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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. 5424

13 **BUFFY JEANNE DULAC**
14 **1018 Cortina Court**
15 **Orland, CA 95963**

16 **Pharmacy Technician Registration**
17 **No. TCH 117193**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

Respondent.

18 **FINDINGS OF FACT**

19 1. On or about May 21, 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. 5424 against Buffy Jeanne Dulac ("Respondent") before the Board of Pharmacy.
22 (A true and correct copy of Accusation No. 5424 is attached hereto, marked Exhibit A, and
23 incorporated herein by reference.)

24 2. On or about October 3, 2011, the Board of Pharmacy ("Board") issued Pharmacy
25 Technician Registration No. TCH 117193 to Respondent. The Pharmacy Technician Registration
26 was in full force and effect at all times relevant to the charges brought in Accusation No. 5424.
27 The Pharmacy Technician Registration expired on January 31, 2015, without renewal. This lapse
28 in licensure, however, pursuant to Business and Professions Code ("Code") section 4300.1 does

1 not deprive the Board of its authority to institute or continue this disciplinary proceeding. The
2 Pharmacy Technician Registration was cancelled on May 3, 2015, pursuant to Code section 4402,
3 subdivision (e).

4 3. On or about June 10, 2015, Respondent was served by Certified and First Class Mail
5 copies of the Accusation No. 5424, Statement to Respondent, Notice of Defense, Request for
6 Discovery, and Discovery Statutes (Gov. Code §§ 11507.5, 11507.6, 11507.7) at Respondent's
7 address of record which, pursuant to Business and Professions Code section 4100, is required to
8 be reported and maintained with the Board. Respondent's address of record was and is: Buffy
9 Jeanne Dulac, 1018 Cortina Ct., Orland, CA 95963.

10 4. On or about June 17, 2015, the documents mentioned in paragraph 3, above, that were
11 served by Certified Mail, were returned by the U.S. Postal Service marked "Unclaimed" and
12 "Notify Sender of New Address" and "Dulac, PO Box 7283, Chico CA 95927-7283."

13 5. On or about July 22, 2015, Respondent was served by Certified and First Class Mail
14 copies of the Accusation No. 5424, Statement to Respondent, Notice of Defense, Request for
15 Discovery, and Discovery Statutes (Gov. Code §§ 11507.5, 11507.6, 11507.7) at: Buffy Jeanne
16 Dulac, P. O. Box 7283, Chico, CA 95927-7283."

17 6. On or about September 18, 2015, the documents mentioned in paragraph 5, above,
18 that were served by Certified Mail, were returned by the U.S. Postal Service marked "Return to
19 sender," "Unclaimed," and "Unable to Forward."

20 7. Service of the Accusation was effective as a matter of law under the provisions of
21 Government Code section 11505, subdivision (c), and/or Business & Professions Code section
22 124.

23 8. Government Code section 11506 states, in pertinent part:

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

1 9. Respondent failed to file a Notice of Defense within fifteen (15) days after service
2 upon her of the Accusation, and therefore waived her right to a hearing on the merits of
3 Accusation No. 5424.

4 10. California Government Code section 11520 states, in pertinent part:

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

8 11. Pursuant to its authority under Government Code section 11520, the Board finds
9 Respondent is in default. The Board will take action without further hearing and, based on the
10 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
11 taking official notice of all the investigatory reports, exhibits and statements contained therein on
12 file at the Board's offices regarding the allegations contained in Accusation No. 5424, finds that
13 the charges and allegations in Accusation No. 5424, are separately and severally, found to be true
14 and correct by clear and convincing evidence.

15 12. Taking official notice of its own internal records, pursuant to Business and
16 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
17 and Enforcement is \$1,972.50 as of September 25, 2015.

18 **DETERMINATION OF ISSUES**

19 1. Based on the foregoing findings of fact, Respondent Buffy Jeanne Dulac
20 ("Respondent") has subjected her Pharmacy Technician Registration No. TCH 117193 to
21 discipline.

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

23 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
24 Registration No. TCH 117193 based upon the following violations alleged in the Accusation
25 which are supported by the evidence contained in the Default Decision Investigatory Evidence
26 Packet in this case:

1 a. Respondent violated Business and Professions Code ("Code") section 4301,
2 subdivision (f), in that she committed acts of moral turpitude, dishonesty, fraud, deceit, or
3 corruption, as alleged in the First Cause for Discipline in Accusation No. 5424;

4 b. Respondent violated Code section 4301, subdivision (j), in that she violated statutes
5 of this State regulating controlled substances and dangerous drugs as alleged in the Second Cause
6 for Discipline in Accusation No. 5424;

7 c. Respondent violated Code section 4301, subdivision (l), in that on or about January
8 14, 2015, she was convicted of a crime that is substantially related to the functions, qualifications,
9 and duties of a Pharmacy Technician.

10 **ORDER**

11 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 117193, heretofore
12 issued to Respondent Buffy Jeanne Dulac, is REVOKED.

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

17 This Decision shall become effective on December 18, 2015.

18 It is so ORDERED November 18, 2015.

19 BOARD OF PHARMACY
20 DEPARTMENT OF CONSUMER AFFAIRS
21 STATE OF CALIFORNIA

22 

24 By _____

25 Amy Gutierrez, Pharm.D.
26 Board President

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28 Attachment:

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 LESLIE A. BURGERMYER
Deputy Attorney General
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5 P.O. Box 944255
Sacramento, CA 94244-2550
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7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 5424

12 **BUFFY JEANNE DULAC**
1018 Cortina Ct.
13 **Orland, CA 95963**

ACCUSATION

14 **Pharmacy Technician Registration**
15 **No. TCH 117193**

Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Virginia Herold ("Complainant") brings this Accusation solely in her official capacity
20 as the Executive Officer of the Board of Pharmacy ("Board"), Department of Consumer Affairs.

21 2. On or about October 3, 2011, the Board issued Pharmacy Technician Registration
22 Number TCH 117193 to Buffy Jeanne Dulac ("Respondent"). The Pharmacy Technician
23 Registration was in full force and effect at all times relevant to the charges brought herein and
24 expired on January 31, 2015, without renewal.

25 **JURISDICTION**

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

1 4. Section 4300 of the Code states, in pertinent part:

2 (a) Every license issued may be suspended or revoked.

3 (b) The board shall discipline the holder of any license issued by the board,
4 whose default has been entered or whose case has been heard by the board and
found guilty, by any of the following methods:

5 (1) Suspending judgment.

6 (2) Placing him or her upon probation.

7 (3) Suspending his or her right to practice for a period not exceeding one
8 year.

9 (4) Revoking his or her license.

10 (5) Taking any other action in relation to disciplining him or her as the
board in its discretion may deem proper.

11 5. Section 4300.1 of the Code states:

12 The expiration, cancellation, forfeiture, or suspension of a board-issued
13 license by operation of law or by order or decision of the board or a court of
14 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
15 or proceed with any investigation of, or action or disciplinary proceeding
against, the licensee or to render a decision suspending or revoking the license.

16 **STATUTORY PROVISIONS**

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

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

21 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
22 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.

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

25 (l) The conviction of a crime substantially related to the qualifications,
26 functions, and duties of a licensee under this chapter. The record of conviction
27 of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the
28 United States Code regulating controlled substances or of a violation of the

1 statutes of this state regulating controlled substances or dangerous drugs shall
2 be conclusive evidence of unprofessional conduct. In all other cases, the
3 record of conviction shall be conclusive evidence only of the fact that the
4 conviction occurred. The board may inquire into the circumstances
5 surrounding the commission of the crime, in order to fix the degree of
6 discipline or, in the case of a conviction not involving controlled substances or
7 dangerous drugs, to determine if the conviction is of an offense substantially
8 related to the qualifications, functions, and duties of a licensee under this
9 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
10 contendere is deemed to be a conviction within the meaning of this provision.
11 The board may take action when the time for appeal has elapsed, or the
12 judgment of conviction has been affirmed on appeal or when an order granting
13 probation is made suspending the imposition of sentence, irrespective of a
14 subsequent order under Section 1203.4 of the Penal Code allowing the person
15 to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting
16 aside the verdict of guilty, or dismissing the accusation, information, or
17 indictment.

18 (p) Actions or conduct that would have warranted denial of a license.

19 7. Code section 4022 states, in pertinent part:

20 "Dangerous drug" . . . means any drug . . . unsafe for self-use in humans or
21 animals, and includes the following:

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

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

26 8. Section 4059 states, in pertinent part:

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

9. Section 4060 of the Code states, in pertinent part:

A person shall not 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, a physician assistant
pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or
a pharmacist pursuant to Section 4052.1, 4052.2, or 4052.6. . . .

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

///

1 11. Health and Safety Code section 11173 states, in pertinent part:

2 (a) No person shall obtain or attempt to obtain controlled substances, or
3 procure or attempt to procure the administration of or prescription for controlled
4 substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the
concealment of a material fact.

5 **DRUG**

6 12. **Hydrocodone/Acetaminophen** is the generic name for Lortab, Norco, and Vicodin,
7 and is a Schedule II controlled substance as designated by Health and Safety Code section 11056,
8 subdivision (e)(4), and a dangerous drug within the meaning of Code section 4022. It is a
9 narcotic used for pain relief.

10 **COST RECOVERY**

11 13. Section 125.3 of the Code states, in pertinent part, that the Board may request the
12 administrative law judge to direct a licensee found to have committed a violation or violations of
13 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
14 enforcement of the case.

15 **BACKGROUND**

16 14. From on or about June 15, 2012, to on or about April 24, 2014, Respondent was
17 employed as a Registered Pharmacy Technician by Wal-Mart Pharmacy 10-1608 located at 1025
18 South Main Street, Red Bluff, California.

19 15. On or about February 20, 2014, while employed and on duty at Wal-Mart Pharmacy
20 10-1608, Respondent obtained and possessed two (2) Hydrocodone/APAP 10/325 mg tablets
21 from the Pharmacy's supply, without a valid prescription, and self-administered them.

22 16. On or about April 24, 2014, Respondent admitted that she had taken the two (2)
23 Hydrocodone/ APAP 10/325 mg tablets on or about February 20, 2014, for her personal use.

24 17. On or about April 24, 2014, Wal-Mart Stores terminated Respondent from her
25 position on the grounds of theft and diversion of controlled substances.

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1 FIRST CAUSE FOR DISCIPLINE

2 (Acts of Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)

3 18. Respondent is subject to disciplinary action under Code section 4301, subdivision (f),
4 on the grounds of unprofessional conduct in that Respondent committed acts of moral turpitude,
5 dishonesty, fraud, deceit, or corruption when she obtained two (2) tablets of the controlled
6 substance Hydrocodone/ APAP 10/325 mg from her employer. The underlying circumstances are
7 set forth in paragraphs 14 through 17, above, incorporated herein by reference.

8 SECOND CAUSE FOR DISCIPLINE

9 (Violated Statutes Regulating Controlled Substances and Dangerous Drugs)

10 19. Respondent is subject to disciplinary action under Code section 4301, subdivision (j),
11 on the grounds of unprofessional conduct in that Respondent violated statutes of this state
12 regulating controlled substances and dangerous drugs as follows:

13 a. Respondent violated Code section 4059 in that she unlawfully self-furnished two
14 (2) tablets of the controlled substance and dangerous drug Hydrocodone/APAP 10/325 mg
15 without a lawful prescription in violation of Code section 4022, as set forth in paragraphs 14
16 through 17, above, incorporated herein by reference.

17 b. Respondent violated Code section 4060 in that she unlawfully possessed two (2)
18 tablets of the controlled substance and dangerous drug Hydrocodone/APAP 10/325 mg without a
19 lawful prescription, as set forth in paragraphs 14 through 17, above, incorporated herein by
20 reference.

21 c. Respondent violated Health and Safety Code section 11170 in that she
22 unlawfully furnished to herself two (2) tablets of Hydrocodone/ APAP 10/325 mg , a controlled
23 substance, without a lawful prescription, as set forth in paragraphs 14 through 17, above,
24 incorporated herein by reference.

25 d. Respondent violated Health and Safety Code section 11170 in that she
26 unlawfully self-administered two (2) tablets of Hydrocodone/ APAP 10/325 mg , a controlled
27 substance without a lawful prescription, as set forth in paragraphs 14 through 17, above,
28 incorporated herein by reference.

1 e. Respondent violated Health and Safety Code section 11173 in that she obtained
2 two (2) tablets of the controlled substance Hydrocodone/ APAP 10/325 mg by fraud, deceit,
3 misrepresentation, or subterfuge or by the concealment of a material fact, as set forth in
4 paragraphs 14 through 17, above, incorporated herein by reference.

5 **THIRD CAUSE FOR DISCIPLINE**

6 **(Criminal Conviction)**

7 20. Respondent is subject to disciplinary action under Code section 4301, subdivision (I),
8 on the grounds of unprofessional conduct in that on or about January 14, 2015, in the case titled
9 *People v. Buffy Jeanne Dulac*, Tehama County Superior Court Case No. NCR90980, Respondent
10 was convicted upon the guilty verdict to violating Penal Code section 484, subdivision (a)
11 [unlawfully stealing, taking, and carrying away the personal property of another (Walmart)], a
12 misdemeanor. Said crime is substantially related to the duties, functions, and qualifications of a
13 licensed Pharmacy Technician. The underlying circumstances are set forth in paragraphs 15 and
14 16, above, incorporated herein by reference.

15 **PRAYER**

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

18 1. Revoking or suspending Pharmacy Technician Registration Number TCH 117193
19 issued to Buffy Jeanne Dulac;

20 2. Ordering Buffy Jeanne Dulac to pay the Board of Pharmacy the reasonable costs of
21 the investigation and enforcement of this case, pursuant to Business and Professions Code section
22 125.3;

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

DATED:

5/21/15

Virginia Herold

VIRGINIA HEROLD

Executive Officer

Board of Pharmacy

Department of Consumer Affairs

State of California

Complainant

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