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

In the Matter of the Accusation Against:  
  
**DAVID MADRIGAL**  
**948 S. California Street**  
**Stockton, California 95206**  
**Pharmacy Technician Registration No. TCH**  
**112091**  
  
Respondent.

Case No. 5485

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about October 20, 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. 5485 against David Madrigal (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

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1           2.    On or about April 5, 2011, the Board of Pharmacy (Board) issued Pharmacy  
2 Technician Registration No. TCH 112091 to Respondent. The Pharmacy Technician Registration  
3 expired on March 31, 2015, and has not been renewed.

4           3.    On or about November 13, 2015, Respondent was served by Certified Mail and  
5 United States First Class mail with copies of the Accusation No. 5485, Statement to Respondent,  
6 Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections  
7 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business  
8 and Professions Code section 4100, is required to be reported and maintained with the Board.  
9 Respondent's address of record was and is: 948 S. California Street, Stockton, California 95206.

10          4.    Service of the Accusation was effective as a matter of law under the provisions of  
11 Government Code section 11505, subdivision (c) and/or Business & Professions Code section  
12 124.

13          5.    On or about November 17, 2015, Complainant received a signed Green Card for  
14 Respondent's receipt of certified mail containing the documents described in Paragraph 3 above.  
15 The United States First class Mail to Respondent was not returned by the United States Postal  
16 Service.

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

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

21          7.    Respondent failed to file a Notice of Defense within 15 days after service upon him  
22 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.  
23 5485.

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

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

1 9. Pursuant to its authority under Government Code section 11520, the Board finds  
2 Respondent is in default. The Board will take action without further hearing and, based on the  
3 relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,  
4 as well as taking official notice of all the investigatory reports, exhibits and statements contained  
5 therein on file at the Board's offices regarding the allegations contained in Accusation No. 5485,  
6 finds that the charges and allegations in Accusation No. 5485, are separately and severally, found  
7 to be true and correct by clear and convincing evidence.

8 10. Taking official notice of its own internal records, pursuant to Business and  
9 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation  
10 and Enforcement is \$4,380.00 as of January 19, 2016.

11 DETERMINATION OF ISSUES

12 1. Based on the foregoing findings of fact, Respondent David Madrigal has subjected  
13 his Pharmacy Technician Registration No. TCH 112091 to discipline.

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

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

18 a. Respondent violated Business & Professions Code sections 4301(j) [unlawful  
19 possession of controlled substances], 4301(h) [unlawfully self-administration of controlled  
20 substances, and 4301(j) [fraud and deceit to obtain controlled substances]. On or about March 24,  
21 2014, and for a least one year prior thereto, Respondent stole one or more tablets of Oxycodone  
22 from a co-worker where Respondent was employed as a pharmacy technician.

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ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 112091, heretofore issued to Respondent David Madrigal, 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 March 25, 2016.

It is so ORDERED February 24, 2016.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By \_\_\_\_\_

Amy Gutierrez, Pharm.D.  
Board President

Attachment:  
Exhibit A: Accusation

# Exhibit A

Accusation

(DAVID MADRIGAL)

1 KAMALA D. HARRIS  
Attorney General of California  
2 KENT D. HARRIS  
Supervising Deputy Attorney General  
3 STERLING A. SMITH  
Deputy Attorney General  
4 State Bar No: 84287  
1300 I Street, Suite 125  
5 P.O. Box 944255  
Sacramento, CA 94244-2550  
6 Telephone: (916) 445-0378  
Facsimile: (916) 327-8643  
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. 5485

13 **DAVID MADRIGAL**  
948 S. California Street  
Stockton, California 95206

**ACCUSATION**

14 **Pharmacy Technician Registration No. TCH**  
15 **112091**

16 Respondent.

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, Department of Consumer Affairs.

21 2. On or about April 5, 2011, the Board of Pharmacy issued Pharmacy Technician  
22 Registration Number TCH 112091 to David Madrigal (Respondent). The Pharmacy Technician  
23 Registration expired on March 31, 2015, and has not been renewed.

24 JURISDICTION

25 3. This Accusation is brought before the Board of Pharmacy (Board), Department of  
26 Consumer Affairs, under the authority of the following laws. All section references are to the  
27 Business and Professions Code unless otherwise indicated.

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4. Section 4300 of the Code states:

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

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

- (1) Suspending judgment.
- (2) Placing him or her upon probation.
- (3) Suspending his or her right to practice for a period not exceeding one year.
- (4) Revoking his or her license.
- (5) Taking any other action in relation to disciplining him or her as the board in its

discretion may deem proper.

(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy, including, but not limited to, the following:

- (1) Medical or psychiatric evaluation.
- (2) Continuing medical or psychiatric treatment.
- (3) Restriction of type or circumstances of practice.
- (4) Continuing participation in a board-approved rehabilitation program.
- (5) Abstention from the use of alcohol or drugs.
- (6) Random fluid testing for alcohol or drugs.
- (7) Compliance with laws and regulations governing the practice of pharmacy.

(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary certificate of licensure for any violation of the terms and conditions of probation. Upon satisfactory completion of probation, the board shall convert the probationary certificate to a regular certificate, free of conditions.

1 (e) The proceedings under this article shall be conducted in accordance with Chapter 5  
2 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board  
3 shall have all the powers granted therein. The action shall be final, except that the propriety of the  
4 action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil  
5 Procedure."

6 5. Section 4301 of the Code provides, in pertinent part, that:

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

10 ...  
11 (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or  
12 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and  
13 whether the act is a felony or misdemeanor or not.

14 ...  
15 (h) The administering to oneself, of any controlled substance, or the use of any dangerous  
16 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to  
17 oneself, to a person holding a license under this chapter, or to any other person or to the public, or  
18 to the extent that the use impairs the ability of the person to conduct with safety to the public the  
19 practice authorized by the license.

20 ...  
21 (j) The violation of any of the statutes of this state, or any other state, or of the United  
22 States regulating controlled substances and dangerous drugs.

23 ..."

24 6. Section 4060 of the Code provides, in pertinent part, that no person shall possess any  
25 controlled substance, except that furnished to a person upon lawful prescription.

26 7. Section 11170 of Health and Safety Code provides, in pertinent part, that no person  
27 shall furnish a controlled substance to himself.



1           8. Section 11173, sub-part (a), of the Health and Safety Code states that "no person shall  
2 obtain or attempt to obtain controlled substances, or procure or attempt to procure the  
3 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,  
4 or subterfuge; or (2) by the concealment of a material fact."

5           9. Health and Safety Code section 11350(a) provides, in pertinent part, that "...every  
6 person who possesses (1) any controlled substance... specified in subdivision (b) or (c) of Section  
7 11055..., unless upon prescription..., shall be punished by imprisonment pursuant to subdivision  
8 (h) of Section 1170 of the Penal Code".

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

15           11 Section 118, subdivision (b), of the Code provides that the  
16 suspension/expiration/surrender/cancellation of a license shall not deprive the  
17 Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period  
18 within which the license may be renewed, restored, reissued or reinstated.

#### 19                           DRUGS

20           12. Percocet, also known as Oxycodone/Acetaminophen, is a Schedule II controlled  
21 substance as designated by Health and Safety Code section 11055, subpart (b)(1)(M).

#### 22                           BACKGROUND

23           13. On or about March 24, 2014, and for at least one year prior thereto, Respondent was  
24 employed as a pharmacy technician at California Department of Corrections and Rehabilitation,  
25 California Correctional Health Care services (CDCR/CCHCS) in Sacramento, California.

26           14. On or about March 24, 2014, Respondent unlawfully entered the job locker of D.G.  
27 an employee of (CDCR/CCHCS) and stole one or more tablets of Oxycodone from D.G.'s lunch  
28 box. On other occasions on unknown dates during the approximately one year period before

1 March 24, 2014, Respondent stole approximately five tablets of Percocet also known as  
2 Oxycodone/Acetaminophen from co-employee D.G. in the same fashion as alleged in Paragraphs  
3 13 and 14 above.

4 15. Respondent self-administered some or all the Oxycodone/Acetaminophen that he  
5 stole from D.G. as alleged above.

6 FIRST CAUSE FOR DISCIPLINE

7 (Unprofessional Conduct-Unlawful Possession of Controlled Substances)

8 16. Respondent is subject to disciplinary action under Code section 4301, subdivision (j),  
9 because he violated Code sections 11350, subdivision (a) and 4060 by possessing the controlled  
10 substance Oxycodone/Acetaminophen without a valid prescription, as alleged in Paragraphs 13,  
11 14 and 15 above.

12 SECOND CAUSE FOR DISCIPLINE

13 (Unprofessional Conduct-Unlawful Self-Administration of Controlled Substances)

14 17. Respondent is subject to disciplinary action under Code section 4301, subdivision (h)  
15 because he violated Health and Safety Code section 11170 by self-administering  
16 Oxycodone/Acetaminophen without a valid prescription, as set forth in Paragraphs 13, 14 and 15  
17 above.

18 THIRD CAUSE FOR DISCIPLINE

19 (Obtaining Controlled Substances by Fraud, Deceit and Subterfuge)

20 18. Respondent is subject to disciplinary action under Code section 4301, subdivision (j),  
21 because he violated Health and Safety Code section 11173, subdivision (a), by obtaining  
22 Oxycodone/Acetaminophen by fraud, deceit and subterfuge as alleged in Paragraphs 13, 14 and  
23 15 above.

24 PRAYER

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

27 1. Revoking or suspending Pharmacy Technician Registration No. TCH 112091 issued  
28 to Respondent David Madrigal;

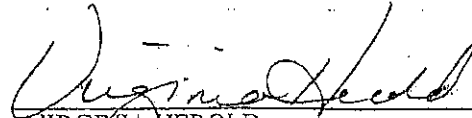
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2. Ordering Respondent David Madrigal to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED:

10/20/15



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