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

In the Matter of the Accusation Against:
EDDIE M. JOHNSON
8346 Golden Avenue
Lemon Grove, CA 91945

Pharmacy Technician Registration No. TCH
39901

Respondent.

Case No. 4734

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about September 19, 2013, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4734 against Eddie M. Johnson (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about December 6, 2001, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 39901 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 4734 and will expire on July 31, 2015, unless renewed.

1 3. On or about October 2, 2013, Respondent was served by Certified and First Class
2 Mail copies of the Accusation No. 4734, Statement to Respondent, Notice of Defense, Request
3 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
4 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
5 section 4100, is required to be reported and maintained with the Board. Respondent's address of
6 record was and is: 8346 Golden Avenue, Lemon Grove, CA 91945.

7 4. Service of the Accusation was effective as a matter of law under the provisions of
8 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
9 124.

10 5. On or about October 7, 2013, the domestic return receipt reflecting service of the
11 aforementioned documents by Certified Mail was returned by the U.S. Postal Service, signed and
12 dated October 4, 2013.

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

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

19 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
20 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
21 4734.

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

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

27 9. Pursuant to its authority under Government Code section 11520, the Board finds
28 Respondent is in default. The Board will take action without further hearing and, based on the
relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
taking official notice of all the investigatory reports, exhibits and statements contained therein on
file at the Board's offices regarding the allegations contained in Accusation No. 4734, finds that

1 the charges and allegations in Accusation No. 4734, are separately and severally, found to be true
2 and correct by clear and convincing evidence.

3 10. Taking official notice of its own internal records, pursuant to Business and
4 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
5 and Enforcement is \$4,233.50 as of October 24, 2013.

6 DETERMINATION OF ISSUES

7 1. Based on the foregoing findings of fact, Respondent Eddie M. Johnson has subjected
8 his Pharmacy Technician Registration No. TCH 39901 to discipline.

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

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

13 a. Respondent is subject to disciplinary action under section 4301, subdivision (j) for
14 dishonest acts, in that Respondent falsified entries in hospital records by withdrawing medication
15 and charging the withdrawal to patients who did not receive the drugs, and for stealing drugs from
16 his employer; and,

17 b. Respondent is subject to disciplinary action under section 4301, subdivisions (j) and
18 (o) for violation of Business and Professions Code section 4060 for possessing a controlled
19 substance without a prescription, in that Respondent possessed hydromorphone without a
20 prescription.

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ORDER

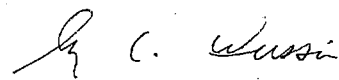
IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 39901, heretofore issued to Respondent Eddie M. Johnson, is revoked.

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 January 17, 2014.

It is so ORDERED ON December 18, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____
STAN C. WEISSER
Board President

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DOJ Matter ID:SD2013705544

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
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2 JAMES M. LEDAKIS
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3 NICOLE R. TRAMA
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7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11
12 In the Matter of the Accusation Against:

Case No. 4734

13 **EDDIE M. JOHNSON**
14 **8346 Golden Avenue**
Lemon Grove, CA 91945

ACCUSATION

15 **Pharmacy Technician Registration No. TCH**
16 **39901**

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 December 6, 2001, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 39901 to Eddie M. Johnson (Respondent). The Pharmacy Technician
25 Registration was in full force and effect at all times relevant to the charges brought herein and
26 expired on July 31, 2013.

JURISDICTION

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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 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].

5. Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked.

6. Section 4300.1 of the Code states:

The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.

STATUTORY PROVISIONS & REGULATORY PROVISIONS

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 4060 of the Code provides that no person shall possess a controlled substance except that furnished to a person upon a valid prescription.

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9. 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.

....

(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.

....

10. Health and Safety Code section 11170 states:

No person shall prescribe, administer, or furnish a controlled substance for himself.

COST RECOVERY

11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

1 **DRUGS**

2 12. Hydromorphone is a Schedule II controlled substance pursuant to Health and Safety
3 Code section 11055, subdivision (b), and a dangerous drug pursuant to Business and Professions
4 Code section 4022.

5 **FACTUAL ALLEGATIONS**

6 13. Respondent was employed as a pharmacy technician at Sharp Memorial Hospital
7 Pharmacy located at 7901 Frost Street in San Diego, California, from July 8, 2002 to March 22,
8 2012.

9 14. On or about March 12, 2012, the hospital's housekeeper discovered Benadryl vials in
10 the men's bathroom trashcans. The next day, on or about March 13, 2012, the housekeeper again
11 discovered Benadryl vials in the trashcans in the men's bathroom. A couple days later on or
12 about March 15, 2012, the housekeeper found three vials of Benadryl 50 mg, two vials of 1ml
13 hydromorphone 10mg/ml and 1 vial of 5ml hydromorphone 10mg/ml in the trashcans in the
14 men's bathroom. The housekeeper also discovered controlled substance documentation sheets
15 with Respondent's name on them and a patient label for hydromorphone 11mg/55ml for patient
16 E.P. Following this discovery, the Pharmacist-in-Charge (PIC) initiated an internal investigation,
17 which included reviewing Pyxis¹ records and other pharmacy records. The following narcotic
18 discrepancies were attributed to Respondent:

19 a. On March 3, 2012 at 9:32 hours, Respondent removed 1 vial of hydromorphone
20 500mg (1 vial x 50ml 10mg/ml) from the Pyxis for patient S.L. There is no delivery receipt
21 reflecting that the hydromorphone was delivered to this patient. Therefore, Respondent failed to
22 account for 1 vial of hydromorphone 500mg (1 x 50ml 10mg/ml).

23
24 ¹ Pyxis is a trade name for the automated single-unit dose medication dispensing system
25 that delivers medications, typically narcotics and controlled substances, to an individual
26 authorized to access the system. The Pyxis records information such as patient name, physician
27 orders, date and time medication was withdrawn, and the name of the licensed individual who
28 withdrew and administered the medication. Each user/operator is given a user identification code
to operate the control panel. Sometimes only portions of the withdrawn narcotics are given to the
patient. The portions not given to the patient are referred to as "wastage." This waste must be
witnessed by another authorized user and is also recorded by the Pyxis machine.

1 b. On March 10, 2012 at 07:30 hours, Respondent removed 100 mg hydromorphone (2
2 vials x 5 ml amps at 10 mg/ml) from the Pyxis for patient H.K. There is no delivery receipt
3 reflecting that the hydromorphone was delivered to this patient. Therefore, Respondent failed to
4 account for 100 mg hydromorphone (2 vials x 5 ml amps at 10 mg/ml).

5 c. On March 10, 2012 at 09:12 hours, Respondent removed 1 vial of hydromorphone
6 500 mg (10mg/ml 50 ml vial) from the Pyxis for patient H.K. There is no delivery receipt
7 reflecting that the hydromorphone was delivered to this patient. Therefore, Respondent failed to
8 account for 1 vial of hydromorphone 500 mg (10mg/ml 50 ml vial).

9 d. On March 11, 2012 at 09:34 hours, Respondent removed 1 vial of hydromorphone
10 500 mg (10mg/ml 50 ml vial) from the Pyxis for patient H.K. There is no delivery receipt
11 reflecting that the hydromorphone was delivered to this patient. Therefore, Respondent failed to
12 account for 1 vial of hydromorphone 500 mg (10mg/ml 50 ml vial).

13 e. On March 15, 2012 at 11:46 hours, Respondent removed 20 mg of hydromorphone (2
14 vials x 1 ml 10mg/ml) from the Pyxis for patient E.P. Patient E.P. did not have a physician's
15 order for hydromorphone at or near the time of Respondent's removal of the drug. There is no
16 delivery receipt reflecting that the hydromorphone was delivered to this patient. Both vials were
17 discovered empty in the trashcan by the hospital housekeeper.

18 f. On March 15, 2015 at 11:47 hours, Respondent removed 100 mg of hydromorphone
19 (2 vials x 5 ml 10mg/ml) from the Pyxis for patient E.P. Patient E.P. did not have a physician's
20 order for hydromorphone at or near the time of Respondent's removal of the drug. There is no
21 delivery receipt reflecting that the hydromorphone was delivered to this patient. One of these
22 vials was discovered empty in the trashcan by the hospital housekeeper. The other vial was
23 unaccounted for.

24 15. On March 16, 2012 at 09:24 hours, Respondent inventoried diphenhydramine at a
25 Pyxis machine. The expected beginning count was 8 vials of diphenhydramine. Respondent
26 edited the beginning count to 6 vials of diphenhydramine, creating a discrepancy of 2 vials of
27 diphenhydramine. A witness saw Respondent place something in his pocket and then enter the
28

1 Cathlab restroom. Shortly thereafter, 3 vials of diphenhydramine were discovered in the trashcan
2 in the Cathlab restroom.

3 16. Respondent was terminated from his employment at Sharp on March 22, 2012 and the
4 discrepancies were reported to the Board of Pharmacy.

5 **FIRST CAUSE FOR DISCIPLINE**

6 (Dishonest Act)

7 17. Respondent is subject to disciplinary action under section 4301, subdivision (j) for
8 dishonest acts, in that Respondent falsified entries in hospital records by withdrawing medication
9 and charging the withdrawal to patients who did not receive the drugs, and for stealing drugs from
10 his employer, as set forth in as set forth in paragraphs 13 through 16, which are incorporated
11 herein by reference.

12 **SECOND CAUSE FOR DISCIPLINE**

13 (Unlawful Possession of a Controlled Substance)

14 18. Respondent is subject to disciplinary action under section 4301, subdivisions (j) and
15 (o) for violation of Business and Professions Code section 4060 for possessing a controlled
16 substance without a prescription, in that Respondent possessed hydromorphone without a
17 prescription as set forth in paragraphs 13 through 16, which are incorporated herein by reference.

18 **PRAYER**

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

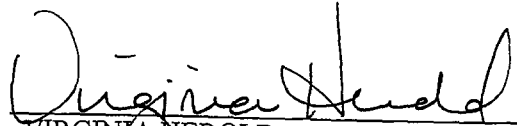
21 1. Revoking or suspending Pharmacy Technician Registration Number TCH 39901,
22 issued to Eddie M. Johnson;

23 2. Ordering Eddie M. Johnson to pay the Board of Pharmacy the reasonable costs of the
24 investigation and enforcement of this case, pursuant to Business and Professions Code section
25 125.3;

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3. Taking such other and further action as deemed necessary and proper.

DATED: 9/19/13



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

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