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7
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. 3180

13 **JIMMY LEE FUQUA**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

14 Respondent.

15
16 FINDINGS OF FACT

17 1. On or about April 14, 2009, Complainant Virginia Herold, in her official capacity as
18 the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed
19 Accusation No. 3180 against Jimmy Lee Fuqua (Respondent) before the Board of Pharmacy.

20 2. On or about January 12, 1993, the Board of Pharmacy (Board) issued Pharmacy
21 Technician Registration No. TCH 3154 to Respondent. The Pharmacy Technician Registration
22 was in full force and effect at all times relevant to the charges brought herein and will expire on
23 December 31, 2010, unless renewed.

24 3. On or about April 17, 2009, Staci Caston, an employee of the Department of Justice,
25 served by Certified and First Class Mail a copy of the Accusation No. 3180, Statement to
26 Respondent, Request for Discovery, Notice of Defense (two copies), and Government Code
27 sections to Respondent's address of record with the Board, which was and is:

1 413 Lewis Lane, Pacifica, CA 94044, and to Respondent's alternate address which is: 2531
2 Taylor St. NE, Minneapolis, MN 55418.

3 A copy of the Accusation is attached as exhibit A, and is incorporated herein by reference.

4 4. Service of the Accusation was effective as a matter of law under the provisions of
5 Government Code section 11505, subdivision (c).

6 On or about May 11, 2009, the aforementioned documents were returned by the U.S. Postal
7 Service marked "Unclaimed."

8 5. Government Code section 11506 states, in pertinent part:

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

13 Respondent failed to file a Notice of Defense within 15 days after service upon him of the
14 Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 3180.

15 6. California Government Code section 11520 states, in pertinent part:

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

19 7. Pursuant to its authority under Government Code section 11520, the Board finds
20 Respondent is in default. The Board will take action without further hearing and, based on the
21 evidence on file herein, finds that the allegations in Accusation No. 3180 are true.

22 8. The total cost for investigation and enforcement in connection with the Accusation
23 are \$5,196.75 as of June 26, 2009.

24 DETERMINATION OF ISSUES

25 1. Based on the foregoing findings of fact, Respondent Jimmy Lee Fuqua has subjected
26 his Pharmacy Technician Registration No. TCH 3154 to discipline.

27 2. A copy of the Accusation is attached.

28 3. The agency has jurisdiction to adjudicate this case by default.

1 4. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
2 Registration based upon the following violations alleged in the Accusation:

- 3 a. Diversion of Controlled Substance (Business and Professions Code section 4301(f));
- 4 b. Furnishing a Controlled Substance (Business and Professions Code section
5 4301(j)(o));
- 6 c. Possession of a Controlled Substance (Business and Professions Code section
7 4301(j)(o));
- 8 d. Substantially Related Conviction (Business and Professions Code section 4301(l));
- 9 e. Subverting Investigation (Business and Professions Code section 4301(q));
- 10 f. Failure to Maintain Address of Record (Business and Professions Code section
11 4301(o));

12 ORDER

13 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 3154, heretofore
14 issued to Respondent Jimmy Lee Fuqua, is revoked.

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

19 This Decision shall become effective on October 15, 2009.

20 It is so ORDERED September 15, 2009.

21
22 BOARD OF PHARMACY
23 DEPARTMENT OF CONSUMER AFFAIRS
24 STATE OF CALIFORNIA

25 By *Kenneth H. Schell*
26 _____
27 KENNETH H. SCHELL
28 Board President

27 DOJ docket number:SF2008401770

28 Attachment: Exhibit A: Accusation No.3180

Exhibit A

Accusation No. 3180

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

10 In the Matter of the Accusation Against:

Case No. 3180

11 **JIMMY LEE FUQUA**
12 2531 Taylor St. NE
13 Minneapolis, MN 55418

A C C U S A T I O N

14 Pharmacy Technician Registration
No. TCH 3154

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Virginia K. Herold (Complainant) brings this Accusation solely in her
19 official capacity as the Executive Officer of the Board of Pharmacy.

20 2. On or about January 12, 1993, the Board of Pharmacy issued Pharmacy
21 Technician Registration to Jimmy Lee Fuqua (Respondent). The Pharmacy Technician
22 Registration will expire on December 31, 2010, unless renewed.

23 **JURISDICTION**

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

27 ///

1 4. Section 118(b) of the Code states, in relevant part, that the suspension,
2 expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to
3 proceed with a disciplinary action during the period within which the license may be renewed,
4 restored, reissued or reinstated.

5 5. Section 4402(a) of the Code states that any pharmacist license that is not
6 renewed within three years following its expiration may not be renewed, restored, or reinstated
7 and shall be canceled by operation of law at the end of the three-year period.

8 6. Section 4300 (a) of the Code states that every license issued may be
9 suspended or revoked.

10 7. Section 4301 of the Code states:

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

15

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

19

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

22

23 "(l) The conviction of a crime substantially related to the qualifications, functions,
24 and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
25 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
26 substances or of a violation of the statutes of this state regulating controlled substances or
27 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
28 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

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

12

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 or of the
15 applicable federal and state laws and regulations governing pharmacy, including regulations
16 established by the board or by any other state or federal regulatory agency.

17

18 (q) Engaging in any conduct that subverts or attempts to subvert an investigation
19 of the board.

20

21 8. Section 4059(a) of the Code states, in relevant part, that a person may not
22 furnish any dangerous drug, except with the prescription of a physician, dentist, podiatrist,
23 optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

24 9. Section 4060 of the Code states, in relevant part, that no person shall
25 possess any controlled substance, except that furnished to a person upon the prescription of a
26 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to
27 Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife
28 pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician

1 assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a
2 pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
3 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.

4 10. Title 16, California Code of Regulations, section 1704 states that each
5 person holding a certificate, license, permit, registration or exemption to practice or engage in
6 any activity in the State of California under any and all laws administered by the Board shall file
7 a proper and current residence address with the Board at its office in Sacramento and shall within
8 30 days notify the Board at its said office of any and all changes of residence address, giving
9 both the old and new address.

10 11. Title 16, California Code of Regulations, section 1770, states that for the
11 purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division
12 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be
13 considered substantially related to the qualifications, functions or duties of a licensee or
14 registrant if to a substantial degree it evidences present or potential unfitness of a licensee or
15 registrant to perform the functions authorized by his license or registration in a manner
16 consistent with the public health, safety, or welfare.

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

21 **CONTROLLED SUBSTANCE**

22 13. "Hydrocodone," a narcotic drug compound, is a Schedule III controlled
23 substance as defined in Health and Safety Code section 11056 (e) and a dangerous drug as
24 defined by Code section 4022.

25 **FIRST CAUSE FOR DISCIPLINE**

26 **(Diversion of Controlled Substance)**

27 14. Respondent is subject to disciplinary action under section 4301(f) of the
28 Code in that on or about July 30, 2007, while on duty as a Pharmacy Technician at Walgreens

1 #3707 in San Francisco, California, Respondent committed an act involving moral turpitude,
2 dishonesty, fraud, deceit, or corruption by diverting a bottle of 500 Hydrocodone with
3 acetaminophen 5/500 tablets from Walgreens' supplies.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Furnish a Controlled Substance)**

6 15. Respondent is subject to disciplinary action under sections 4301(j) and/or
7 (o) of the Code for the violation of section 4059(a) of the Code in that Respondent unlawfully
8 furnished Hydrocodone, a controlled substance, to himself without a prescription, as set forth in
9 paragraph 14, above.

10 **THIRD CAUSE FOR DISCIPLINE**

11 **(Possession of Controlled Substance)**

12 16. Respondent is subject to disciplinary action under sections 4301(j) and/or
13 (o) of the Code for the violation of section 4060 of the Code in that Respondent unlawfully
14 possessed Hydrocodone, a controlled substance, as set forth in paragraph 14, above.

15 **FOURTH CAUSE FOR DISCIPLINE**

16 **(Substantially Related Conviction)**

17 17. Respondent is subject to disciplinary action under section 4301(l) of the
18 Code in that he was convicted of a crime which is substantially related to the qualifications,
19 functions and duties of a pharmacy technician as follows:

20 a. On or about January 3, 2006, in a criminal proceeding entitled People of
21 the State of California vs. Jimmy Lee Fuqua, Superior Court of California, County of San Mateo,
22 Case Number NM352923A, Respondent was convicted by a plea of nolo contendere of violating
23 Penal Code section 602.5(A)(unauthorized entry of noncommercial dwelling), a misdemeanor.

24 b. The underlying circumstances are that on or about August 29, 2005,
25 Respondent entered his ex-wife's residence, pushed her, and grabbed her arm, leaving a red mark
26 and bruise on her arm.

27 c. Respondent was sentenced to eighteen (18) months supervised probation,
28 followed by three (3) years court probation. Respondent was ordered to complete 104 hours of

1 domestic violence counseling.

2 **FIFTH CAUSE FOR DISCIPLINE**

3 **(Subverting of Investigation)**

4 18. Respondent is subject to disciplinary action under section 4301(q) of the
5 Code in that Respondent subverted the Board's investigation by failing to respond to the Board's
6 request for him to contact the Board regarding the investigation of theft of controlled substances
7 at Walgreens #3707, as set forth in paragraph 14, above.

8 **SIXTH CAUSE FOR DISCIPLINE**

9 **(Failure to Maintain Current Address of Record)**

10 19. Respondent is subject to disciplinary action under sections 4301(o) of the
11 Code for the violation of Title 16, California Code of Regulations section 1704, in that
12 Respondent failed to maintain a current residence address with the Board.

13 **PRAYER**

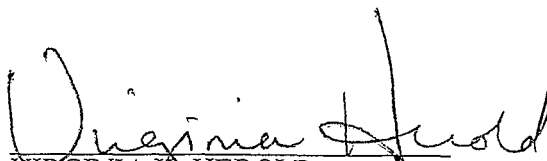
14 WHEREFORE, Complainant requests that a hearing be held on the matters herein
15 alleged, and that following the hearing, the Board of Pharmacy issue a decision:

16 1. Revoking or suspending Pharmacy Technician Registration No. TCH 3154,
17 issued to Jimmy Lee Fuqua;

18 2. Ordering Jimmy Lee Fuqua to pay the Board of Pharmacy the reasonable
19 costs of the investigation and enforcement of this case, pursuant to Business and Professions
20 Code section 125.3;

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

22
23 DATED: 4/14/09

24
25 
26 VIRGINIA K. HEROLD
27 Executive Officer
28 Board of Pharmacy
State of California
Complainant