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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. 5174

**FREDDRICK JOHN COUSART
328 Snow Flake Way
Pittsburg, CA 94565**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

**Pharmacy Technician License No. TCH
125562**

Respondent.

FINDINGS OF FACT

1. On or about May 4, 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. 5174 against Freddrick John Cousart (Respondent) before the Board of Pharmacy. (Accusation attached as exhibit A.)

2. On or about October 16, 2012, the Board of Pharmacy issued Pharmacy Technician License Number TCH 125562 to Freddrick John Cousart (Respondent). The Pharmacy Technician License expired on July 31, 2014, and has not been renewed.

3. On or about May 20, 2015, Respondent was served by Certified Mail copies of the Accusation No. 5174, Statement to Respondent, Notice of Defense, Request for Discovery, and

1 Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's
2 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 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 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 respondent files a notice of defense, and the notice shall be deemed a specific
17 denial of all parts of the accusation not expressly admitted. Failure to file a
18 notice of defense shall constitute a waiver of respondent's right to a hearing,
19 but the agency in its discretion may nevertheless grant a hearing.

20 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
21 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
22 5174.

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

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

28 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
relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
taking official notice of all the investigatory reports, exhibits and statements contained therein on

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

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

7 **DETERMINATION OF ISSUES**

8 1. Based on the foregoing findings of fact, Respondent Fredrick John Cousart has
9 subjected his Pharmacy Technician Registration No. TCH 125562 to discipline.

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

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

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

27 b. Respondent's License is subject to revocation pursuant to Business and
28 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 ORDER

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
19 STATE OF CALIFORNIA

20 

21
22 By _____

23 Amy Gutierrez, Pharm.D.
24 Board President

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26 Attachment:
27 Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 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
Facsimile: (510) 622-2270
7 E-mail: Carter.Ott@doj.ca.gov
Attorneys for Complainant

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9 **BEFORE THE**
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
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 **Pittsburg, CA 94565**
15 **Pharmacy Technician License No. TCH**
125562

ACCUSATION

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 October 16, 2012, the Board of Pharmacy issued Pharmacy Technician
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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6. Code section 493 states:

"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.'"

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

8. Code section 4300.1 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."

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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"(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.

...

"(l) 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 nolo 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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1 COST RECOVERY

2 9. Code section 125.3 provides, in part, that the Board may request the administrative
3 law judge to direct a licentiate found to have committed a violation or violations of the licensing
4 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
5 case.

6 DRUGS

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

12 11. Ambien is a Schedule IV controlled substance pursuant to Health and Safety Code
13 section 11057, subdivision (d)(32), and a dangerous drug according to Business and Professions
14 Code section 4022 in that it can be lawfully dispensed only by prescription. Ambien is used for
15 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.

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

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governing pharmacy. (Bus. & Prof. Code § 4301, subd. (o)). The circumstances are described in paragraphs 10 through 17, above.

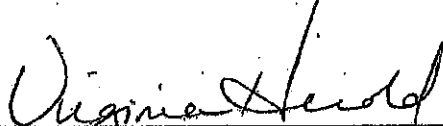
PRAYER

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

1. Revoking or suspending Respondent's Pharmacy Technician License Number TCH 125562;
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 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED:

5/4/13



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

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