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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. 5788

12 **SIMON CHRISTOPHER DAY**
13 **18 Skypark Circle**
South San Francisco, CA 94080

A C C U S A T I O N

14 **Pharmacy Technician Registration No. TCH**
15 **146277**

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 February 11, 2015, the Board of Pharmacy issued Pharmacy Technician
22 Registration Number TCH 146277 to Simon Christopher Day (Respondent). The Pharmacy
23 Technician Registration expired on March 31, 2016, 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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1 4. Section 4011 of the Code provides that the Board shall administer and enforce both
2 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
3 Act [Health & Safety Code, § 11000 et seq.].

4 5. Section 4300 of the Code states, in relevant 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 "(e) The proceedings under this article shall be conducted in accordance with Chapter 5
17 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board
18 shall have all the powers granted therein. The action shall be final, except that the propriety of the
19 action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil
20 Procedure."

21 6. Section 4300.1 of the Code states:

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

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1 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
2 indictment.”

3 8. California Code of Regulations, title 16, section 1770, states:

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

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

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

19 10. Section 4022 of the Code states

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

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

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

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

1 DRUGS

2 11. Code section 4021 states:

3 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
4 11053) of Division 10 of the Health and Safety Code.”

5 12. Promethazine with codeine is a Schedule V controlled substance as designated by
6 Health and Safety Code section 11058, and a dangerous drug as designated by Business and
7 Professions Code section 4022.

8 13. Marijuana is a Schedule I controlled substance as designated by Health
9 and Safety Code section 11054, subd. (d)(13), and a dangerous drug as designated by Business
10 and Professions Code section 4022.

11 14. Zithromax is a brand name for Azithromycin. Azithromycin is an antibiotic useful for
12 the treatment of a number of bacterial infections and is a dangerous drug as designated by
13 Business and Professions Code section 4022.

14 COST RECOVERY

15 15. Section 125.3 of the Code provides, in relevant part, that the Board may request the
16 administrative law judge to direct a licentiate found to have committed a violation or violations of
17 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
18 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
19 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
20 included in a stipulated settlement.

21 BACKGROUND

22 16. On or about November 12, 2015, an officer from the Daly City Police Department,
23 noticed a car on Lake Merced Boulevard in Daly City. The car’s hazard lights were flashing, its
24 hood propped up, and the driver-side door was open, but no one was in the car. Shortly after the
25 officer arrived, Respondent approached the officer and indicated the car belonged to him and that
26 he had been in an accident. Ultimately, it was determined that Respondent’s car had collided with
27 several parked cars. During an inventory of the car, another officer located various types of
28 cannabis products in the car. Respondent admitted to the officer that he had been drinking beer

1 and smoked Marijuana before driving the car. Respondent performed poorly on several field
2 sobriety tests. A preliminary alcohol screening test indicated that Respondent had a blood alcohol
3 concentration of .038%. The officer arrested Respondent for driving while under the influence of
4 alcohol and drugs.

5 17. On or about January 4, 2016, Respondent called Anchor Drugs, a pharmacy in South
6 San Francisco, falsely identified himself as a Dr. W¹, and ordered a prescription for Zithromax
7 and Phenergan with Codeine for a patient, J. S.² Respondent provided the pharmacy with Dr. W's
8 Drug Enforcement Agency (DEA) number for prescribing controlled substances. On January 6,
9 2016, Respondent went to Anchor Drugs and asked to pick up the prescription for J. S., but left
10 the pharmacy after being asked for identification. Respondent was identified by the pharmacy's
11 caller ID and verified by surveillance footage.

12 18. Subsequently, on January 7, 2016, Respondent attempted to pick up a prescription for
13 Azithromycin and Promethazine with Codeine for a J. S. at Walgreens, a pharmacy in South San
14 Francisco. The prescription had been ordered over the phone by someone claiming to be Dr. W.
15 After receiving Respondent's identification, a store clerk notified her supervisor that the
16 transaction appeared to be fraudulent. The supervisor notified the South San Francisco Police
17 Department and officers responded to the store. Based on the report from Anchor Drugs and
18 Respondent's attempt to obtain the prescription at Walgreens, officers arrested Respondent. A
19 subsequent search of Respondent's cell phone revealed a photograph of information related to Dr.
20 W, including the physician's DEA number for prescribing controlled substances. Officers
21 determined that Dr. W never ordered any prescriptions for a J. S. and never allowed Respondent
22 to use his DEA number.

23 19. On or about March 30, 2016, in a criminal matter entitled *The People of the State of*
24 *California v. Simon Day*, in the San Mateo County Superior Court, Case No. 16-NM-001069-A,
25 Respondent, based on a plea of no contest, was convicted of obtaining a controlled substance by
26

27 ¹ The physician's name is being referred to by an initial to protect his or her privacy.

28 ² The name of the patient is being referred to by initials, although police could not locate any records of a J. S. with the birthdate provided by Respondent.

1 fraud (Health & Safety Code, § 11173, subd. (a)), a misdemeanor. The court sentenced
2 Respondent to three years of probation with various terms and conditions including, but not
3 limited to, serving 10 days in jail³ and paying court fees. Further, the court ordered that
4 Respondent could not act as a registered pharmacy technician as a condition of his probation.

5 20. On or about March 30, 2016, in a criminal matter entitled *The People of the State of*
6 *California v. Simon Day*, in the San Mateo County Superior Court, Case No. 15NM001521-A,
7 Respondent, based on a plea of no contest, was convicted of reckless driving involving alcohol or
8 drugs (Veh. Code, § 23103.5, subd. (a)), a misdemeanor. The court sentenced Respondent to two
9 years of probation with various terms and conditions including, but not limited to, completing a
10 first-offender—driving under the influence—program, and paying court fees.

11 **FIRST CAUSE FOR DISCIPLINE**
12 **(Violation of Laws Relating to Controlled Substances)**
13 **(Bus. & Prof. Code, § 4301, subd. (j))**

14 21. Respondent has subjected his Pharmacy Technician Registration to disciplinary action
15 under Code section 4031, subdivision (j), in that he violated laws relating to controlled
16 substances, including Health and Safety Code, section 11350, subdivision (a) (possessing
17 controlled substances), when he possessed and smoked Marijuana, a controlled substance, on or
18 about November 12, 2015. The circumstances are more fully explained in paragraph 16, above.

19 **SECOND CAUSE FOR DISCIPLINE**
20 **(Conviction of Substantially Related Crime)**
21 **(Bus. & Prof Code, § 4301, subd. (l))**

22 22. Respondent has subjected his Pharmacy Technician Registration to disciplinary action
23 in that he was convicted of a crime substantially related to the qualifications, functions, and duties
24 of a registered pharmacy technician (Bus. & Prof. Code, § 4301, subd. (l)). Specifically, on or
25 about March 30, 2016, Respondent was convicted of reckless driving involving alcohol or drugs
26 (Veh. Code, § 23103.5, subd. (a)), in San Mateo County Superior Court. The circumstances are
27 more fully explained in paragraph 20, above.

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³ The court allowed Respondent to serve the jail time through the Sheriff's Alternative Sentencing program, and was credited one day for time served.

1 **THIRD CAUSE FOR DISCIPLINE**
2 **(Committed Act Involving Dishonesty, Fraud, or Deceit)**
3 **(Bus. & Prof. Code, § 4301, subd. (f))**

4 23. Respondent has subjected his Pharmacy Technician Registration to disciplinary action
5 in that he committed acts involving dishonesty and fraud (Bus. & Prof. Code, § 4301, subd. (f)).
6 Specifically, between January 4, 2016 and January 7, 2016, Respondent fraudulently used a
7 physician's name and DEA number to order prescription medications by telephone, and attempted
8 to pick up the medications at various pharmacies. The circumstances are more fully explained in
9 paragraphs 17, 18, and 19, above.

10 **FOURTH CAUSE FOR DISCIPLINE**
11 **(Conviction of Substantially Related Crime)**
12 **(Bus. & Prof Code, § 4301, subd. (I))**

13 24. Respondent has subjected his Pharmacy Technician Registration to disciplinary action
14 in that he was convicted of a crime substantially related to the qualifications, functions, and duties
15 of a registered pharmacy technician (Bus. & Prof. Code, § 4301, subd. (I)). Specifically, on or
16 about March 30, 2016, Respondent was convicted of one count of attempting to obtain a
17 controlled substance by fraud (Health and Safety Code, § 11173, subd. (a)), in San Mateo County
18 Superior Court. The circumstances are more fully explained in paragraph 19, above.

19 PRAYER

20 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
21 Accusation, and that following the hearing, the Board of Pharmacy issue a decision:

22 1. Revoking or suspending Pharmacy Technician Registration Number TCH 146277,
23 issued to Simon Day;

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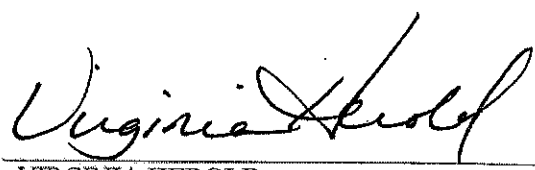
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1 2. Ordering Simon Day to pay the Board of Pharmacy the reasonable costs of the
2 investigation and enforcement of this case, pursuant to Business and Professions Code section
3 125.3; and

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

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6
7 DATED: 8/23/17



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

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