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

In the Matter of the Accusation Against:
ANTHONY CLINTON THWEATT
2411 Arline Street
West Covina, CA 91792
**Pharmacy Technician Registration No.
TCH 49549,**

Case No. 3777

DEFAULT DECISION AND ORDER

Respondent. [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about February 23, 2011, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 3777 against Anthony Clinton Thweatt (Respondent) before the Board of Pharmacy. (The Accusation is attached hereto as Exhibit A.)

2. On or about August 22, 2003, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 49549 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein. The license expired on May 31, 2011, and has not been renewed.

3. On or about March 3, 2011, Respondent was served by both Certified Mail and First Class Mail with copies of Accusation No. 3777, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code section 4100, is required to be reported and maintained with the Board, which was and is:

1
2 2411 Arline Street, West Covina, CA 91792.

3 4. Service of the Accusation was effective as a matter of law under the provisions of
4 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
5 124.

6 5. On or about March 28, 2011, the Certified Mail set of the aforementioned documents
7 were returned by the U.S. Postal Service marked "Unclaimed" after three attempts at delivery.

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

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

14 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
15 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
16 3777.

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

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

22 9. Pursuant to its authority under Government Code section 11520, the Board finds
23 Respondent is in default. The Board will take action without further hearing and, based on the
24 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
25 taking official notice of all the investigatory reports, exhibits and statements contained therein on
26 file at the Board's offices regarding the allegations contained in Accusation No. 3777, finds that
27 the charges and allegations in Accusation No. 3777, are separately and severally, found to be true
28 and correct by clear and convincing evidence.

10. Taking official notice of its own internal records, pursuant to Business and
Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
and Enforcement is \$5,428.50 as of June 10, 2011.

1 DETERMINATION OF ISSUES

2 1. Based on the foregoing findings of fact, Respondent Anthony Clinton Thweatt has
3 subjected his Pharmacy Technician Registration No. TCH 49549 to discipline.

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

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

8 a. Business & Professions Code §§ 4301, subdivision (l), and 490 - - conviction of a
9 substantially related crime; and

10 b. Business & Professions Code § 4301, subdivisions (j) and (o) - - obtained or
11 possessed a controlled substance.

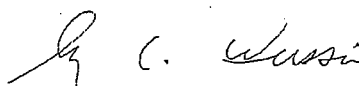
12 ORDER

13 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 49549, heretofore
14 issued to Respondent Anthony Clinton Thweatt, 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 September 15, 2011.

20 It is so ORDERED August 16, 2011.

21 

22
23 _____
24 STANLEY C. WEISSER, BOARD PRESIDENT
25 FOR THE BOARD OF PHARMACY
26 DEPARTMENT OF CONSUMER AFFAIRS

27 Attachment:
28 Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
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2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 TERRENCE M. MASON
Deputy Attorney General
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6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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. 3777

13 **ANTHONY CLINTON THWEATT,**
a.k.a. ANTHONY C. THWEATT,
14 a.k.a. ANTHONY C. THEATT
2411 Arline Street
West Covina, CA 91792

ACCUSATION

15 **Pharmacy Technician License**
16 **No. TCH 49549**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about August 22, 2003, the Board of Pharmacy (Board) issued Pharmacy
24 Technician License No. TCH 49549 to Anthony Clinton Thweatt, also known as Anthony C.
25 Thweatt and Anthony C. Theatt (Respondent). The Pharmacy Technician License was in full
26 force and effect at all times relevant to the charges brought herein, and will expire on May 31,
27 2011, unless renewed.

28 ///

1 JURISDICTION

2 3. This Accusation is brought before the Board under the authority of the following
3 laws. All section references are to the Business and Professions Code unless otherwise indicated.

4 STATUTORY PROVISIONS

5 4. Section 118, subdivision (b) provides in pertinent part, that the expiration of a license
6 shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period
7 within which the license may be renewed, restored, reissued or reinstated.

8 5. Section 490 states, in pertinent part:

9 "(a) In addition to any other action that a board is permitted to take against a licensee, a
10 board may suspend or revoke a license on the ground that the licensee has been convicted of a
11 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
12 or profession for which the license was issued.

13 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
14 discipline a licensee for conviction of a crime that is independent of the authority granted under
15 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
16 of the business or profession for which the licensee's license was issued.

17 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
18 conviction following a plea of nolo contendere. Any action that a board is permitted to take
19 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
20 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
21 made suspending the imposition of sentence, irrespective of a subsequent order under the
22 provisions of Section 1203.4 of the Penal Code."

23 6. Section 4060 of the states, in pertinent part:

24 "No person shall possess any controlled substance, except that furnished to a person upon
25 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
26 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
27 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a

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1 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
2 or a 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. This section shall not
4 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
5 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
6 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
7 labeled with the name and address of the supplier or producer.”

8 7. Section 4300 provides, in pertinent part, that every license issued by the Board is
9 subject to discipline, including suspension or revocation.

10 8. Section 4301 states, in pertinent part:

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

14

15 - “(j) The violation of any of the statutes of this state, or any other state, or of the United
16 States regulating controlled substances and dangerous drugs.

17

18 “(l) The conviction of a crime substantially related to the qualifications, functions, and
19 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
20 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
21 substances or of a violation of the statutes of this state regulating controlled substances or
22 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
23 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
24 The board may inquire into the circumstances surrounding the commission of the crime, in order
25 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
26 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
27 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
28 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning

1 of this provision. The board may take action when the time for appeal has elapsed, or the
2 judgment of conviction has been affirmed on appeal or when an order granting probation is made
3 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
4 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
5 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
6 indictment.”

7

8 “(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
9 violation of or conspiring to violate any provision or term of this chapter or of the applicable
10 federal and state laws and regulations governing pharmacy, including regulations established by
11 the board or by any other state or federal regulatory agency.”

12 REGULATORY PROVISIONS

13 9. California Code of Regulations, title 16, section 1770 states, in pertinent part:

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

20 COST RECOVERY

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

25 11. CONTROLLED SUBSTANCES

26 a. “Ativan,” is the brand name for Lorazepam, a benzodiazepine derivative. It is a
27 ~~Schedule IV controlled substance as designated by Health and Safety Code section 11057,~~
28 subdivision (d)(16) and is categorized as a dangerous drug pursuant to section 4022.

1 b. "Norco," is the brand name for Hydrocodone /Acetaminophen 10/325mg. It is a
2 Schedule III controlled narcotic substance pursuant to Health and Safety Code section
3 11056(e)(4) and is categorized as a dangerous drug pursuant to section 4022.

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Conviction of a Substantially Related Crime)**

6 12. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and
7 490, in conjunction with California Code of Regulations, title 16, section 1770, in that
8 Respondent was convicted of a crime substantially related to the qualifications, functions or
9 duties of a pharmacy technician. On or about November 23, 2010, Respondent was convicted of
10 one felony count of violating Health & Safety Code section 11377, subdivision (a) [possession of
11 a controlled substance] in the criminal proceeding entitled *The People of the State of California v.*
12 *Anthony Clinton Thweatt*, (Los Angeles County Superior Court Case No. KA091342). The Court
13 placed Respondent on 3 years formal probation, with terms and conditions. The circumstances
14 surrounding the conviction are that on or about April 11, 2009, Respondent was contacted during
15 a traffic stop by the West Covina Police Department. While speaking to Respondent, the police
16 officer detected a strong odor of an alcoholic beverage emitting from the interior of the vehicle.
17 Respondent was observed to be sweating about the face and forehead, had rapid speech, and an
18 odor of alcohol upon his breath. When asked if there were any open containers or other illegal
19 contraband in the car, Respondent stated, "There's nothing in there." During a search of
20 Respondent's vehicle, the police officer found 2 unopened bottles of Hydrocodone containing 100
21 pills each. During the booking search of Respondent's person, the officer found two small tablets
22 in Respondent's right front pants pocket. When asked about these pills, Respondent indicated
23 that he did not know where the pills came from, nor whom they belonged to. An investigation
24 revealed that these pills were Ativan, a controlled substance.

25 **SECOND CAUSE FOR DISCIPLINE**

26 **(Obtained or Possessed a Controlled Substance)**

27 ~~13. Respondent is subject to disciplinary action under section 4301, subdivisions (j) and~~
28 (o) for violating section 4060, in that on or about April 11, 2009, Respondent was found to be in

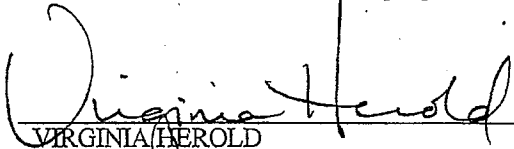
1 possession of a controlled substance. Complainant refers to, and by this reference incorporates,
2 the allegations set forth above in paragraph 12; as though set forth fully.

3 PRAYER

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

- 6 1. Revoking or suspending Pharmacy Technician License No. TCH 49549, issued to
7 Respondent.
8 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
9 enforcement of this case, pursuant to section 125.3;
10 3. Taking such other and further action as deemed necessary and proper.

11
12 Dated: 2/23/11


13 VIRGINIA HEROLD
14 Executive Officer
15 Board of Pharmacy
16 Department of Consumer Affairs
17 State of California
18 Complainant

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