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8		RE THE PHARMACY	
9	DEPARTMENT OF C	CONSUMER AFFAIRS	
10	STATE OF CALIFORNIA		
11			
12	In the Matter of the Accusation Against:	Case No. 5174	
13	FREDDRICK JOHN COUSART	DEFAULT DECISION AND ORDER	
14	328 Snow Flake Way Pittsburg, CA 94565	[Gov. Code, §11520]	
15	Pharmacy Technician License No. TCH 125562		
16	Respondent.		
17	Kespondent.		
18	<u>FINDING</u>	S OF FACT	
19	1. On or about May 4, 2015, Complainant Virginia K. Herold, in her official capacity as		
20	the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed		
21	Accusation No. 5174 against Freddrick John Cousart (Respondent) before the Board of		
22	Pharmacy. (Accusation attached as exhibit A.)		
23	2. On or about October 16, 2012, the B	oard of Pharmacy issued Pharmacy Technician	
24	License Number TCH 125562 to Freddrick John	· · ·	
25	Technician License expired on July 31, 2014, an		
26		ent was served by Certified Mail copies of the	
27	Accusation No. 5174, Statement to Respondent, Notice of Defense, Request for Discovery, and		
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		DEFAULT DECISION AND ORDER - Freddrick Cousart	

1	Discovery S	biscovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's		
2	address of re	address of record which, pursuant to Business and Professions Code section 4100, is required to		
3	be reported and maintained with the Board. Respondent's address of record was and is: 328			
4	Snow Flake Way, Pittsburg, CA 94565.			
5	4.	Service of the Accusation was effective as a matter of law under the provisions of		
6	Government	Government Code section 11505, subdivision (c) and/or Business & Professions Code section		
7	124.			
8	5.	On or about February 13, 2013, the aforementioned documents were returned by the		
9	U.S. Postal S	Service marked "UTF." The address on the documents was the same as the address		
10	on file with	the Board. Respondent failed to maintain an updated address with the Board and the		
11	Board has made attempts to serve the Respondent at the address on file. Respondent has not			
12	made himself available for service and therefore, has not availed himself of his right to file a			
13	notice of defense and appear at hearing.			
14	6. (	Government Code section 11506 states, in pertinent part:		
15		(c) The respondent shall be entitled to a hearing on the merits if the		
16 17		respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts 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.		
18	7. 1	Respondent failed to file a Notice of Defense within 15 days after service upon him		
19	of the Accus	ation, and therefore waived his right to a hearing on the merits of Accusation No.		
20	5174.			
21	8. 0	California Government Code section 11520 states, in pertinent part:		
22		(a) If the respondent either fails to file a notice of defense or to appear at the		
23		hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence		
24		without any notice to respondent.		
25	9. 1	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 officia	al notice of all the investigatory reports, exhibits and statements contained therein on		
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		DEFAULT DECISION AND ORDER - Freddrick Cousart		

file at the Board's offices regarding the allegations contained in Accusation No. 5174, finds that the charges and allegations in Accusation No. 5174, are separately and severally, found to be true and correct by clear and convincing evidence.

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10. Taking official notice of its own internal records, pursuant to Business and
 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
 and Enforcement is \$1,977.50 as of August 24, 2015.

# **DETERMINATION OF ISSUES**

1.Based on the foregoing findings of fact, Respondent Freddrick John Cousart hassubjected his Pharmacy Technician Registration No. TCH 125562 to discipline.

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

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:

Respondent's License is subject to revocation pursuant to Business and a. 14 Professions Code sections 490 and 4301, subdivisions (j) and (l), in that on or about March 6, 15 2014, in People v. Freddrick John Cousart, Superior Court of California, County of San Mateo 16 (Case No. NF425922), Respondent was charged with four felony counts for possession with 17 18 intent to sell the controlled substances DCPD officers found in his possession, in violation of Health and Safety Code sections 11351; and 11375, subdivision (b)(1); and 11378. On or about 19 August 6, 2014, Respondent pled no contest to violating Health and Safety Code section 11351, a 20 felony, based on his unlawful possession of hydrocodone for purposes of sale. Thereafter, 21 Respondent was sentenced to 180 days in county jail. The circumstances surrounding the 22 conviction are that on or about February 5, 2014, Respondent was arrested for being in possession 23 of and attempting to sell controlled substance pills. Respondent admitted to officers that he was 24 an employee of Walgreens pharmacy and had been stealing and pills from his employer for 25approximately two to three months. 26

b. Respondent's License is subject to revocation pursuant to Business and
Professions Code section 4301, subdivision (f), in that he engaged in unprofessional conduct by

1	committing acts of dishonesty, namely theft. The circumstances are set forth in subparagraph	
2	3(a) above.	
3	c. Respondent's License is subject to revocation pursuant to Business and	
4	Professions Code section 4301, subdivision (o), in that he engaged in unprofessional conduct by	
5	violating statutes of this state regulating controlled substances and dangerous drugs, namely code	
6	section 4059, subdivision (a) and Health and Safety Code section 11173, subdivision (a). The	
7	circumstances are set forth in subparagraph 3(a), above.	
8	<u>ORDER</u>	
9	IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 125562, issued to	
10	Respondent Freddrick John Cousart, is revoked.	
11	Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a	
12	written motion requesting that the Decision be vacated and stating the grounds relied on within	
13	seven (7) days after service of the Decision on Respondent. The agency in its discretion may	
14	vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.	
15	This Decision shall become effective on December 9, 2015.	
16	It is so ORDERED November 9, 2015.	
17	BOARD OF PHARMACY	
18	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA	
19		
20	Aghconty	
21		
22	By Amy Gutierrez, Pharm.D.	
23	Board President	
24	90547474.doc	
25	SF2015900130	
26	Attachment: Exhibit A: Accusation	
27		
28		
	4 DEFAULT DECISION AND ORDER - Freddrick Cousart	

# Exhibit A

Accusation

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	* . <sup>16</sup> *	
	1	KAMALA D. HARRIS
ł	. 2	Attorney General of California DIANN SOKOLOFF
		Supervising Deputy Attorney General
	3	CARTER OTT Deputy Attorney General
	4	State Bar No. 221660 1515 Clay Street, 20th Floor
	5	P.O. Box 70550 Oakland, CA 94612-0550
	. 6	Telephone: (510) 622-2219
}	7 -	Facsimile: (\$10) 622-2270 E-mail: Carter.Ott@doj.ca.gov
	8	Attorneys for Complainant
	9	BEFORE THE BOARD OF PHARMACY
	ч.,	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA
	10	STATE OF CALIFORNIA
	11	In the Matter of the Accusation Against: Case No. 5174
	12	FREDDRICK JOHN COUSART
	13	328 Snow Flake Way
•	14	
	15	Pharmacy Technician License No. TCH 125562
	16	Respondent.
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	18	Complainant alleges:
ļ	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 October 16, 2012, the Board of Pharmacy issued Pharmacy Technician
ł	23	License Number TCH 125562 to Freddrick John Cousart (Respondent). The Pharmacy
	24	Technician License expired on July 31, 2014, and has not been renewed.
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		ACCUSATION In the Matter of the Accusation Against Freddrick John Cousart
	:	In the Matter of the Advisation Against Frederick John Coustril
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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 unless otherwise indicated,

#### RELEVANT STATUTES AND REGULATIONS

4. Code section 118, subdivision (b), states:

7 "(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a 8 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by 9 order of a court of law, or its surrender without the written consent of the board, shall not, during 10 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its 11 authority to institute or continue a disciplinary proceeding against the licensee upon any ground 12 provided by law or to enter an order suspending or revoking the license or otherwise taking 13 disciplinary action against the licensee on any such ground."

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5. Code section 490 states, in part:

"(a) In addition to any other action that a board is permitted to take against a licensee, a
board may suspend or revoke a license on the ground that the licensee has been convicted of a
crime, if the crime is substantially related to the qualifications, functions, or duties of the business
or profession for which the license was issued.

"(b) Notwithstanding any other provision of law, a board may exercise any authority to
discipline a licensee for conviction of a crime that is independent of the authority granted under
subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
of the business or profession for which the licensee's license was issued.

"(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
conviction following a plea of nolo contendere. Any action that a board is permitted to take
following the establishment of a conviction may be taken when the time for appeal has elapsed,
or the judgment of conviction has been affirmed on appeal, or when an order granting probation
is made suspending the imposition of sentence, irrespective of a subsequent order under the
provisions of Section 1203.4 of the Penal Code.

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ACCUSATION

In the Matter of the Accusation Against Freddrick John Cousart

#### Code section 493 states: б.

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"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

"As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration,'"

Code section 4300 states, in part, that "[e]very license issued may be suspended or 7. revoked."

8.

Code section 4300.1 states; /

"The expiration, cancellation, forfeiture, or suspension of a board-issued license by 16 operation of law or by order or decision of the board or a court of law, the placement of a license 17 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board 18 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary 19 proceeding against, the licensee or to render a decision suspending or revoking the license." .20

9. Code section 4301 states, in part:

"The board shall take action against any holder of a license who is guilty of unprofessional conduct .... 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 act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

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ACCUSATION In the Matter of the Accusation Against Freddrick John Cousart "(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.

"(I) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nois contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203,4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

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

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ACCUSATION

In the Matter of the Accusation Against Freddrick John Cousart

# COST RECOVERY

9. Code section 125.3 provides, in part, that the Board may request the administrative law judge to direct a licentiate 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.

# <u>DRUGS</u>

10. Acetaminophen-hydrocodone, also known as Vicodin, is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(J), and a dangerous drug according to Business and Professions Code section 4022 in that it can be lawfully dispensed only by prescription. Acetaminophen-hydrocodone is a combination opioid narcotic analgesic drug consisting used to relieve moderate to severe pain.

11. Ambien is a Schedule IV controlled substance pursuant to Health and Safety Code
section 11057, subdivision (d)(32), and a dangerous drug according to Business and Professions
Code section 4022 in that it can be lawfully dispensed only by prescription. Ambien is used for
the treatment of insomnia and some brain disorders, and as a date-rape drug.

16 12. Alprazolam, also known as Xanax, is a Schedule IV controlled substance pursuant to
17 Health and Safety Code section 11057; subdivision (d)(1), and a dangerous drug according to
18 Business and Professions Code section 4022 in that it can be lawfully dispensed only by
19 prescription. Alprazolam is commonly used for the medical treatment of panic disorder and
20 anxiety disorders.

Clonazepam is a Schedule IV controlled substance pursuant to Health and Safety
 Code section, subdivision (d)(7), and a dangerous drug according to Business and Professions
 Code section 4022 in that it can be lawfully dispensed only by prescription. Clonazepam is a
 benzodiazepine drug having anxiolytic, muscle relaxant, amnestic, sedative, and hypnotic
 properties.

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ACCUSATION In the Matter of the Accusation Against Freddrick John Cousart

# FACTUAL BACKGROUND

On February 5, 2014, at approximately 7:49 p.m., Daly City Police Department 14. (DCPD) officers were investigating a report from a tested reliable informant that Respondent would be in Daly City, California, in the area of Templeton and Roosevelt Avenues, to sell a large amount of controlled substance pills. The informant provided these officers with Respondent's name, positively identified Respondent from a DMV photograph, provided a description of Respondent's vehicle, and informed the officers that Respondent worked at a pharmacy and obtained the drugs he would be selling from his employer-pharmacy.

15. The DCPD officers assigned to the area identified Respondent, sitting in his vehicle 9. on Templeton Avenue, and detained and questioned him. During a search of Respondent's 10 possessions, DCPD officers found 285 pills of Acetaminophen-hydrocodone, 100 pills of 11 Ambien, 60 pills of Alprazolam, and 500 pills of Clonazepam. 12

16. After DCPD officers placed Respondent under arrest and read him his Miranda rights, 13 Respondent told them that he was an employee of Walgreens and had been stealing pills, 14 including the pills found in his possession, from his employer for approximately two to three 15 months. He also told DCPD officers that he planned to sell the pills found in his possession for 16 \$2,000. 17

17. On or about March 6, 2014, in People v. Freddrick John Cousart, Superior Court of California, County of San Mateo (Case No. NF425922), Respondent was charged with four felony counts for possession with intent to sell the controlled substances DCPD officers found in his possession, in violation of Health and Safety Code sections 11351; and 11375, subdivision (b)(1); and 11378. On or about August 6, 2014, Respondent pled no contest to violating Health and Safety Code section 11351, a felony, based on his unlawful possession of hydrocodone for purposes of sale. Thereafter, Respondent was sentenced to 180 days in county jail.

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In the Matter of the Accusation Against Freddrick John Cousart

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#### CAUSES FOR DISCIPLINE

#### FIRST CAUSE FOR DISCIPLINE (Criminal Conviction) (Bus. & Prof. Code §§ 490, subds. (a)-(c), and 493)

18. Respondent's license is subject to disciplinary action because he has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which Respondent's Pharmacy Technician license was issued. (Bus. & Prof. Code §§ 490, subdivisions (a) through (c), and 493). The circumstances are described in paragraphs 10 through 17, above.

#### SECOND CAUSE FOR DISCIPLINE (Unprofessional Conduct – Criminal Conviction) (Bus. & Prof. Code § 4301, subds. (j) and (l))

19. Respondent's license is subject to disciplinary action because he has acted unprofessionally by being convicted of violating a California statute reguláting controlled substances and dangerous drugs. (Bus. & Prof. Code § 4301, subds. (j) and (l)). The circumstances are described in paragraphs 10 through 17, above.

# THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Commission of an Act Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption) (Bus. & Prof. Code § 4301, subd. (f))

20. Respondent's license is subject to disciplinary action because he has acted unprofessionally by committing an act involving moral turpitude, dishonesty, fraud, deceit, or corruption. (Bus. & Prof. Code § 4301, subd. (f)). In particular, Respondent admittedly stole controlled substances and dangerous drugs from his pharmacy-employer to sell and benefit

22 || himself. The circumstances are described in paragraphs 10 through 17, above.

# FOURTH CAUSE FOR DISCIPLINE

(Violating the Pharmacy Law, and Applicable Federal And State Laws And Regulations) (Bus. & Prof. Code § 4301, subd. (o))

21. Respondent's license is subject to disciplinary action because he has violated and/or

26 attempted to violate, directly or indirectly, provisions of the Pharmacy Law, Business and

27 Professions Code section 4000 et seq.; and applicable federal and state laws and regulations

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1	governing pharmacy. (Bus. & Prof. Code § 4301, subd. (o)). The circumstances are described in
2	paragraphs 10 through 17, above.
3	PRAYER
. 4 .	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
5	and that following the hearing, the Board of Pharmacy issue a decision:
6	1. Revoking or suspending Respondent's Pharmacy Technician License Number TCH
7	125562;
8	2. Ordering Respondent to pay the Board of Pharmacy the reasonable costs of the
	investigation and enforcement of this case, pursuant to Business and Professions Code section
.10	125.3; and
11	3. Taking such other and further action as deemed necessary and proper.
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13	$= l_{1}l_{1}c_{1}$
14	DATED: <u>J17/D</u> <u>Vigine yrus y</u> VIRGINIA HEROLD
15	Executive/Officer Board of Pharmacy
- 16	Department of Consumer Affairs State of California
17	Complainant
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