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

In the Matter of the Accusation Against:

Case No. 3551

STEPHANIE RAE FERNANDEZ
678 Bartlett Avenue
Hayward, CA 94541
**Pharmacy Technician Registration No. TCH
75828**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

Respondent.

FINDINGS OF FACT

1. On or about June 3, 2010, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 3551 against Stephanie Rae Fernandez (Respondent) before the Board of Pharmacy.
2. On or about April 25, 2007, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 75828 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2010, unless renewed.
3. On or about June 7, 2010, Joan Randolph, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation No. 3551, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is:

1
2 678 Bartlett Avenue
Hayward, CA 94541.

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

7 (c) The respondent shall be entitled to a hearing on the merits if the respondent
8 files a notice of defense, and the notice shall be deemed a specific denial of all parts
9 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.

10 6. Respondent failed to file a Notice of Defense within 15 days after service upon her of
11 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 3551.

12 7. California Government Code section 11520 states, in pertinent part:

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

16 8. Pursuant to its authority under Government Code section 11520, the Board finds
17 Respondent is in default. The Board will take action without further hearing and, based on the
18 evidence on file herein, finds that the allegations in Accusation No. 3551 are true.

19 9. The total cost for investigation and enforcement in connection with the Accusation
20 are \$4,402.00 as of July 8, 2010.

21 DETERMINATION OF ISSUES

22 1. Based on the foregoing findings of fact, Respondent Stephanie Rae Fernandez has
23 subjected her Pharmacy Technician Registration No. TCH 75828 to discipline.

24 2. A copy of the Accusation is attached.

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

26 4. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
27 Registration based upon the following violations alleged in the Accusation:
28

1 a. Respondent is subject to disciplinary action under Business and Professions Code
2 (“Code”) section 4301(j) in that Respondent violated the laws of California concerning dangerous
3 drugs and controlled substances.

4 b. Respondent is subject to disciplinary action under section 4301(f) of the Code in that
5 Respondent committed acts of moral turpitude, dishonesty, and/or deceit.

6 c. Respondent is subject to disciplinary action under sections 4301(l) and 490 of the
7 Code in that respondent was convicted of a crime that is substantially related to the duties,
8 functions, or qualifications of pharmacy technician.

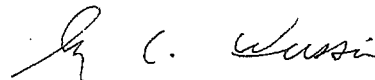
9 ORDER

10 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 75828, heretofore
11 issued to Respondent Stephanie Rae Fernandez, is revoked.

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

16 This Decision shall become effective on October 27, 2010.

17 It is so ORDERED September 27, 2010.



18
19 STANLEY C. WEISSER, BOARD PRESIDENT
20 FOR THE BOARD OF PHARMACY
21 DEPARTMENT OF CONSUMER AFFAIRS

22 20305854.DOC
23 DOJ docket number:SF2010400067

24 Attachment:

25 Exhibit A: Accusation No. 3551
26
27
28

Exhibit A
Accusation No. 3551

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7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:
11 **STEPHANIE RAE FERNANDEZ**
12 678 Bartlett Avenue
Hayward, CA 94541
13 **Pharmacy Technician Registration No. TCH**
75828
14
15 Respondent.

Case No. 3551

A C C U S A T I O N

16
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 25, 2007, the Board of Pharmacy issued Pharmacy Technician
22 Registration Number TCH 75828 to Stephanie Rae Fernandez (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 September 30, 2010, unless renewed.

25 **JURISDICTION**

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

1 4. Section 4300 of the Code states:

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

3 5. Section 4301 of the Code states:

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

7 ...

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

11 ...

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

14 ...

15 "(l) The conviction of a crime substantially related to the qualifications, functions, and
16 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
17 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
18 substances or of a violation of the statutes of this state regulating controlled substances or
19 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
20 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
21 The board may inquire into the circumstances surrounding the commission of the crime, in order
22 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
23 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
24 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
25 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
26 of this provision. The board may take action when the time for appeal has elapsed, or the
27 judgment of conviction has been affirmed on appeal or when an order granting probation is made
28 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of

1 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
2 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
3 indictment.”

4 6. Section 4059 of the Code states, in pertinent part, that a person may not furnish any
5 dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,
6 veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any
7 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist,
8 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

9 7. Section 4060 of the Code states:

10 "No person shall possess any controlled substance, except that furnished to a person upon
11 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
12 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
13 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
14 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
15 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
16 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
17 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
18 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
19 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
20 labeled with the name and address of the supplier or producer.

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

24 8. Section 490 of the Code provides, in pertinent part, that a board may suspend or
25 revoke a license on the ground that the licensee has been convicted of a crime substantially
26 related to the qualifications, functions, or duties of the business or profession for which the
27 license was issued.

28 9. Health and Safety Code Section 11350 (a) states:

1 "Except as otherwise provided in this division, every person who possesses (1) any
2 controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of
3 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or
4 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section
5 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic
6 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian
7 licensed to practice in this state, shall be punished by imprisonment in the state prison.

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

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

15 COSTS

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

20 DRUGS INVOLVED

21 12. Hydrocodone/APAP (Brand name Vicodin) is a controlled substance pursuant to
22 Health and Safety Code section 11056(e)(4) and a dangerous drug pursuant to Business and
23 professions code §4022. It is used to treat pain.

24 FACTUAL BACKGROUND

25 13. From about December 11, 2007 until about December 8, 2008, Respondent stole
26 approximately 18 bottles of Hydrocodone/APAP 10mg/325mg from her employer Walgreens.
27 Respondent worked for Walgreens as a pharmacy technician. Each bottle Respondent stole
28 contained about 500 pills of Hydrocodone/APAP 10mg/325mg. Respondent gave the bottles of

1 Hydrocodone/APAP 10mg/325mg to her boyfriend who then sold the bottles for \$1200 each.
2 Respondent's boyfriend then gave the proceeds of the sale back to Respondent.

3 14. On or about May 18, 2009, In Alameda County Superior Court Case No. 417524-7
4 (H46893A), Respondent was convicted on a plea of no contest to violating Penal Code section
5 487(a), felony grand theft. The circumstances are described in paragraph 13, above.

6 FIRST CAUSE FOR DISCIPLINE

7 (Unprofessional Conduct-Conviction)

8 15. Respondent is subject to disciplinary action under sections 4301(l) and 490 of the
9 code in that respondent was convicted of a crime that is substantially related to the duties,
10 functions, or qualifications of pharmacy technician. The circumstances are described in
11 paragraphs 13-14, above.

12 SECOND CAUSE FOR DISCIPLINE

13 (Unprofessional Conduct-Violation of Drug Laws)

14 16. Respondent is subject to disciplinary action under section 4301(j) of the Code in that
15 Respondent violated Business and Professions Code §§ 4059, 4060 and Health Safety Code
16 §11350(a) (all are California statutes that regulate controlled substances and dangerous drugs) by
17 possessing and furnishing controlled substances and dangerous drugs without a prescription. The
18 circumstances are described in paragraph 13, above.

19 THIRD CAUSE FOR DISCIPLINE

20 (Unprofessional Conduct-Moral Turpitude, Dishonesty, Fraud, and/or Deceit)

21 17. Respondent is subject to disciplinary action under section 4301 (f) of the code in that
22 Respondent committed acts of moral turpitude, dishonesty, and/or deceit. The circumstances are
23 described in paragraph 13, 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 Number TCH 75828,
28 issued to Stephanie Rae Fernandez.

