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

9 In the Matter of the Accusation Against:

Case No. 4024

10 **ANDREW LAWRENCE MARES**
11 **508 South Plum Ave.**
12 **Ontario, CA 91761**
13 **Pharmacy Technician Registration No. TCH**
14 **72300**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

Respondent.

15 FINDINGS OF FACT

16 1. On or about April 5, 2011, Complainant Virginia Herold, in her official capacity as
17 the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed
18 Accusation No. 4024 against Andrew Lawrence Mares (Respondent) before the Board of
19 Pharmacy. (Accusation attached as Exhibit A.)

20 2. On or about October 19, 2006, the Board of Pharmacy (Board) issued Pharmacy
21 Technician Registration No. TCH 72300 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 August 31, 2012, unless renewed.

24 3. On or about April 18, 2011, Respondent was served by Certified Mail copies of the
25 Accusation No. 4024, Statement to Respondent, Notice of Defense, Request for Discovery, and
26 Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's
27 address of record which, pursuant to Business and Professions Code section 4100, is required to
28 be reported and maintained with the Board, which was and is 508 South Plum Avenue, Ontario,
CA 91761.

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

4 5. On or about May 5, 2011, the aforementioned documents were returned by the U.S.
5 Postal Service marked "Returned to Sender." The address on the documents was the same as the
6 address on file with the Board. Respondent failed to maintain an updated address with the Board
7 and the Board has made attempts to serve the Respondent at the address on file. Respondent has
8 not made himself available for service and therefore, has not availed himself of his right to file a
9 notice of defense and appear at hearing.

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

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

16 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
17 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
18 4024.

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
21 hearing, the agency may take action based upon the respondent's express admissions
22 or upon other evidence and affidavits may be used as evidence without any notice to
23 respondent.

24 9. Pursuant to its authority under Government Code section 11520, the Board finds
25 Respondent is in default. The Board will take action without further hearing and, based on the
26 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
27 taking official notice of all the investigatory reports, exhibits and statements contained therein on
28 file at the Board's offices regarding the allegations contained in Accusation No. 4024, finds that
the charges and allegations in Accusation No. 4024, are separately and severally, found to be true
and correct by clear and convincing evidence.

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1 10. Taking official notice of its own internal records, pursuant to Business and
2 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
3 and Enforcement is \$1,757.50 as of May 12, 2011.

4 DETERMINATION OF ISSUES

5 1. Based on the foregoing findings of fact, Respondent Andrew Lawrence Mares has
6 subjected his Pharmacy Technician Registration No. TCH 72300 to discipline.

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

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

11 a. Respondent is subject to disciplinary action under section 490, 493 and 4301,
12 subdivisions (f) of the Code on the grounds of unprofessional conduct as defined in Title 16,
13 California Code of Regulations, section 1770, in that he was convicted of a crime substantially
14 related to the qualifications, duties and functions of a Pharmacy Technician.

15 b. Respondent is subject to disciplinary action for unprofessional conduct under Code
16 section 4301 (f) in that between May 1, 2010 and November 15, 2010, while working as a
17 pharmacy technician at CVS Pharmacy, Respondent obtained by fraud, deceit, and subterfuge,
18 Hydrocodone/Acetaminophen, a controlled substance under Health and Safety Code section
19 11056(e)(4) and Acetaminophen/Codeine, a controlled substance under Health and Safety Code
20 section 11056(e)(5), in violation of Health and Safety Code section 11173 (a).

21 c. Respondent is subject to disciplinary action for unprofessional conduct under Code
22 section 4301 (j) in that between May 1, 2010 and November 15, 2010, while working as a
23 pharmacy technician at CVS Pharmacy, Respondent possessed and took
24 Hydrocodone/Acetaminophen, a controlled substance under Health and Safety Code section
25 11056(e)(4) and Acetaminophen/ Codeine, a controlled substance under Health and Safety Code
26 section 11056(e)(5), in violation of Code section 4060 and Health and Safety Code section
27 11350.

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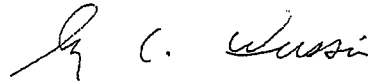
ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 72300, heretofore issued to Respondent Andrew Lawrence Mares, 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 October 12, 2011.

It is so ORDERED September 12, 2011.



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

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DOJ Matter ID:LA2011501306

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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7 *Attorneys for Complainant*

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10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

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12 **ANDREW LAWRENCE MARES**
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14 **Pharmacy Technician Registration No. TCH**
72300

A C C U S A T I O N

15 Respondent.

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 October 19, 2006, the Board of Pharmacy issued Pharmacy Technician
22 Registration Number TCH 72300 to Andrew Lawrence Mares (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 August 31, 2012, 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 118, subdivision (b), of the Code provides that the
2 suspension/expiration/surrender/cancellation of a license shall not deprive the
3 Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period
4 within which the license may be renewed, restored, reissued or reinstated.

5 5. Section 477 of the Code states:

6 As used in this division:

7 "(a) 'Board' includes 'bureau,' 'commission,' 'committee,' 'department,' 'division,'
8 'examining committee,' 'program,' and 'agency.'

9 "(b) 'License' includes certificate, registration or other means to engage in a
10 business or profession regulated by this code."

11 6. Section 482 of the Code states:

12 "Each board under the provisions of this code shall develop criteria to evaluate the
13 rehabilitation of a person when:

14 "(a) Considering the denial of a license by the board under Section 480; or

15 "(b) Considering suspension or revocation of a license under Section 490.

16 "Each board shall take into account all competent evidence of rehabilitation furnished by
17 the applicant or licensee."

18 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or
19 revoke a license on the ground that the licensee has been convicted of a crime substantially
20 related to the qualifications, functions, or duties of the business or profession for which the
21 license was issued.

22 8. Section 493 of the Code states:

23 "Notwithstanding any other provision of law, in a proceeding conducted by a board within
24 the department pursuant to law to deny an application for a license or to suspend or revoke a
25 license or otherwise take disciplinary action against a person who holds a license, upon the
26 ground that the applicant or the licensee has been convicted of a crime substantially related to the
27 qualifications, functions, and duties of the licensee in question, the record of conviction of the
28 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,

1 and the board may inquire into the circumstances surrounding the commission of the crime in
2 order to fix the degree of discipline or to determine if the conviction is substantially related to the
3 qualifications, functions, and duties of the licensee in question.

4 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
5 'registration.'"

6 9. Section 4301 of the Code states:

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

10 ...

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

14 ...

15 (j) The violation of any of the statutes of this state, or any other state, or of the
16 United 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 10. Section 4059 of the Code states:

8 “(a) A person may not furnish any dangerous drug, except upon the prescription of a
9 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
10 3640.7.”

11 11. Section 4060 of the Code states:

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

23 12. California Code of Regulations title 16, section 1770 states:

24 “For the purpose of denial, suspension, or revocation of a personal or facility license
25 pursuant to Division 1.5 (commencing with Section 475) of the business and Professions Code, a
26 crime or act shall be considered substantially related to the qualifications, function or duties of a
27 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
28

1 licensee or registrant to perform the functions authorized by this license or registration in a
2 manner consistent with the public health, safety, or welfare.”

3 13. Health and Safety Code section 11173 states, in pertinent part:

4 (a) No person shall obtain or attempt to obtain controlled substances, or
5 procure or attempt to procure the administration of or prescription for controlled
6 substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the
7 concealment of a material fact.

8 14. California Health and Safety Code section 11350 states, in pertinent part:

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

17 **COST RECOVERY**

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

22 **DRUGS**

23 16. “Norco,” is the brand name for Hydrocodone/Acetaminophen. It is a Schedule III
24 controlled substance as designated by Health and Safety Code section 11056, subdivision (e)(4)
25 and is categorized as a dangerous drug per Business and Professions Code section 4022.

26 17. “Vicodin” is the brand name for Acetaminophen/ Codeine (Tylenol #3, Tylenol #4,
27 APAP #3, APAP #4). It is a Schedule III narcotic controlled substance as defined in Health and
28 Safety Code section 11056(e)(5) and is categorized as a dangerous drug per Business and
Professions Code section 4022.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 (Conviction of a Crime)

3 18. Respondent is subject to disciplinary action under section 490, 493 and 4301,
4 subdivisions (f) of the Code on the grounds of unprofessional conduct as defined in Title 16,
5 California Code of Regulations, section 1770, in that he was convicted of a crime substantially
6 related to the qualifications, duties and functions of a Pharmacy Technician. The circumstances
7 are as follows:

8 a. On February 24, 2011, in the Superior Court, County of San Bernardino, California,
9 in the matter entitled *The People of the State of California vs. Andrew Lawrence Mares* (2011),
10 Case No. FWV1003150, Respondent was convicted by the court following his plea of nolo
11 contendere to a violation of Penal Code 487, subdivision (a) (grand theft), a felony.

12 b. The facts that lead to the conviction were that between May 1, 2010 and November
13 15, 2010, Defendant Mares, a pharmacy technician, admitted that he was unlawfully taking
14 several medications from his employer, CVS Pharmacy (CVS), a pharmacy located in Upland,
15 California.

16 **SECOND CAUSE FOR DISCIPLINE**

17 (Obtained Controlled Substances by Fraud, Deceit, and Subterfuge)

18 19. Respondent is subject to disciplinary action for unprofessional conduct under Code
19 section 4301 (f) in that between May 1, 2010 and November 15, 2010, while working as a
20 pharmacy technician at CVS Pharmacy, Respondent obtained by fraud, deceit, and subterfuge,
21 Hydrocodone/Acetaminophen, a controlled substance under Health and Safety Code section
22 11056(e)(4) and Acetaminophen/Codeine, a controlled substance under Health and Safety Code
23 section 11056(e)(5), in violation of Health and Safety Code section 11173 (a), as set forth in
24 paragraph 18, above.

25 **THIRD CAUSE FOR DISCIPLINE**

26 (Possession of a Controlled Substance Without a Prescription)

27 20. Respondent is subject to disciplinary action for unprofessional conduct under Code
28 section 4301 (j) in that between May 1, 2010 and November 15, 2010, while working as a

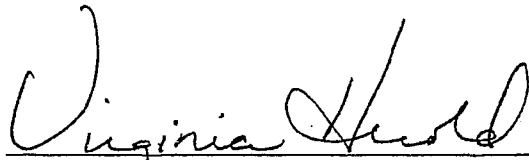
1 pharmacy technician at CVS Pharmacy, Respondent possessed and took
2 Hydrocodone/Acetaminophen, a controlled substance under Health and Safety Code section
3 11056(e)(4) and Acetaminophen/ Codeine, a controlled substance under Health and Safety Code
4 section 11056(e)(5), in violation of Code section 4060 and Health and Safety Code section 11350
5 (a), as set forth in paragraph 18, above.

6 **PRAYER**

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

- 9 1. Revoking or suspending Pharmacy Technician Registration Number TCH 72300,
10 issued to Andrew Lawrence Mares;
- 11 2. Ordering Andrew Lawrence Mares to pay the Board of Pharmacy the reasonable costs
12 of the investigation and enforcement of this case, pursuant to Business and Professions Code
13 section 125.3; and
- 14 3. Taking such other and further action as deemed necessary and proper.

15
16
17 DATED: 4/5/11



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

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