5123

13 **ROBERT T. SOMMERS**
32585 Rice Canyon Road
14 Fallbrook, CA 92028

A C C U S A T I O N

15 **Pharmacy Technician Registration No. TCH**
117407

16 Respondent.
17

18
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 (Board).

23 2. On or about October 3, 2011, the Board issued Pharmacy Technician Registration
24 Number TCH 117407 to Robert T. Sommers (Respondent). The Pharmacy Technician
25 Registration was in full force and effect at all times relevant to the charges brought herein and
26 will expire on June 30, 2015, unless renewed.

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JURISDICTION

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

4. Section 4300 of the Code states:

(a) 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 4301 of the Code states:

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

....

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

....

(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be 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.

....

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

....

(o) Violating or attempting to violate, directly or indirectly, . . . any provision or term of this chapter or of the applicable federal and state laws and

1 regulations governing pharmacy, including regulations established by the board or
2 by any other state or federal regulatory agency.

3 7. Section 4022 of the Code states

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

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

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

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

14 8. Section 4060 of the Code states:

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

28 9. Health and Safety Code section 11173 states in pertinent part that no person shall
obtain a controlled substance by fraud, deceit, subterfuge or concealment of a material fact.

REGULATION

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

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

COSTS

11. Section 125.3 of the Code states, in pertinent part, that the Board may request the
administrative law judge to direct a licentiate found to have committed a violation or violations of

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case.

3 **DRUGS**

4 12. Alprazolam, generic for Xanax, is a Schedule IV controlled substance as designated
5 by Health and Safety Code section 11057(d)(1), and is a dangerous drug as designated by Code
6 section 4022. It is used to treat anxiety.

7 13. Buprenorphine/naloxone, generic for Suboxone, is a Schedule III controlled
8 substance as designated by Health and Safety Code section 11056, and is a dangerous drug as
9 designated by Code section 4022. It is used to treat opiate addiction.

10 14. Carisoprodol, generic for Soma, is a Schedule IV controlled substance as designated
11 by Health and Safety Code section 11057(d), and is a dangerous drug as designated by Code
12 section 4022. It is used to treat muscle spasms.

13 15. Hydrocodone/acetaminophen (apap), generic for Norco, Vicodin and Lortab, is a
14 Schedule III controlled substance as designated by Health and Safety Code section 11056(e), and
15 is a dangerous drug as designated by Code section 4022. It is used to treat pain.

16 16. Methadone, generic for Dolophine, is a Schedule II controlled substance pursuant to
17 Health and Safety Code section 11055, subdivision (c), and a dangerous drug pursuant to Code
18 section 4022. It is used to treat pain and opiate addiction.

19 17. Promethazine with codeine, generic for Phenergan with codeine, is a Schedule V
20 controlled substance as designated by Health and Safety Code section 11058(c)(1), and is a
21 dangerous drug as designated by Code section 4022. It is used to treat severe cough.

22 18. Temazepam, generic for Restoril, is a Schedule IV controlled substance as designated
23 by Health and Safety Code section 11057(d)(29), and is a dangerous drug as designated by Code
24 section 4022. It is used to treat insomnia and anxiety.

25 19. Zolpidem, generic for Ambien, is a Schedule IV controlled substance as designated
26 by Health and Safety Code section 11057(d)(32), and is a dangerous drug as designated by Code
27 section 4022. It is used to treat insomnia.

28 ///

1 **FACTS**

2 20. From approximately November 19, 2011 through October 31, 2013, Respondent was
3 employed as a pharmacy technician at the CVS Pharmacy located on Rancho California Road in
4 Temecula, California.

5 21. On October 24, 2013, the CVS Pharmacy discovered the loss of 1,881 tablets of
6 hydrocodone/apap 5/325mg and 1,499 tablets of zolpidem 10mg. The pharmacist-in-charge
7 (PIC) conducted daily counts of both drugs and within 2 days, the PIC reported one container of
8 hydrocodone/apap 5/325 was unaccounted for. Video surveillance review revealed that
9 Respondent may have been responsible for the loss.

10 22. On October 29, 2013, Respondent was pulled over by the Border Patrol on his way to
11 work at the CVS Pharmacy. Officers found 2.6 grams of methadone, along with a pill
12 cutter/grinder with narcotic residue on it and four rolled bills of US Currency with trace amounts
13 of narcotic residue in Respondent's car. Respondent was arrested for illegal possession of a
14 controlled substance intended for sale. Respondent called in to the CVS Pharmacy and advised
15 the PIC that he would not be able to work that day. He told the PIC that he had an issue with his
16 license and had been arrested.

17 23. On October 31, 2013, the Regional Loss Prevention Manager for the CVS Pharmacy
18 interviewed Respondent at the start of his shift. Respondent admitted to stealing controlled
19 substances from CVS Pharmacy over the course of two years. Respondent admitted that he self-
20 medicated with half of the stolen controlled substances and that he sold the other half for \$2 per
21 tablet. Respondent admitted he stole the following from his employer, CVS Pharmacy:

22	Hydrocodone/apap 10/325mg tab	2,000 tablets
	Hydrocodone/apap 5/325mg tab	2,500 tablets
23	Hydrocodone/apap 7.5/325mg tab	2,500 tablets
	Hydrocodone/apap 10/500mg tab	50 tablets
24	Zolpidem 10mg tab	4,000 tablets
	Carisoprodol 350 mg tab	4,000 tablets
25	Alprazolam 1mg tab	1,500 tablets
	Alprazolam 2mg tab	1,500 tablets
26	Suboxone 8/2mg tab	450 tablets
	Temazepam 30mg cap	15 capsules
27	Promethazine with codeine syrup 473ml	3,311 ml
28	Total number of tablets/capsules:	18,515

1 **FIRST CAUSE FOR DISCIPLINE**

2 (Unprofessional Conduct: Possession of a Controlled Substance without a Prescription)

3 24. Respondent is subject to discipline for unprofessional conduct under Code section
4 4301(o) for possession of a controlled substance without a prescription in violation of Code
5 section 4060. The circumstances are set forth in detail in paragraphs 20 through 23 above and as
6 follows:

7 a. From approximately November 19, 2011 through October 31, 2013,
8 Respondent stole approximately 18,515 tablets and cough syrup that are controlled substances
9 from CVS Pharmacy while working there as a pharmacy technician.

10 b. On October 29, 2013, Respondent possessed 2.6 grams of methadone when he
11 was pulled over by the Border Patrol.

12 **SECOND CAUSE FOR DISCIPLINE**

13 (Unprofessional Conduct: Self-administration of a Controlled Substance)

14 25. Respondent is subject to discipline for unprofessional conduct under Code section
15 4301(h) for the self-administration of controlled substances. Respondent admitted that he self-
16 medicated with half of the controlled substances that he stole from CVS Pharmacy from
17 approximately November 19, 2011 through October 31, 2013. The circumstances are set forth in
18 detail in paragraphs 20 through 23, above, and are incorporated herein by reference.

19 **THIRD CAUSE FOR DISCIPLINE**

20 (Unprofessional Conduct: Obtaining a Controlled Substance by Fraud, Deceit or Subterfuge)

21 26. Respondent is subject to discipline for unprofessional conduct under Code section
22 4301(j) for obtaining controlled substances by fraud, deceit, or subterfuge in violation of Health
23 and Safety Code section 11173, when he stole approximately 18,515 controlled substance tablets
24 and cough syrup from CVS Pharmacy from approximately November 19, 2011 through October
25 31, 2013. The circumstances are set forth in detail in paragraphs 20 through 23, above, and are
26 incorporated herein by reference.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 (Unprofessional Conduct: Acts Involving Dishonesty)

3 27. Respondent's license is subject to discipline for unprofessional conduct under Code
4 section 4301(f) for acts involving dishonesty when he stole approximately 18,515 controlled
5 substance tablets and cough syrup from CVS Pharmacy. The circumstances are set forth in detail
6 in paragraphs 20 through 23, above, and are incorporated herein by reference.

7 **PRAYER**

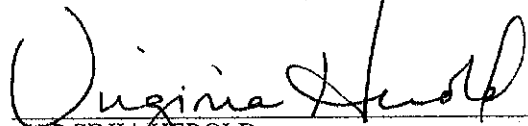
8 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
9 and that following the hearing, the Board of Pharmacy issue a decision:

10 1. Revoking or suspending Pharmacy Technician Registration Number TCH 117407
11 issued to Robert T. Sommers;

12 2. Ordering Robert T. Sommers to pay the Board of Pharmacy the reasonable costs of
13 the investigation and enforcement of this case, pursuant to Business and Professions Code section
14 12.3; and

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

16
17 DATED: 7/26/14



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

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