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

In the Matter of the Accusation Against:  
**TIMOTHY JOSEPH O'HARA**  
**2007 Fernwood Circle**  
**Roseville, CA 95661**  
  
**Pharmacy Technician Registration No. TCH**  
**115814**  
  
Respondent.

Case No. 5434

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about August 10, 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. 5434 against Timothy Joseph O'Hara (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about September 7, 2011, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 115814 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 5434 and will expire on June 30, 2017, unless renewed.

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1           3.     On or about September 17, 2015, Respondent was served by Certified and First Class  
2 Mail copies of Accusation No. 5434, Statement to Respondent, Notice of Defense, Request for  
3 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at  
4 Respondent's address of record which, pursuant to Business and Professions Code section 4100,  
5 is required to be reported and maintained with the Board. Respondent's address of record was  
6 and is:

7     2007 Fernwood Circle  
8     Roseville, CA 95661.

9           4.     Service of the Accusation was effective as a matter of law under the provisions of  
10 Government Code section 11505, subdivision (c) and/or Business & Professions Code section  
11 124.

12           5.     The aforementioned Certified and First Class Mail documents were never returned by  
13 the U.S. Postal Service.

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 respondent  
16 files a notice of defense, and the notice shall be deemed a specific denial of all parts  
17 of the accusation not expressly admitted. Failure to file a notice of defense shall  
18 constitute a waiver of respondent's right to a hearing, but the agency in its discretion  
19 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 5434.

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 admissions  
26 or upon other evidence and affidavits may be used as evidence without any notice to  
27 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. 5434, finds that  
2 the charges and allegations in Accusation No. 5434 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 are \$3,249.00 as of October 16, 2015.

7 DETERMINATION OF ISSUES

8 1. Based on the foregoing findings of fact, Respondent Timothy Joseph O'Hara has  
9 subjected his Pharmacy Technician Registration No. TCH 115814 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 violated Business and Professions Code section 4301(j) in that  
15 Respondent committed unprofessional conduct by violating the following statutes governing  
16 controlled substances and/or dangerous drugs:

17 i. Business and Professions Code section 4060 and Health and Safety Code  
18 Section 11350(a): Respondent possessed marijuana, a controlled substance, without a valid  
19 prescription from a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor.

20 ii. Health and Safety Code Section 11170: Respondent self-administered  
21 marijuana, a controlled substance.

22 iii. Business and Professions Code section 4059: Respondent furnished Tramadol,  
23 a dangerous drug, to himself without a valid prescription.

24 b. The facts and circumstances of these violations are as follows:

25 i. Between on or about May 31 and June 18, 2014, staff at U.C. Davis Medical  
26 Center, Pharmacy Department, (UCDP), located at 2315 Stockton Boulevard, Stockton,  
27 California, reported to UCDP management that while on duty as a pharmacy technician,  
28

1 Respondent appeared to be sleepy or sleeping while standing, his behavior was unusual and odd,  
2 his speech occasionally mumbled or slurred, and he was making medication errors.

3 ii. On or about June 18, 2014, in the course of an investigation by UCDP  
4 management into Respondent's above-described behaviors, Respondent stated that he had taken  
5 around fifty Tramadol tablets from UCDP supplies over a ninety day period. Respondent stated  
6 that he usually took two 50 mg. tablets of Tramadol for back pain while he worked, but did not  
7 take them daily. Respondent also stated that he smoked marijuana in the evening to help him  
8 sleep.

9 iii. On or about August 18, 2014, Respondent's employment with UCDP was  
10 terminated.

11 c. Respondent violated Business and Professions Code section 4301(h), for  
12 unprofessional conduct, in that at times between on or about May 31 and June 18, 2014, while  
13 working as a pharmacy technician for UCDP, Respondent administered to himself Tramadol, a  
14 dangerous drug, to an extent or in a manner as to be dangerous or injurious to himself, to a person  
15 holding a license under this chapter, or to any other person or to the public, or to the extent that  
16 such use impaired his ability to conduct with safety to the public the practice authorized by his  
17 license. The facts and circumstances are set forth in more particularity in paragraph 3(b) and all  
18 of its subparts.

19 d. Respondent violated Business and Professions Code section 4301(f), for  
20 unprofessional conduct, in that between in or around March and June 2014, Respondent  
21 committed acts of moral turpitude, dishonesty, fraud, deceit, or corruption, when he stole  
22 approximately fifty Tramadol tablets from UCDP. The facts and circumstances are set forth in  
23 more particularity in paragraph 3(b) and all of its subparts.

24 ~~e. Respondent violated Business and Professions Code section 4301(o), for~~  
25 unprofessional conduct, in that Respondent violated laws governing pharmacy, as set forth in  
26 paragraph 3(b) and all of its subparts.

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ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 115814, heretofore issued to Respondent Timothy Joseph O'Hara, 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 December 18, 2015.

It is so ORDERED November 18, 2015.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By \_\_\_\_\_

Amy Gutierrez, Pharm.D.  
Board President

11993124.DOC  
SA2015102996

Attachment:  
Exhibit A: Accusation

# Exhibit A

Accusation

(TIMOTHY JOSEPH O'HARA)

1 KAMALA D. HARRIS  
Attorney General of California  
2 KENT D. HARRIS  
Supervising Deputy Attorney General  
3 PHILLIP L. ARTHUR  
Deputy Attorney General  
4 State Bar No. 238339  
1300 I Street, Suite 125  
5 P.O. Box 944255  
Sacramento, CA 94244-2550  
6 Telephone: (916) 322-0032  
Facsimile: (916) 327-8643  
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 5434

12 **TIMOTHY JOSEPH O'HARA**  
1522 N Street, #202  
13 Sacramento, California 95814

**ACCUSATION**

14 **Pharmacy Technician Registration No.**  
15 **TCH 115814**

16 Respondent.

17 Virginia Herold ("Complainant") alleges:

18 **PARTIES**

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

21 **Pharmacy Technician Registration**

22 2. On or about September 7, 2011, the Board issued Pharmacy Technician Registration  
23 Number TCH 115814 to Timothy Joseph O'Hara ("Respondent"). The pharmacy technician  
24 registration was in full force and effect at all times relevant to the charges brought herein and will  
25 expire on June 30, 2017, unless renewed.

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

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

8 6. Code section 4059(a) states that, "A person may not furnish any dangerous drug,  
9 except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or  
10 naturopathic doctor pursuant to Section 3640.7."

11 7. Code section 4060 states, in pertinent part:

12 A person shall not possess any controlled substance, except that furnished to a  
13 person upon the prescription of a physician, dentist, podiatrist, optometrist,  
14 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant  
15 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a  
16 nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to  
17 Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist  
18 pursuant to Section 4052.1, 4052.2, or 4052.6. . . .

19 8. Code section 4022 states:

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

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

24 (b) Any device that bears the statement: "Caution: federal law restricts this  
25 device to sale by or on the order of a \_\_\_\_\_," "Rx only," or words of similar import,  
26 the blank to be filled in with the designation of the practitioner licensed to use or  
27 order use of the device.

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

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

10. Health and Safety Code section 11173(a) states:

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

1 11. Health and Safety Code section 11350(a), states:

2 Except as otherwise provided in this division, every person who possesses  
3 (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of  
4 subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of  
5 subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section  
6 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled  
7 substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon  
8 the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to  
9 practice in this state, shall be punished by imprisonment pursuant to subdivision (h)  
10 of Section 1170 of the Penal Code.

7 **COST RECOVERY**

8 12. Code section 125.3 provides, in pertinent part, that the Board may request the  
9 administrative law judge to direct a licentiate found to have committed a violation or violations of  
10 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
11 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being  
12 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
13 included in a stipulated settlement.

14 **DRUG/CONTROLLED SUBSTANCE**

15 13. *Marijuana* is a Schedule I controlled substance as designated by Health and Safety  
16 Code section 11054(d)(13), and is a dangerous drug within the meaning of Code section 4022, in  
17 that it requires a lawful prescription.

18 14. *Tramadol*, a centrally acting synthetic opioid analgesic, is a dangerous drug within  
19 the meaning of Code section 4022, in that it requires a lawful prescription.<sup>1</sup>

20 **BACKGROUND**

21 15. At all times relevant to the charges brought herein, Respondent was employed as a  
22 registered pharmacy technician at U.C. Davis Medical Center, Pharmacy Department (UCDP),  
23 license No. HPE 37803, located at 2315 Stockton Boulevard, Stockton, California.

24 16. Between on or about May 31 and June 18, 2014, UCDP staff reported to UCDP  
25 management that while on duty as a pharmacy technician, Respondent appeared to be

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27 <sup>1</sup> Effective August 18, 2014, Code of Federal Regulations, title 21, section 1308.14(b)(3)  
28 designated *Tramadol* as a controlled substance.

1 sleepy or sleeping while standing, his behavior was unusual and odd, his speech occasionally  
2 mumbled or slurred, and he was making medication errors.

3 17. On or about June 18, 2014, in the course of an investigation by UCDP management  
4 into Respondent's above-described behaviors, Respondent stated that he had taken around fifty  
5 Tramadol tablets from UCDP supplies over a ninety day period. Respondent stated that he  
6 usually took two 50 mg. tablets of Tramadol for back pain while he worked, but did not take them  
7 daily. Respondent also stated that he smoked marijuana in the evening to help him sleep.

8 18. On or about August 18, 2014, Respondent's employment with UCDP was terminated.

9 **FIRST CAUSE FOR DISCIPLINE**

10 (Violation of State Laws Regulating Controlled Substances)

11 19. Paragraphs 14 through 17 are incorporated herein as though set forth at length.  
12 Respondent is subject to disciplinary action pursuant to Code section 4301(j), for unprofessional  
13 conduct, in that Respondent violated the following statutes governing controlled substances  
14 and/or dangerous drugs:

15 a. **Code section 4060 and Health and Safety Code Section 11350(a)**: Respondent  
16 possessed marijuana, a controlled substance, without a valid prescription from a physician,  
17 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor.

18 b. **Health and Safety Code Section 11170**: Respondent self-administered marijuana, a  
19 controlled substance.

20 c. **Code section 4059**: Respondent furnished Tramadol, a dangerous drug, to himself  
21 without a valid prescription.

22 **SECOND CAUSE FOR DISCIPLINE**

23 (Self-Administration of a Dangerous Drug in a Manner Dangerous or Injurious)

24 20. Paragraphs 14 through 17 are incorporated herein as though set forth at length.  
25 Respondent is subject to disciplinary action pursuant to Code section 4301(h), for unprofessional  
26 conduct, in that at times between on or about May 31 and June 18, 2014, while working as a  
27 pharmacy technician for UCDP, Respondent administered to himself Tramadol, a dangerous  
28 drug, to an extent or in a manner as to be dangerous or injurious to himself, to a person holding a

1 license under this chapter, or to any other person or to the public, or to the extent that such use  
2 impaired his ability to conduct with safety to the public the practice authorized by his license.

3 **THIRD CAUSE FOR DISCIPLINE**

4 (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)

5 21. Paragraphs 14 through 17 are incorporated herein as though set forth at length.

6 Respondent is subject to disciplinary action pursuant to Code section 4301(f), for unprofessional  
7 conduct, in that between in or around March and June 2014, Respondent committed acts of moral  
8 turpitude, dishonesty, fraud, deceit, or corruption, when he stole approximately fifty Tramadol  
9 tablets from UCDP.

10 **FOURTH CAUSE FOR DISCIPLINE**

11 (Violation of the Pharmacy Law)

12 22. Respondent is subject to disciplinary action pursuant to Code section 4301(o), for  
13 unprofessional conduct, in that Respondent violated laws governing pharmacy, as set forth in  
14 paragraphs 19 through 21, above.

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 115814,  
19 issued to Timothy Joseph O'Hara;

20 2. Ordering Timothy Joseph O'Hara to pay the Board of Pharmacy the reasonable costs  
21 of the investigation and enforcement of this case, pursuant to Business and Professions Code  
22 section 125.3; and,

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

24 DATED: 8/10/15

25 *Virginia Herold*  
26 VIRGINIA HEROLD  
27 Executive Officer  
28 Board of Pharmacy  
Department of Consumer Affairs  
State of California  
Complainant

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