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

In the Matter of the Accusation Against:

**STEVEN L. ZAFLOW
11679 Erwin Street
North Hollywood, CA 91606**

**Pharmacy Technician Registration No. TCH
90163**

Respondent.

Case No. 5462

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about July 13, 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. 5462 against Steven L. Zaflow ("Respondent") before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about March 27, 2009, the Board of Pharmacy ("Board") issued Pharmacy Technician Registration No. TCH 90163 to Respondent. The Pharmacy Technician Registration expired on November 2, 2014, was not been renewed, and was cancelled on November 2, 2014 pursuant to Businesses and Professions Code section 4402, subdivision (e). Pursuant to Business

1 and Professions Code section 4300.1, the cancellation of the license shall not the deprive the
2 Board of jurisdiction to commence or proceed with this action.

3 3. On or about July 22, 2015, Respondent was served by Certified and First Class Mail
4 with copies of the Accusation No. 5462, Statement to Respondent, Notice of Defense, Request for
5 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
6 Respondent's address of record which, pursuant to Business and Professions Code section 4100,
7 is required to be reported and maintained with the Board. Respondent's address of record was
8 and is: 11679 Erwin Street, North Hollywood, CA 91606.

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 documents in Paragraph 3 were returned by the U.S. Postal
13 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 5462.

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. 5462, finds that
2 the charges and allegations in Accusation No. 5462, 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 \$5,079.5 as of August 14, 2015.

7 **DETERMINATION OF ISSUES**

8 1. Based on the foregoing findings of fact, Respondent Steven L. Zaflow has subjected
9 his Pharmacy Technician Registration No. TCH 90163 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) Business and Professions Code section 4301, subdivision (l) in that Respondent
15 committed crimes that are substantially related to the qualifications, functions or duties of a
16 registered pharmacy technician in that on or about May 14, 2015, Respondent was convicted of
17 one misdemeanor count of violating Penal Code section 484, subdivision (a) [theft] and one
18 misdemeanor count of violating Penal Code section 594, subdivision (a) [vandalism] in the
19 criminal proceeding entitled *People v. Zaflow* (Super. Ct. Los Angeles County, 2015, No.
20 5WA00445).

21 (b) Code section 4301, subdivision (o), in conjunction with Code section 4060 in that on
22 October 27, 2014 and November 4, 2014, Respondent, unlawfully possessed controlled
23 substances, to wit: hydrocodone/apap, lorazepam, Tylenol #3 with Codeine, and Tylenol #4 with
24 Codeine. Respondent, who was a pharmacy technician at Rite Aid, unlawfully diverted these
25 medications from the pharmacy.

26 (c) Business and Professions Code section 4301, subdivision (j), in conjunction with
27 Health and Safety Code section 11350, subdivision (a) and Health and Safety Code section
28 11170, in that on October 27, 2014 and November 4, 2014, Respondent violated California rules

1 regulating controlled substances when he unlawfully possessed and unlawfully furnished to
2 himself controlled substances, to wit, hydrocodone/apap, lorazepam, Tylenol #3 with Codeine,
3 and Tylenol #4 with Codeine. Respondent, who was a pharmacy technician at Rite Aid ,
4 unlawfully diverted these medications from the pharmacy.

5 (d) Respondent is subject to disciplinary action under Code section 4301, subdivisions (f)
6 and (p), in conjunction with Code section 480, subdivision (a)(2), in that Respondent committed
7 acts involving moral turpitude, dishonesty, fraud, deceit, and/or corruption. On or about
8 November 4, 2014, Respondent, who was a pharmacy technician at Rite Aid, admitted to Loss
9 Prevention officers that he took various medications, including Ibuprofen 600mg and 800mg,
10 Tylenol #3 with Codeine, Tylenol #4 with Codeine, hydrocodone/apap, and lorazepam from the
11 pharmacy. Respondent removed medication from his pockets and promised to show the Loss
12 Prevention officers where he had hidden other pills but instead, he ran out of the store and fled
13 into the parking structure. Respondent then drove out of the parking structure without paying and
14 in the process, he drove through and broke the security drop down arm at the exit of the parking
15 structure.

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ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 90163, heretofore issued to Respondent Steven L. Zaflow, 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 October 16, 2015.

It is so ORDERED September 16, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

51875247.DOC/DOJ Matter ID:LA2015500808
Attachment: Exhibit A: Accusation

Exhibit A

Accusation

STEVEN L. ZAFLOW

1 KAMALA D. HARRIS
Attorney General of California
2 ARMANDO ZAMBRANO
Supervising Deputy Attorney General
3 SYDNEY M. MEHRINGER
Deputy Attorney General
4 State Bar No. 245282
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2537
6 Facsimile: (213) 897-2804
E-mail: Sydney.Mehring@doj.ca.gov
7 Attorneys for Complainant

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. 5462

13 **STEVEN L. ZAFLOW**
11679 Erwin Street
North Hollywood, CA 91606

ACCUSATION

14 Pharmacy Technician Registration No. TCH
90163

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

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

21 2. On or about March 27, 2009, the Board of Pharmacy ("Board") issued Pharmacy
22 Technician Registration Number TCH 90163 to Steven L. Zaflow ("Respondent"). The Pharmacy
23 Technician Registration expired July 31, 2014, was not renewed, and was cancelled on November
24 2, 2014 pursuant to Business and Professions Code section 4402, subdivision (e).¹

25 ///

26 ¹ Business and Professions Code section 4402, subdivision (e) states that "Any other license [i.e.,
27 not a pharmacist license] issued by the board may be canceled by the board if the license is not
28 renewed within 60 days after its expiration. Any license canceled under this subdivision may not
be reissued. Instead, a new application will be required."

1 JURISDICTION

2 3. This Accusation is brought before the Board under the authority of the following
3 laws. All section references are to the Business and Professions Code unless otherwise indicated.

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

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

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

9 "(1) Suspending judgment.

10 "(2) Placing him or her upon probation.

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

12 "(4) Revoking his or her license.

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

15
16 5. Section 4300.1 of the Code states:

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

22 STATUTES

23 6. Section 480 of the Code states, in pertinent part:

24 "(a) A board may deny a license regulated by this code on the grounds that the applicant has
25 one of the following:

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27 "(2) Done any act involving dishonesty, fraud, or deceit with the intent to
28 substantially benefit himself or herself or another, or substantially injure another."

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

"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."

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

"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.

.....
"(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

1 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
2 substances or of a violation of the statutes of this state regulating controlled substances or
3 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
4 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
5 The board may inquire into the circumstances surrounding the commission of the crime, in order
6 to fix the degree of 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 related to the
8 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
9 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
10 of this provision. The board may take action when the time for appeal has elapsed, or the
11 judgment of conviction has been affirmed on appeal or when an order granting probation is made
12 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
13 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
14 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
15 indictment.

16

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

21 "(p) Actions or conduct that would have warranted denial of a license."
22

23 9. Health and Safety Code section 11170 states, "[n]o person shall prescribe, administer,
24 or furnish a controlled substance for himself."

25 10. Health and Safety Code section 11350, subdivision (a) states:

26 "(a) Except as otherwise provided in this division, every person who possesses (1) any
27 controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of
28 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or

1 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section
2 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic
3 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian
4 licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of
5 Section 1170 of the Penal Code."

6 11. California Code of Regulations, title 16, section 1770 states:

7 "For the purpose of denial, suspension, or revocation of a personal or facility license
8 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
9 crime or act shall be considered substantially related to the qualifications, functions or duties of a
10 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
11 licensee or registrant to perform the functions authorized by his license or registration in a manner
12 consistent with the public health, safety, or welfare."

13 COST RECOVERY

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

18 CONTROLLED SUBSTANCES/DANGEROUS DRUGS

19 13. Carisoprodol, a generic name for Soma, is a dangerous drug pursuant to Code section
20 4022. It is a centrally acting skeletal muscle relaxant.

21 14. Hydrocodone/acetaminophen ("hydrocodone/apap"), a generic name for Vicodin,
22 Norco, and Lortab, is used to treat moderate to severe pain, is a controlled substance pursuant to
23 Health and Safety Code section 11056, subdivision (e)(4), and is a dangerous drug pursuant to
24 Code section 4022. As of October 6, 2014, hydrocodone/apap became a Schedule II controlled
25 substance pursuant to United States Code, title 21, section 812.

26 15. Ibuprofen, sold under the brand names Advil, Motrin, and Ibuprofen, is a medication
27 used to relieve pain, swelling and/or inflammation. 200mg dosages of Ibuprofen are sold over the
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1 counter, while 400mg, 600mg and 800mg dosages are dangerous drugs pursuant to Code section
2 4022.

3 16. Lorazepam, the generic name for Ativan, is used to treat anxiety. It is a Schedule IV
4 controlled substance pursuant to Health and Safety Code section 11057, subdivision (d)(16) and is
5 a dangerous drug pursuant to Code section 4022.

6 17. Tylenol with Codeine is a controlled substance pursuant to Health and Safety Code
7 section 11058, subdivision (c)(2). Tylenol #3 with Codeine contains 300mg of acetaminophen
8 and 30mg of codeine. Tylenol #4 with Codeine contains 300mg of acetaminophen and 60mg of
9 codeine.

10 BACKGROUND FACTS

11 18. Respondent was employed as a pharmacy technician at Rite Aid #5433 ("Rite Aid") in
12 the Westwood area of Los Angeles, California between March 2014 and November 4, 2014.

13 19. Video surveillance of Rite Aid's pharmacy taken on October 27, 2014 and November
14 4, 2014 shows Respondent taking medications, including hydrocodone/apap and carisoprodol
15 from the pharmacy. The video surveillance also shows Respondent performing pharmacy
16 technician duties even though his license expired on July 31, 2014 and was cancelled on
17 November 2, 2014.

18 20. On or about November 4, 2014, Rite Aid Loss Prevention officers had a meeting with
19 Respondent to confront him about diverting medication from the pharmacy. Respondent admitted
20 to taking various medications, including Ibuprofen 600mg and 800mg, Tylenol #3 with Codeine
21 and Tylenol #4 with Codeine, hydrocodone/apap, and lorazepam. Respondent removed 15 tablets
22 of Tylenol #4 with Codeine from his pockets. Respondent promised to show the Loss Prevention
23 officers where he had hidden other pills but instead, he ran out of the store. Respondent reached
24 the side of the building and stopped running. Respondent gave 15 tablets of Tylenol #3 with
25 Codeine to a Loss-Prevention officer, then pretended the officer hit him, and threw himself to the
26 ground. Once Respondent got up, he ran into another Loss Prevention officer, pushed her out of
27 the way, and ran into the parking structure. He then drove out of the parking structure without
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1 paying and in the process, he drove through and broke the security drop down arm at the exit of
2 the parking structure.

3 **FIRST CAUSE FOR DISCIPLINE**

4 21. Respondent is subject to disciplinary action under Code section 4301, subdivision (l)
5 on the grounds of unprofessional conduct in that he committed crimes that are substantially
6 related to the qualifications, functions or duties of a registered pharmacy technician that to a
7 substantial degree evidence his present or potential unfitness the perform the functions authorized
8 by his registration in a manner consistent with the public health, safety, or welfare as follows:

9 (a) On or about May 14, 2015, after pleading nolo contendere, Respondent was convicted
10 of one misdemeanor count of violating Penal Code section 484, subdivision (a) [theft] and one
11 misdemeanor count of violating Penal Code section 594, subdivision (a) [vandalism] in the
12 criminal proceeding entitled *The People of the State of California v. Steven Zaflow* (Super. Ct.
13 Los Angeles County, 2015, No. 5WA00445). The Court placed Respondent on 36 months
14 probation, ordered him to serve 1 day in Los Angeles County Jail, ordered him to serve 44 days of
15 Caltrans and further ordered him to stay 100 yards away from Rite Aid. The facts and
16 circumstances underlying the convictions are set forth in paragraph 20, which Complainant
17 incorporates by reference as though fully set forth herein.

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(Unlawful Possession of Controlled Substances)**

20 22. Respondent is subject to disciplinary action under Code section 4301, subdivision (o),
21 in conjunction with Code section 4060, on the grounds of unprofessional conduct in that on
22 October 27, 2014 and November 4, 2014, Respondent, who was a pharmacy technician at Rite
23 Aid, unlawfully possessed controlled substances, to wit: hydrocodone/apap, lorazepam, Tylenol
24 #3 with Codeine, and Tylenol #4 with Codeine. Complainant incorporates by reference
25 paragraphs 18 through 20, as though fully set forth herein.

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1 THIRD CAUSE FOR DISCIPLINE

2 (Violating Drug Statutes)

3 23. Respondent is subject to disciplinary action under Code section 4301, subdivision (j),
4 in conjunction with Health and Safety Code section 11350, subdivision (a) and Health and Safety
5 Code section 11170, on the grounds of unprofessional conduct in that on October 27, 2014 and
6 November 4, 2014, Respondent, who was a pharmacy technician at Rite Aid, violated California
7 rules regulating controlled substances when he unlawfully possessed and unlawfully furnished to
8 himself controlled substances, to wit, hydrocodone/apap, lorazepam, Tylenol #3 with Codeine,
9 and Tylenol #4 with Codeine. Complainant incorporates by reference paragraphs 18 through 20,
10 as though fully set forth herein.

11 FOURTH CAUSE FOR DISCIPLINE

12 (Dishonest Acts)

13 24. Respondent is subject to disciplinary action under Code section 4301, subdivision (f)
14 and subdivision (p), in conjunction with Code section 480, subdivision (a)(2), on the grounds of
15 unprofessional conduct in that Respondent committed acts involving moral turpitude, dishonesty,
16 fraud, deceit, and/or corruption. Complainant incorporates by reference paragraphs 18 through
17 20, as though fully set forth herein.

18 PRAYER

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

21 1. Revoking or suspending Pharmacy Technician Registration Number TCH 90163,
22 issued to Steven L. Zaflow;

23 2. Ordering Steven L. Zaflow to pay the Board of Pharmacy the reasonable costs of the
24 investigation and enforcement of this case, pursuant to Business and Professions Code section
25 125.3; and

26 ///

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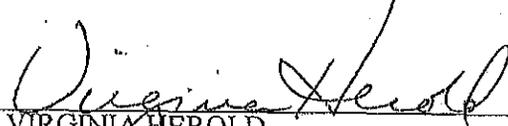
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3. Taking such other and further action as deemed necessary and proper.

DATED:

7/13/15



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

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