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

In the Matter of the Accusation Against:  
**EMERSON EVERETT WENDEL-HENRY**  
**5297 Edgewood Ln.**  
**Paradise, CA 95969**  
**Pharmacy Technician Registration No. TCH**  
**133780**  
  
Respondent.

Case No. 5894  
  
**DEFAULT DECISION AND ORDER**  
  
[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about January 30, 2017, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 5894 against Emerson Everett Wendel-Henry (Respondent) before the Board of Pharmacy. The Accusation incorrectly identified Respondent's Pharmacy Technician Registration Number as TCH 133789 (Accusation attached as Exhibit A.)

2. On or about October 18, 2013, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 133780 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 5894 and will expire on April 30, 2017, unless renewed.

///

1           3.     On or about February 7, 2017, Respondent was served by Certified Mail and First  
2 Class Mail copies of the Accusation No. 5894, Statement to Respondent, Notice of Defense,  
3 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,  
4 and 11507.7) at Respondent's address of record which, pursuant to Business and Professions  
5 Code section 4100, is required to be reported and maintained with the Board. Respondent's  
6 address of record was and is: 5297 Edgewood Ln., Paradise, CA 95969.

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

10          5.     On or about February 8, 2017, the aforementioned documents were delivered and the  
11 Certified Mail was signed for by Debi Wendel.

12          6.     Government Code section 11506(c) 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  
15 parts of the accusation . . . not expressly admitted. Failure to file a notice of defense  
16 . . . shall constitute a waiver of respondent's right to a hearing, but the agency in its  
17 discretion may nevertheless grant a hearing.

18          7.     Respondent failed to file a Notice of Defense within 15 days after service upon him  
19 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.  
20 5894.

21          8.     California Government Code section 11520(a) states, in pertinent part:

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

26          9.     Pursuant to its authority under Government Code section 11520, the Board finds  
27 Respondent is in default. The Board will take action without further hearing and, based on the  
28 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  
file at the Board's offices regarding the allegations contained in Accusation No. 5894, finds that

1 the charges and allegations in Accusation No. 5894, are separately and severally, found to be true  
2 and correct by clear and convincing evidence.

3 10. Taking official notice of its own internal records, pursuant to Business and  
4 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation  
5 and Enforcement is \$4,680.75 as of March 8, 2017.

6 DETERMINATION OF ISSUES

7 1. Based on the foregoing findings of fact, Respondent Emerson Everett Wendel-Henry  
8 has subjected his Pharmacy Technician Registration No. TCH 133780 to discipline.

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

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

13 Respondent is subject to disciplinary action under Business and Professions Code sections  
14 4301, subsections (j), (h), (o), and (l) for the conviction of a crime substantially related to the  
15 qualifications, functions, and duties of a licensee, for the use of controlled substances in a manner  
16 dangerous or injurious to himself and/or others, and for violating the Pharmacy Law and state  
17 laws regulating controlled substances, as follows:

18 a. On or about October 19, 2015, an officer with the Paradise Police Department  
19 detained Respondent. When the officer asked if he had any weapons on his person, Respondent  
20 said he had a pocket knife in his back pocket. The officer conducted a cursory search for weapons  
21 and found multiple hypodermic needles in a cellophane bag, a bag of marijuana, two pocket  
22 knives, and a concealed knife with a 3.5" fixed blade on Respondent's person. Respondent  
23 admitted that he had narcotics on his person and the officer found multiple color coded baggies  
24 with a white crystalline substance later identified as methamphetamine. Respondent admitted to  
25 the officer that he had used methamphetamine on and off for ten to fifteen years, and had used  
26 marijuana since his early teens. Respondent could not provide the officer with a medical  
27 marijuana recommendation.

28 ///

1 b. On or about October 22, 2015, in a criminal proceeding entitled *People v. Emerson*  
2 *Everett Wendelhenry*, Superior Court of California, County of Butte, Case No. SCR104842,  
3 Respondent was convicted by the court on his plea of no contest of violating Penal Code section  
4 21310 (carrying a concealed dirk or dagger), a misdemeanor.

5 ORDER

6 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 133780, heretofore  
7 issued to Respondent Emerson Everett Wendel-Henry, is revoked.

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

12 This Decision shall become effective at 5:00 p.m. on May 17, 2017.

13 It is so ORDERED on April 17, 2017.

14  
15 BOARD OF PHARMACY  
16 DEPARTMENT OF CONSUMER AFFAIRS  
17 STATE OF CALIFORNIA

18 

19  
20 By \_\_\_\_\_  
21 Amy Gutierrez, Pharm.D.  
22 Board President

23 12614099.DOC  
24 DOJ Matter ID:SA2016102869

25 Attachment:  
26 Exhibit A: Accusation  
27  
28

# Exhibit A

Accusation

(EMERSON EVERETT WENDEL-HENRY)

1 XAVIER BECERRA  
Attorney General of California  
2 KENT D. HARRIS  
Supervising Deputy Attorney General  
3 JOSHUA B. EISENBERG  
Deputy Attorney General  
4 State Bar No. 279323  
1300 I Street, Suite 125  
5 P.O. Box 944255  
Sacramento, CA 94244-2550  
6 Telephone: (916) 327-1466  
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. 5894

12 **EMERSON EVERETT WENDEL-HENRY**  
5297 Edgewood Ln.  
13 Paradise, CA 95969

**ACCUSATION**

14 **Pharmacy Technician Registration No.**  
15 **TCH 133789**

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 2. On or about October 18, 2013, the Board issued Pharmacy Technician Registration  
22 Number TCH 133789 to Emerson Everett Wendel-Henry ("Respondent"). The Pharmacy  
23 Technician Registration was in full force and effect at all times relevant to the charges brought  
24 herein and will expire on April 30, 2017, unless renewed.

25 **JURISDICTION**

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

1 4. Code section 4300 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 year.

8 (4) Revoking his or her license.

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

11 5. Code section 4300.1 states:

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

16 **STATUTORY AND REGULATORY PROVISIONS**

17 6. Code section 4301 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, but is  
20 not limited to, any of the following:

21 (h) The administering to oneself, of any controlled substance, or the use of any  
22 dangerous drug or of alcoholic beverages to the extent or in a manner as to be  
23 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.

24 (i) 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.

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 of a  
27 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United  
States Code regulating controlled substances or of a violation of the statutes of this  
28 state regulating controlled substances or dangerous drugs shall be conclusive  
evidence of unprofessional conduct. In all other cases, the record of conviction shall  
be conclusive evidence only of the fact that the conviction occurred. The board may

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

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

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

19 A person shall not possess any controlled substance, except that furnished to a  
20 person upon the prescription of a physician, dentist, podiatrist, optometrist,  
21 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant  
22 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a  
23 nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to  
24 Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist  
25 pursuant to Section 4052.1, 4052.2, or 4052.6. . . .

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

### 28 COST RECOVERY

9. Code section 125.3 provides, in pertinent part, that the Board may request the  
administrative law judge to direct a licentiate 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, with failure of the licentiate to comply subjecting the license to not being  
renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
included in a stipulated settlement.

### DRUG

10. *Marijuana* is a Schedule I controlled substance pursuant to Health and Safety Code  
section 11054(d)(13).

///



1 11. *Methamphetamine* is a Schedule II controlled substance as designated by Health and  
2 Safety Code section 11055(d)(2).

3 **FIRST CAUSE FOR DISCIPLINE**

4 (Violation of State Laws Regulating Controlled Substances)

5 11. On or about October 19, 2015, an officer with the Paradise Police Department  
6 detained Respondent. When the officer asked if he had any weapons on his person, Respondent  
7 said he had a pocket knife in his back pocket. The officer conducted a cursory search for weapons  
8 and found multiple hypodermic needles in a cellophane bag, a bag of marijuana, two pocket  
9 knives, and a concealed knife with a 3.5" fixed blade on Respondent's person. Respondent  
10 admitted that he had narcotics on his person and the officer found multiple color coded baggies  
11 with a white crystalline substance later identified as methamphetamine. Respondent admitted to  
12 the officer that he had used methamphetamine on and off for ten to fifteen years, and had used  
13 marijuana since his early teens. Respondent could not provide the officer with a medical  
14 marijuana recommendation.

15 12. Respondent is subject to disciplinary action pursuant to Code section 4301(j), on the  
16 grounds of unprofessional conduct, in that Respondent violated statutes regulating controlled  
17 substances and dangerous drugs, as follows:

18 a. **Health & Safety Code section 11357 and Code section 4060:** On or about  
19 October 19, 2015, Respondent possessed the following controlled substances:

- 20 i. Marijuana  
21 ii. Methamphetamine

22 b. **Health and Safety Code Section 11550:** At times unknown between approximately  
23 2000 and October 19, 2015, Respondent unlawfully self-administered the following controlled  
24 substances:

- 25 i. Marijuana  
26 ii. Methamphetamine

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1 **SECOND CAUSE FOR DISCIPLINE**

2 (Use of Controlled Substances in a Dangerous or Injurious Manner)

3 13. Respondent is subject to disciplinary action pursuant to Code section 4301(h), in that  
4 at times unknown between approximately 2000 and October 19, 2015, Respondent used  
5 marijuana and/or methamphetamine in a manner dangerous or injurious to himself and/or others,  
6 as set forth in paragraphs 11 and 12, above.

7 **THIRD CAUSE FOR DISCIPLINE**

8 (Violation of the Pharmacy Law)

9 14. Respondent is subject to disciplinary action pursuant to Code section 4301(o), for  
10 unprofessional conduct, in that Respondent violated laws governing pharmacy, as set forth in  
11 paragraphs 12(a) and 13, above.

12 **FOURTH CAUSE FOR DISCIPLINE**

13 (Criminal Conviction)

14 15. Respondent is subject to disciplinary action pursuant to Code section 4301(i), on the  
15 grounds of unprofessional conduct, in that Respondent committed a crime substantially related to  
16 the qualifications, functions, and duties of a licensed pharmacy technician. Specifically, on or  
17 about October 22, 2015, in a criminal proceeding entitled *People v. Emerson Everett*  
18 *Wendelhenry*, Superior Court of California, County of Butte, Case No. SCR104842, Respondent  
19 was convicted by the court on his plea of no contest of violating Penal Code section 21310  
20 (carrying a concealed dirk or dagger), a misdemeanor. The circumstance of the crime is that on or  
21 about October 19, 2015, Respondent was found to have a concealed dirk, or dagger, on his  
22 person, as set forth in paragraph 11, above.

23 **MATTERS IN AGGRAVATION**

24 16. To determine the degree of discipline to be assessed against Respondent, if any,  
25 Complainant alleges that on or about July 26, 2016, an officer with the Paradise Police  
26 Department found that Respondent had a concealed dirk or dagger and a hypodermic needle on  
27 his person. On or about August 18, 2016, a complaint was filed in *People v. Emerson Everett*  
28 *Wendelhenry*, Superior Court of California, County of Butte, Case No. 16CM03898, alleging that

1 Respondent possessed a dirk or dagger and unlawful possession of drug paraphernalia on or about  
2 July 26, 2016. On or about October 7, 2016, the court issued an arrest warrant for Respondent's  
3 failure to appear in that case.

4 **PRAYER**

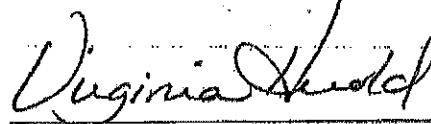
5 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,  
6 and that following the hearing, the Board of Pharmacy issue a decision:

7 1. Revoking or suspending Pharmacy Technician Registration Number TCH 133789,  
8 issued to Emerson Everett Wendel-Henry

9 2. Ordering Emerson Everett Wendel-Henry to pay the Board of Pharmacy the  
10 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
11 Professions Code section 125.3; and,

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

13  
14 DATED: 1/30/17



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

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