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8 Attorneys for Complainant

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

12 In the Matter of the Accusation Against:
13 KRISTAL R. MCDONALD
14 6367 Jack Hill Drive
Oroville, CA 95966
15 Pharmacy Technician Reg. No. TCH 33305
16

Case No. 3255

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

19 1. On or about March 19, 2009, Complainant Virginia Herold, in her official
20 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs,
21 filed Accusation No. 3255 against Kristal R. McDonald (Respondent) before the Board of
22 Pharmacy.

23 2. On or about May 18, 2000, the Board of Pharmacy (Board) issued
24 Pharmacy Technician Registration No. TCH 33305 to Respondent. The Pharmacy Technician
25 Registration was in full force and effect at all times relevant to the charges brought herein and
26 will expire on October 31, 2009, unless renewed.

27 3. On or about March 27, 2009, Charlette Sheppard, an employee of the
28 Department of Justice, served by Certified and First Class Mail a copy of the Accusation

1 No. 3255, Statement to Respondent, Notice of Defense, Request for Discovery, and Government
2 Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board,
3 which was and is:

4 6367 Jack Hill Drive
Oroville, CA 95966.
5

6 A copy of the Accusation is attached as Exhibit A, and is incorporated herein by reference.

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

9 5. On or about April 2, 2009, the Domestic Return Receipt for the documents
10 served by certified mail was returned by the U.S. Postal Service indicating that the Accusation
11 was delivered to Respondent's address of record on March 31, 2009.

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

13 (c) The respondent shall be entitled to a hearing on the merits if the
14 respondent files a notice of defense, and the notice shall be deemed a specific
15 denial of all parts 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.

16 7. Respondent failed to file a Notice of Defense within 15 days after service
17 upon her of the Accusation, and therefore waived her right to a hearing on the merits of
18 Accusation No. 3255.

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

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

23 9. Pursuant to its authority under Government Code section 11520, the Board
24 finds Respondent is in default. The Board will take action without further hearing and, based on
25 the evidence on file herein, finds that the allegations in Accusation No. 3255 are true.

26 10. The total cost for investigation and enforcement in connection with the
27 Accusation are \$2,779.25 as of April 27, 2009.

28 ///

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Kristal R. McDonald
has subjected her Pharmacy Technician Registration No. TCH 33305 to discipline.

4 2. A copy of the Accusation is attached.

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

4. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy

7 | Technician Registration based upon the following violations alleged in the Accusation:

19 c. Respondent is subject to disciplinary action under section 4301,
20 subdivision (h) of the Code in that on or about May 14, 2007 and November 19, 2007, while
21 working as a pharmacy technician, Respondent self-administered controlled substances and
22 dangerous drugs, and admitted that she was addicted to prescription medications, conduct
23 substantially related to the qualifications, functions, and duties of a pharmacy technician.

24 d. Respondent is subject to disciplinary action under section 4301,
25 subdivision (o) of the Code in that on or about May 14, 2007 and November 19, 2007, while
26 working as a pharmacy technician, Respondent violated Title 21 United States Code section 843,
27 subdivision (a)(3), Board of Pharmacy Regulations (California Code of Regulations, Title 16,
28 Section 1700, et seq.), and the California Uniform Controlled Substances Act (Health and Safety

1 Code 11000, et seq.), conduct substantially related to the qualifications, functions, and duties of
2 a pharmacy technician.

ORDER

4 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 33305,
5 heretofore issued to Respondent Kristal R. McDonald, 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.

11 This Decision shall become effective on August 14, 2009.

13 It is so ORDERED July 15, 2009

By Kenneth H. Schell
KENNETH H. SCHELL
Board President

25 80355970.wpd
DOJ docket number:SD2009803480

28 | Attachment: Exhibit A: Accusation No. 3255

Exhibit A
Accusation No. 3255

EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE
1300 I Street, Sacramento, CA 95814
Billing Inquiries: (916) 324-5090



Cost-of-Suit Summary

As Of 04/27/2009

Matter ID: SD2009803480

Date Opened: 01/09/2009

Description McDonald, Kristal R., TCH

Total Legal Costs: \$688.25
Cost-of-Suit: \$0.00
Grand Total: \$688.25

Matter Time Activity Summary

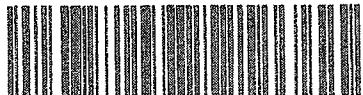
Rate	Hrs Wrkd	Amount
Professional Type: Attorney		
FY: 2008-2009		
\$158.00	1.00	\$158.00
FY 2008-2009 Total:		<u>\$158.00</u>
Attorney Total:		<u>\$158.00</u>
Professional Type: Paralegal		
FY: 2008-2009		
\$101.00	5.25	\$530.25
FY 2008-2009 Total:		<u>\$530.25</u>
Paralegal Total:		<u>\$530.25</u>
Total Legal Costs:		
		<u>\$688.25</u>

Cost-of-Suit

Entry #	Journal Date	Vendor #	Vendor	Schedule	Reference	Amount
Client Agency:						
FY:						
Component Description:						
						\$0.00
					Total:	<u>\$0.00</u>
					FY Total:	<u>\$0.00</u>
					Client Agency Total:	<u>\$0.00</u>
					Cost-of-Suit:	<u>\$0.00</u>

* Denotes soft costs which are not included in totals

2. Article



7160 3901 9848 2000 5470

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

Sharon McDonald 3/31/09

B. Date of Delivery

C. Signature

X Sharon McDonald

 Agent
 AddresseeD. Is delivery address different from item 1?
If YES, enter delivery address below: Yes
 No

3. Service Type CERTIFIED MAIL

4. Restricted Delivery? (Extra Fee) Yes

1. Article Addressed to:

Kristal R. McDonald
6367 Jack Hill Drive
Oroville, CA 95966

SD2009803480
Accusation Packet
Amanda Dodds

PS Form 3811, January 2005

Domestic Return Receipt

1 EDMUND G. BROWN JR., Attorney General
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12 || In the Matter of the Accusation Against:

Case No. 3255

13 KRISTAL R. MCDONALD
6367 Jack Hill Drive
14 Oroville, CA 95966

ACCUSATION

15 | Pharmacy Technician Reg. No. TCH 33305

Respondent.

18 Complainant alleges:

PARTIES

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

23 2. On or about May 18, 2000, the Board of Pharmacy issued Pharmacy
24 Technician Registration Number TCH 33305 to Kristal R. McDonald (Respondent). The
25 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges
26 brought herein and will expire on October 31, 2009, unless renewed.

27 | / / /

28 | //

JURISDICTION

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

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

STATUTORY PROVISIONS

5. Section 4300, subdivision (a) of the Code states that "every license issued may be suspended or revoked."

12 || 6. Section 4301 of the Code states:

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.

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

(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.

(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing

pharmacy, including regulations established by the board or by any other state or federal regulatory agency.

7. Section 4022 of the Code states

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

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

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

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

8. Section 4059 of the Code states, in pertinent part, that a person may not

furnish any dangerous drug except upon the prescription of a physician, dentist, podiatrist,

optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may no

furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist,

optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

9. Section 4060 of the Code states:

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.

Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices.

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

5 11. United States Code, title 21, section 843 states, in pertinent part:

6 (a) It shall be unlawful for any person knowingly or intentionally --

7

8 (3) to acquire or obtain possession of a controlled substance by
9 misrepresentation, fraud, forgery, deception, or subterfuge;

10

11 **DRUGS**

12 12. Hydrocodone bitartate/acetaminophen, also known by the brand names
13 Vicodin, Norco, and Lortab, is a Schedule III controlled substance as designated by Health and
14 Safety Code section 11056, subdivision (e)(4), and is a dangerous drug pursuant to Business and
15 Professions Code section 4022.

16 13. Carisoprodol, the generic name for Soma, is a dangerous drug pursuant to
17 Business and Professions Code section 4022.

18 **FACTS**

19 14. Respondent was employed as a pharmacy technician at a San Juan

20 Capistrano Costco store from May 14, 2007, until she was terminated on November 20, 2007. In
21 or around November 2007, the Drug Enforcement Agency (DEA) was alerted by a Costco
22 employee to possible illegal drug activity on the part of Respondent. Costco's Regional
23 Pharmacy Manager directed an audit of Respondent's prescriptions, which revealed
24 discrepancies with the store's inventory of hydrocodone and Soma.

25 15. On or about November 19 and 20, 2007, a full audit of hydrocodone
26 products was conducted. It was determined that 2,765 hydrocodone-containing tablets were
27 missing from inventory.

28 ///

1 16. On or about November 20, 2007, Respondent met with various Costco
2 loss prevention personnel at the store. Respondent admitted that she had been abusing
3 prescription medications and was interested in the employee assistance program. Respondent
4 admitted that she had stolen approximately 200 tablets of carisoprodol (Soma) and 150 tablets of
5 hydrocodone products from Costco for her personal use.

FIRST CAUSE FOR DISCIPLINE

**(Unprofessional Conduct - Commission of Acts Involving Moral Turpitude,
Dishonesty, Fraud, Deceit & Corruption)**

9 17. Respondent is subject to disciplinary action under section 4301,
10 subdivision (f) of the Code in that on or about May 14, 2007 and November 19, 2007, while
11 working as a pharmacy technician, Respondent admitted stealing controlled substances and
12 dangerous drugs from her employer, Costco, using fraud, deceit, and dishonesty, as detailed in
13 paragraphs 14-16, above.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Possession of Controlled Substances & Dangerous Drugs)

16 18. Respondent is subject to disciplinary action under section 4301,
17 subdivision (j) of the Code in that on or about May 14, 2007 and November 19, 2007, while
18 working as a pharmacy technician, Respondent knowingly violated Business and Professions
19 Code sections 4022, 4059, and 4060 in that she furnished to herself and was in possession of
20 controlled substances and dangerous drugs without a prescription, as detailed in paragraphs 14
21 16, above.

THIRD CAUSE FOR DISCIPLINE

(Self-Administration of Controlled Substances and Dangerous Drugs)

24 19. Respondent is subject to disciplinary action under section 4301,
25 subdivision (h) of the Code in that on or about May 14, 2007 and November 19, 2007, while
26 working as a pharmacy technician, Respondent self-administered controlled substances and
27 dangerous drugs, and admitted that she was addicted to prescription medications, as detailed in
28 paragraphs 14-16, above.

1 FOURTH CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct - Violating Federal & State Laws
3 & Regulations Governing Pharmacy)

4 20. Respondent is subject to disciplinary action under section 4301,
5 subdivision (o) of the Code in that on or about May 14, 2007 and November 19, 2007, while
6 working as a pharmacy technician, Respondent violated Title 21 United States Code section 843,
7 subdivision (a)(3), Board of Pharmacy Regulations (California Code of Regulations, Title 16,
8 Section 1700, et seq.), and the California Uniform Controlled Substances Act (Health and Safety
9 Code 11000, et seq.), as detailed in paragraphs 14-16, above.

10 PRAYER

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

- 13 1. Revoking or suspending Pharmacy Technician Registration Number TCH
14 33305, issued to Kristal R. McDonald;
- 15 2. Ordering Kristal R. McDonald to pay the Board of Pharmacy the
16 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
17 Professions Code section 125.3;
- 18 3. Taking such other and further action as deemed necessary and proper.

19

20 DATED: 3/19/09

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22

23

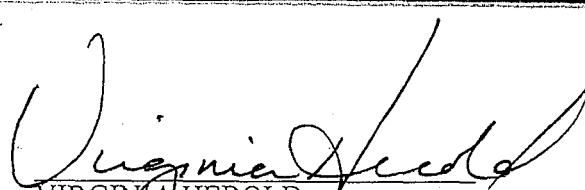
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VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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