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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. 5170

KEVIN PATRICK MCCARTHY
3215 E. Main St., #23
Ventura, CA 93003
Pharmacy Technician Registration No. TCH
91659

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

Respondent.

FINDINGS OF FACT

1. On or about December 3, 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. 5170 against Kevin Patrick McCarthy (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about June 11, 2009, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 91659 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 5170 and will expire on April 30, 2015, unless renewed.

1 3. On or about December 19, 2014, Respondent was served by Certified and First Class
2 Mail copies of the Accusation No. 5170, 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: 536 East Thompson Blvd., Ventura, CA 93001. Respondent was previously
7 served at his former address of record of 3215 East Main Street #23, Ventura, CA 93003.

8 4. Service of the Accusation was effective as a matter of law under the provisions of
9 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
10 124.

11 5. On or about December 19, 2014, the aforementioned documents were served at
12 Respondent's former address of record of 3215 East Main Street #23, Ventura, CA 93003 were
13 returned by the U.S. Postal Service marked "Unclaimed." On or about February 6, 2015, the
14 aforementioned documents were served at Respondent's current address of record of 536 East
15 Thompson Blvd., Ventura, CA 93001.

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

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

22 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
23 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
24 5170.

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

26 (a) If the respondent either fails to file a notice of defense or to appear at the
27 hearing, the agency may take action based upon the respondent's express admissions
28 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. 5170, finds that
4 the charges and allegations in Accusation No. 5170, 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 \$3,222.00 as of March 16, 2015.

9 DETERMINATION OF ISSUES

10 1. Based on the foregoing findings of fact, Respondent Kevin Patrick McCarthy has
11 subjected his Pharmacy Technician Registration No. TCH 91659 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 subjected his pharmacy technician registration to discipline under Code
17 sections 4301, subdivision (h) in that between 2011 and 2013, Respondent used dangerous drugs
18 including Hydrocodone/apap, Clonazepam and/or Lorazepam to the extent and in a manner that
19 was dangerous and injurious to himself and to the public while he was employed as a full-time
20 pharmacy technician rotating through in-patient pharmacy's shifts at Ventura County Medical
21 Center Pharmacy located at 3291 Lorna Vista Road, in Ventura, CA 93003.

22 b. During his employment, his work was jeopardized and he received multiple written
23 counseling notifications and a written reprimand. Respondent conceded his dependence on the
24 aforementioned dangerous drugs.

25 ORDER

26 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 91659, heretofore
27 issued to Respondent Kevin Patrick McCarthy, is revoked.

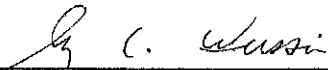
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1 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
2 written motion requesting that the Decision be vacated and stating the grounds relied on within
3 seven (7) days after service of the Decision on Respondent. The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

5 This Decision shall become effective on June 12, 2015.

6 It is so ORDERED May 13, 2015.

7 BOARD OF PHARMACY
8 DEPARTMENT OF CONSUMER AFFAIRS
9 STATE OF CALIFORNIA

10 By 
11 STAN C. WEISSER
12 Board President

13 51733075.DOC
14 DOJ Matter ID:LA2014511468

15 Attachment:
16 Exhibit A: Accusation
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Exhibit A

Accusation

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2 MARC D. GREENBAUM
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Deputy Attorney General
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6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

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

12 In the Matter of the Accusation Against:

Case No. 5170

13 **KEVIN PATRICK MCCARTHY**
14 **3215 E. Main St., #23**
Ventura, CA 93003

A C C U S A T I O N

15 **Pharmacy Technician Registration No. TCH**
916559

16 Respondent.

17
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 June 11, 2009, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 916559 to Kevin Patrick McCarthy (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 April 30, 2015, unless renewed.

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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 4300 subdivision (a) of the Code states: "Every license issued may be
6 suspended or revoked."

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

11 **STATUTORY PROVISIONS**

12 6. Section 4301 of the Code states in pertinent part:

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

17

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

23 7. Section 4327 of the Code states:

24 "Any person who, while on duty, sells, dispenses or compounds any drug while under the
25 influence of any dangerous drug or alcoholic beverages shall be guilty of a misdemeanor."

26 8. Section 11170 of the Health and Safety Code states:

27 No person shall prescribe, administer, or furnish a controlled substance for himself.

28 ///

1 DRUGS

2 7. Norco 10/325, a brand name for Hydrocodone/apap, is a Schedule III controlled
3 substance as designated by Health and Safety Code section 11056 subdivision (e) and is a
4 dangerous drug pursuant to Business and Professions Code section 4022. The indication for use
5 is for pain.

6 9. Ativan, a brand name for Lorazepam, is a Schedule IV controlled substance as
7 designated by Health and Safety Code section 11057, subdivision (d), and is a dangerous drug
8 pursuant to Business and Professions Code section 4022. The indication for use is for anxiety.

9 10. Klonopin, a brand name for Clonazepam, is a Schedule IV controlled substance as
10 designated by Health and Safety Code section 11057, subdivision (d), and is a dangerous drug
11 pursuant to Business and Professions Code section 4022. The indication for use is for anxiety.

12 FIRST CAUSE FOR DISCIPLINE

13 (Unprofessional Conduct - Dangerous Use Of Drugs)

14 11. Respondent subjected his pharmacy technician registration to discipline under Code
15 sections 4301, subdivision (h) in that commencing in or about 2011 and continuing through 2013,
16 Respondent used dangerous drugs including Hydrocodone/apap, Clonazepam and/or Lorazepam
17 to the extent and in a manner that was dangerous and injurious to himself and to the public while
18 he was employed in a pharmacy as a pharmacy technician. The circumstances are as follows:

19 12. On or about November 14, 2010, Respondent was hired as a full-time pharmacy
20 technician rotating through in-patient pharmacy's shifts at Ventura County Medical Center
21 Pharmacy located at 3291 Lorna Vista Road, in Ventura, CA 93003.

22 13. In or about January 2013, Respondent requested and was transferred to the infusion
23 pharmacy.

24 14. While employed at Ventura County Medical Center Pharmacy, Respondent had
25 multiple sick days, tardiness and inexcusable neglect of duty. His performance as a pharmacy
26 technician was jeopardized and he received multiple written counseling notifications on at least
27 five (5) dates between October 14, 2011 and March 28, 2013 and received a written reprimand on
28 June 21, 2013.

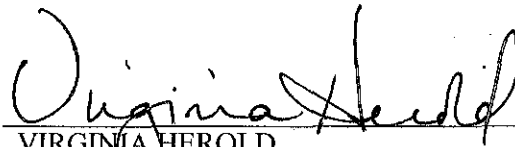
1 15. On or about July 8, 2013, Respondent contacted his manager and informed him of his
2 dependence on controlled substances. Respondent's medical records showed that since January
3 1, 2011, Respondent had been taking the dangerous drugs Hydrocodone/apap, Clonazepam and/or
4 Lorazepam on a regular basis and that they were taken routinely every month since August 2012.

5 **PRAYER**

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

- 8 1. Revoking or suspending Pharmacy Technician Registration Number TCH 916559,
9 issued to Kevin Patrick McCarthy
- 10 2. Ordering Kevin Patrick McCarthy, to pay the Board of Pharmacy the reasonable costs
11 of the investigation and enforcement of this case, pursuant to Business and Professions Code
12 section 125.3;
- 13 3. Taking such other and further action as deemed necessary and proper.
- 14

15
16 DATED: 12/3/14



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

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