

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

In the Matter of the Accusation Against:  
**WILBUR LON WHEELER**  
8166 Center Parkway #32  
Sacramento, California 95823  
  
Pharmacy Technician License No. TCH 41397  
  
Respondent.

Case No. 3827  
**DEFAULT DECISION AND ORDER**  
[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about December 30, 2010, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 3827 against Wilbur Lon Wheeler (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about February 8, 2002, the Board of Pharmacy (Board) issued Pharmacy Technician License No. TCH 41397 to Respondent. The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2011, unless renewed.

3. On or about January 5, 2011, Respondent was served by Certified Mail and by First Class Mail with copies of the Accusation No. 3827, Statement to Respondent, Notice of Defense (two blank copies), 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 136 and/or agency specific statute or regulation, is required to be

1 reported and maintained with the Board, which was and is: 8166 Center Parkway, #32,  
2 Sacramento, California 95823. Respondent was also served by Certified Mail and First Class Mail  
3 with copies of the aforesaid documents at 3254 Imani Drive, Columbus, Ohio 43224.

4 4. Service of the Accusation was effective as a matter of law under the provisions of  
5 Government Code section 11505, subdivision (c) and/or Business & Professions Code section  
6 124.

7 5. On or about January 10, 2011, the Certified Mail to Respondent at 8166 Center  
8 Parkway, #32, Sacramento, California 95823 was returned by the U.S. Postal Service marked  
9 "Attempted, Not Known." The First Class Mail to Respondent at the aforesaid address was not  
10 returned by the U.S. Postal Service.

11 On January 18, 2011, a Return Receipt signed by a "Gay Wheeler" on January 13, 2011,  
12 was received for the Certified Mail sent to Respondent at 3254 Imani Drive, Columbus Ohio  
13 43224. The First Class mail to Respondent at 3254 Imani Drive, Columbus Ohio 43224 was not  
14 returned by the U.S. Postal Service.

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

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

21 7. Respondent failed to file a Notice of Defense within fifteen (15) days after service  
22 upon him of the Accusation, and therefore waived his right to a hearing on the merits of  
23 Accusation No. 3827.

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

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

9. Pursuant to its authority under Government Code section 11520, the Board finds  
Respondent is in default. The Board will take action without further hearing and, based on the  
relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,

1 as well as taking official notice of all the investigatory reports, exhibits and statements contained  
2 therein on file at the Board's offices regarding the allegations contained in Accusation No. 3827,  
3 finds that the charges and allegations in Accusation No. 3827, are separately and severally, found  
4 to be true and correct by clear and convincing evidence.

5 10. Taking official notice of its own internal records, pursuant to Business and  
6 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation  
7 and Enforcement is \$1,615.00 as of January 31, 2011.

8 DETERMINATION OF ISSUES

9 1. Based on the foregoing findings of fact, Respondent Wilbur Lon Wheeler has  
10 subjected his Pharmacy Technician License No. TCH 41397 to discipline.

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

12 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician  
13 License based upon the following violations alleged in the Accusation, which are supported by  
14 the evidence contained in the Default Decision Investigatory Evidence Packet in this case:

15 a. Violation of Business & Professions Code sections 4301(j) and 4301(o) by Violation  
16 of Drug Laws; and

17 b. Violation of Business & Professions Code section 4301(f) for Unprofessional  
18 Conduct by Acts of Moral Turpitude, Dishonesty and Fraud.

19 ///  
20 ///  
21 ///  
22 ///  
23 ///  
24 ///  
25 ///  
26 ///  
27 ///  
28 ///

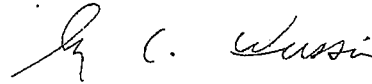
ORDER

IT IS SO ORDERED that Pharmacy Technician License No. TCH 41397, heretofore issued to Respondent Wilbur Lon Wheeler, 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.

This Decision shall become effective on May 11, 2011.

It is so ORDERED April 11, 2011.



---

STANLEY C. WEISSER, BOARD PRESIDENT  
FOR THE BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS

SA2010103125 / 10663827.docx

Attachment:  
Exhibit A: Accusation

# Exhibit A

Accusation No. 3827

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 ARTHUR D. TAGGART  
Supervising Deputy Attorney General  
3 STERLING A. SMITH  
Deputy Attorney General  
4 State Bar No. 84287  
1300 I Street, Suite 125  
5 P.O. Box 944255  
Sacramento, CA 94244-2550  
6 Telephone: (916) 445-0378  
Facsimile: (916) 327-8643  
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. 3827

13 **WILBUR LON WHEELER**  
8166 Center Parkway #32  
14 Sacramento, California 95823  
Pharmacy Technician License No. TCH 41397

**A C C U S A T I O N**

15 Respondent.

16  
17 Complainant alleges:

18 PARTIES

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

22 2. On or about February 8, 2002, the Board issued Pharmacy Technician Registration  
23 No. TCH 41397 to Respondent Wilbur Lon Wheeler. The license was in full force and effect at  
24 all times relevant to the charges brought herein and will expire on September 30, 2011, unless  
25 renewed.

26 ///

27 ///

28 ///

STATUTORY PROVISIONS

3. Under Business & Professions Code section 4300, the Board may discipline any license, for any reason provided in the Pharmacy Law (i.e., Business & Professions Code sections 4000 et. seq.).

4. Business & Professions Code section 4301 states, in pertinent part:  
“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.

(j) The violation of any of the statutes of this 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.

...”  
5. Business & Professions Code section 4060 provides, in pertinent part, that “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...”

6. Business & Professions Code section 4059, subdivision (a), provides, 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.”

///

1           7. Health & Safety Code section 11352, subdivision (a), prohibits the transportation,  
2 importation, sale, furnishing, administration or giving away of controlled substances classified in  
3 Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a  
4 physician, dentist, podiatrist or veterinarian licensed to practice in the State of California.

5           8. Health & Safety Code section 11350, subdivision (a), provides in pertinent part that  
6 "...every person who possesses...(2) any controlled substance classified in Schedule III, IV, or V  
7 which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or  
8 veterinarian licensed to practice in this state, shall be punished by imprisonment in the state  
9 prison".

10          9. Health & Safety Code section 11173, subdivision (a) provides that "no person shall  
11 obtain or attempt to obtain controlled substances, or procure or attempt to procure the  
12 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,  
13 or subterfuge; or (2) by the concealment of a material fact".

14          10. Business & Professions Code section 118 (b), states: The suspension, expiration, or  
15 forfeiture by operation of law of a license issued by a board in the department, or its suspension,  
16 forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender  
17 without the written consent of the board, shall not, during any period in which it may be renewed,  
18 restored, reissued, or reinstated, deprive the board of its authority to institute or continue a  
19 disciplinary proceeding against the licensee upon any ground provided by law or to enter an order  
20 suspending or revoking the license or otherwise taking disciplinary action against the licensee on  
21 any such ground.

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

26 ///

27 ///

28 ///



1 CONTROLLED SUBSTANCES/DANGEROUS DRUGS AT ISSUE

2 12. Hydrocodone with acetaminophen is a dangerous drug, a narcotic drug and a  
3 Schedule III controlled substance as designated by Health & Safety Code section 11056 (e)(4).  
4 Hydrocodone with acetaminophen is dispensed as HC/AP 5/500 mg tablets and also as HC/AP  
5 10/325 mg tablets.

6 13. At all relevant times from and after August 6, 2007, Respondent Wilbur Lon Wheeler  
7 was employed as a pharmacy technician by Respondent Bel Air Pharmacy # 510, 1540 West El  
8 Camino, Sacramento, California 95833.

9 14. During the period of time of from in or about March 2009 through on or about  
10 January 21, 2010, Respondent stole approximately 2,000 HC/AP 5/500 mg tablets from the  
11 inventory of Bel Air Pharmacy #510 from time to time during the performance of his duties as a  
12 pharmacy technician employed by Bel Air Pharmacy #510. Respondent sold, distributed or  
13 otherwise furnished all or some portion of said HC/AP 5/500 mg tablets to others.

14 FIRST CAUSE FOR DISCIPLINE

15 (Unprofessional Conduct: Violation of Drug Laws)

16 15. Paragraphs 1 through 14 above are incorporated by reference. Respondent is subject  
17 to disciplinary action under Business & Professions Code sections 4301(j) and 4301(o), because  
18 he violated California statutes regulating controlled substances and dangerous drugs, as follows:

19 (a) Business and Professions Code section 4059(a) and Health & Safety Code section  
20 11352(a) by furnishing HC/AP 5/500 mg tablets, a controlled substance and dangerous drug, to  
21 himself and to others without a prescription;

22 (b) Business and Professions Code section 4060 and Health & Safety Code section  
23 11350(a) by possessing HC/AP 5/500 mg tablets without a prescription; and

24 (c) Health and Safety Code section 11173 by obtaining HC/AP 5/500 tablets by fraud,  
25 deceit, misrepresentation, or subterfuge.

26 ///

27 ///

28 ///

1 SECOND CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct; Acts of Moral Turpitude, Dishonesty and Fraud)

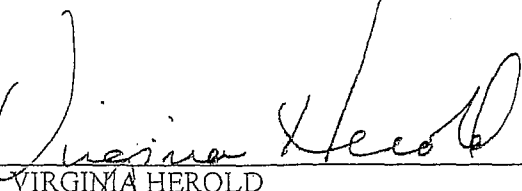
3 16. Paragraphs 1 through 14 above are incorporated by reference. Respondent is subject  
4 to disciplinary action under Business & Professions Code section 4301(f) in that he committed  
5 acts of moral turpitude, dishonesty, fraud, deceit, or corruption. As alleged in Paragraph 14, from  
6 time to time during the period of from in or about March 2009 through on or about  
7 January 21, 2010, while working as a pharmacy technician for employer Bel Air Pharmacy  
8 #510, Respondent stole approximately 2,000 HC/AP 5/500 mg tablets from the inventory of Bel  
9 Air Pharmacy #510. Respondent sold, distributed or otherwise furnished all or some portion of  
10 the HC/AP 5/500 mg tablets to others.

11 PRAYER

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

- 14 1. Revoking or suspending Pharmacy Technician License No. TCH 41397 issued to  
15 Respondent Wilbur Lon Wheeler;
- 16 2. Ordering Respondent to pay the Board of Pharmacy the reasonable costs of the  
17 investigation and enforcement pursuant to Business and Professions Code section 125.3; and
- 18 3. Taking such other and further action as deemed necessary and proper.

19  
20  
21 DATED: 12/30/10



22 VIRGINIA HEROLD  
23 Executive Officer  
24 Board of Pharmacy  
25 Department of Consumer Affairs  
26 State of California  
27 Complainant

28 SA2010102505  
accusation.rtf