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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. 5412

13 **FRANCES DUPUIS**
14 **1311 Isabella Way**
15 **Vista, CA 92084**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

16 **Pharmacy Technician Registration No. TCH**
17 **52185**

Respondent.

18 **FINDINGS OF FACT**

19 1. On or about May 28, 2015, Complainant Virginia K. Herold, in her official capacity
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed
21 Accusation No. 5412 against Frances Dupuis (Respondent) before the Board of Pharmacy.
22 (Accusation attached as Exhibit A.)

23 2. On or about October 9, 2003, the Board of Pharmacy (Board) issued Pharmacy
24 Technician Registration No. TCH 52185 to Respondent. The Pharmacy Technician Registration
25 was in full force and effect at all times relevant to the charges brought in Accusation No. 5412
26 and will expire on October 31, 2015, unless renewed.

27 3. On or about June 15, 2015, Respondent was served by Certified and First Class Mail
28 copies of the Accusation No. 5412, Statement to Respondent, Notice of Defense, Request for

1 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
2 Respondent's address of record which, pursuant to Business and Professions Code section 4100,
3 is required to be reported and maintained with the Board. Respondent's address of record was
4 and is: 1311 Isabella Way, Vista, CA 92084.

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 June 19, 2015, the domestic return receipt reflecting service of the
9 aforementioned documents via Certified Mail was returned by the U.S. Postal Service, signed by
10 Respondent on June 18, 2015. The aforementioned documents served by First Class were not
11 returned by the U.S. Postal Service.

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

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

18 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
19 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 5412.

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
24 respondent.

25 9. 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 official notice of all the investigatory reports, exhibits and statements contained therein on
file at the Board's offices regarding the allegations contained in Accusation No. 5412, finds that
the charges and allegations in Accusation No. 5412, are separately and severally, found to be true
and correct by clear and convincing evidence.

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 \$3,026.50 as of June 30, 2015.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Frances Dupuis has subjected her Pharmacy Technician Registration No. TCH 52185 to discipline.

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

3. 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.:

a. Respondent committed acts involving dishonesty, fraud, deceit, or corruption, in violation of Business and Professions Code section 4301, subdivision (f) when she (1) stole controlled substances from her employer while working as a pharmacy technician; (2) adjusted controlled substance computer records four times after diverting drugs from the pharmacy in order to cover the shortages she caused; and (3) misrepresented the facts of her diversion activities both verbally and in a written statement under penalty of perjury to the Board of Pharmacy.

b. Respondent administered to herself controlled substances to the extent or in a manner as to be dangerous or injurious to herself or the public, or to the extent that it impaired her ability to practice safely, in violation of Business and Professions Code section 4301, subdivision (h), as evidenced by Respondent's admissions that while working as a pharmacy technician, she consumed illegally hydrocodone/apap 10/325 mg.

c. Respondent violated Business and Professions Code section 4301, subdivision (j) when she illegally obtained and administered to herself, hydrocodone/apap 10/325 mg that she stole from Vons, in violation of Health and Safety Code sections 11350 and 11170.

d. Respondent violated Business and Professions Code section 4301, subdivision (o) in that Respondent illegally possessed controlled substances without a prescription, as

1 evidenced by Respondent's admissions that she stole Norco from Vons, in violation of Code
2 section 4060.

3 e. Respondent knowingly made or signed a document that falsely represented a
4 state of facts, in violation of Business and Professions Code section 4301, subdivisions (g) when
5 she adjusted controlled substance computer records four times after diverting drugs from the
6 pharmacy in order to cover the shortages she caused and when she prepared and signed a
7 statement under penalty of perjury that misrepresented the facts of her diversion activities to the
8 Board of Pharmacy.

9 f. Respondent engaged in conduct that subverted or attempted to subvert an
10 investigation of the Board in violation of Business and Professions Code section 4301,
11 subdivisions (q), in that Respondent misrepresented the facts of her diversion activities at Vons to
12 a Board of Pharmacy Inspector.

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ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 52185, heretofore issued to Respondent Frances Dupuis, 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 on September 8, 2015.

It is so ORDERED August 7, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

81091356.DOC
DOJ Matter ID:SD2015700519

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

(FRANCES DUPUIS)

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 NICOLE R. TRAMA
Deputy Attorney General
4 State Bar No. 263607
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2143
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 5412

12 **FRANCES DUPUIS**
13 **1311 Isabella Way**
14 **Vista, CA 92084**

A C C U S A T I O N

15 **Pharmacy Technician Registration No. TCH**
52185

16 Respondent.

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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 9, 2003, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 52185 to Frances Dupuis (Respondent). The Pharmacy Technician
24 Registration was in full force and effect at all times relevant to the charges brought herein and
25 will expire on October 31, 2015, unless renewed.
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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.

4. Section 4300, subdivision (a) of the Code states "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.

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 act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

(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, of any other state, or of the United States regulating controlled substances and dangerous drugs.

....
(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.

....
(q) Engaging in any conduct that subverts or attempts to subvert an investigation of the board.

....
7. Section 4059 of the Code states:

(a) A person may not furnish any dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

....
8. Section 4060 of the Code states:

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

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

9. Section 4327 of the Code states that any person who, while on duty, sells, dispenses or compounds any drug while under the influence of any dangerous drug or alcoholic beverages shall be guilty of a misdemeanor.

10. Health and Safety Code section 11170 states that no person shall prescribe, administer, or furnish a controlled substance for himself.

11. Health and Safety Code section 11350 states in part:

(a) Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code.

COST RECOVERY

12. Section 125.3 of the Code provides, 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

13. Norco, is a brand name for acetaminophen and hydrocodone bitartrate, a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (e), and a dangerous drug pursuant to Business and Professions Code section 4022.

FACTUAL ALLEGATIONS

14. Respondent was employed as a pharmacy technician at Vons Pharmacy #2344 (Vons), located in Escondido from February 2014 to May 2014.

15. In or around March 2014, the Pharmacist-in-Charge (PIC) at Vons discovered a shortage of hydrocodone/apap 10/325 mg tablets. After reviewing the inventory adjustment records, it was discovered that Respondent had adjusted the inventory of hydrocodone/apap 10/325 mg on two occasions in March 2014. On both occasions, Respondent decreased the quantities on hand. Respondent manipulated the quantities when the PIC was not present. Thereafter, the PIC monitored the hydrocodone/apap 10/325 mg inventory more closely. On

1 April 17, 2014, the PIC discovered another shortage of hydrocodone/apap 10/325 mg; thus,
2 covert cameras were installed in the pharmacy on April 28, 2014.

3 16. On May 6, 2014, after discovering another shortage of hydrocodone/apap 10/325 mg,
4 the surveillance videos were reviewed. The video showed Respondent diverting
5 hydrocodone/apap 10/325 mg from the pharmacy during the PIC's lunch break on May 5, 2014.
6 The video also showed Respondent putting her hand to her mouth to consume something and then
7 drinking from a cup.

8 17. On May 9, 2014, Respondent was interviewed by her employer. During the
9 interview, Respondent admitted to stealing 400 tablets of hydrocodone/apap 10/325 mg on four
10 occasions. She admitted that she readjusted the on hand count in the database the four times that
11 she had diverted drugs from the pharmacy in order to cover the shortages she was causing.
12 Respondent stated that she stole the pills because she was frustrated from being transferred from
13 another store. She stated that she had brought into the pharmacy approximately 40 pills of Norco
14 from her own supply and put them in the Norco stock bottle at the pharmacy to replace some of
15 the drugs that she stole. Respondent also admitted that on May 5, 2014, she consumed one of the
16 pills that she had stolen while at work. She agreed to reimburse Vons in the amount of \$267.96
17 for the drugs she stole.

18 18. Respondent also signed a written statement under penalty of perjury for Vons wherein
19 she admitted that she took Norco from the pharmacy when her own prescription would "get low."
20 Respondent admitted in the statement that she stole "roughly" "400 pills in 4 months" and that
21 she "adjusted the computer after [she] took the 4 times (sic)." She also agreed to pay Vons
22 \$267.96 for the drugs she stole. Respondent was terminated from her employment and the
23 incident was reported to the Board of Pharmacy.

24 19. The Board of Pharmacy initiated an investigation based on the incident report
25 received from Vons. The investigation revealed that at times, staff noticed that Respondent
26 appeared disoriented, out of focus, and not attentive at work. Respondent was also interviewed
27 during the course of the investigation. Respondent misrepresented the facts of her diversion
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1 activities both verbally and in a written statement under penalty of perjury to the Board of
2 Pharmacy.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Dishonest Act)**

5 20. Respondent has subjected her license to disciplinary action under section 4301,
6 subdivision (f) of the Code in that Respondent committed acts involving dishonesty, fraud, deceit,
7 or corruption, as detailed in paragraphs 14 through 19 which are incorporated herein by reference,
8 and as follows:

9 a. Respondent stole controlled substances from her employer while working as a
10 pharmacy technician;

11 b. Respondent adjusted controlled substance computer records four times after diverting
12 drugs from the pharmacy in order to cover the shortages she caused;

13 c. Respondent misrepresented the facts of her diversion activities both verbally and in a
14 written statement under penalty of perjury to the Board of Pharmacy.

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Use of Controlled Substances in Dangerous Manner)**

17 21. Respondent has subjected her license to disciplinary action under section 4301,
18 subdivision (h) of the Code in that Respondent administered to herself controlled substances to
19 the extent or in a manner as to be dangerous or injurious to herself or the public, or to the extent
20 that it impaired her ability to practice safely, as evidenced by Respondent's admissions that while
21 working as a pharmacy technician, she consumed illegally hydrocodone/apap 10/325 mg, as
22 detailed in paragraphs 14 through 19, above, and which are incorporated herein by reference.

23 **THIRD CAUSE FOR DISCIPLINE**

24 **(Violating Statutes Regulating Controlled Substances)**

25 22. Respondent has subjected her license to disciplinary action under section 4301,
26 subdivision (j) of the Code for violation of Health and Safety Code sections 11350 and 11170 in
27 that Respondent illegally obtained and administered to herself, hydrocodone/apap 10/325 mg that
28

1 she stole from Vons, as detailed in paragraphs 14 through 19, above, and which are incorporated
2 herein by reference.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Violating Laws Governing Pharmacy)**

5 23. Respondent has subjected her license to disciplinary action under section 4301,
6 subdivision (o) of the Code for violation of Code section 4060 in that Respondent illegally
7 possessed controlled substances without a prescription, as evidenced by Respondent's
8 admissions that she stole Norco from Vons, as detailed in paragraphs 14 through 19, above, and
9 which are incorporated herein by reference.

10 **FIFTH CAUSE FOR DISCIPLINE**

11 **(Making and Signing a Document that Falsely Represents Facts)**

12 24. Respondent has subjected her license to disciplinary action under section 4301,
13 subdivisions (g) of the Code in that Respondent knowingly made or signed a document that
14 falsely represented a state of facts, when Respondent adjusted controlled substance computer
15 records four times after diverting drugs from the pharmacy in order to cover the shortages she
16 caused and when she prepared and signed a statement under penalty of perjury that
17 misrepresented the facts of her diversion activities to the Board of Pharmacy, as detailed in
18 paragraphs 14 through 19, above, and which are incorporated herein by reference.

19 **SIXTH CAUSE FOR DISCIPLINE**

20 **(Subverting an Investigation)**

21 25. Respondent has subjected her license to disciplinary action under section 4301,
22 subdivisions (q) of the Code in that Respondent engaged in conduct that subverted or attempted to
23 subvert an investigation of the Board when she misrepresented the facts of her diversion activities
24 at Vons, as detailed in paragraphs 14 through 19, above, and which are incorporated herein by
25 reference.

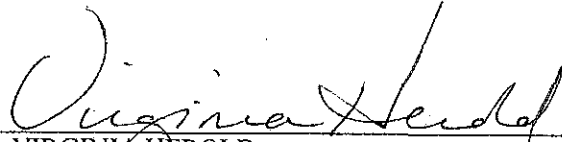
26 **PRAYER**

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

- 1 1. Revoking or suspending Pharmacy Technician Registration Number TCH 52185,
- 2 issued to Frances Dupuis;
- 3 2. Ordering Frances Dupuis to pay the Board of Pharmacy the reasonable costs of the
- 4 investigation and enforcement of this case, pursuant to Business and Professions Code section
- 5 125.3;
- 6 3. Taking such other and further action as deemed necessary and proper.

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10 DATED:

5/28/15



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

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