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

In the Matter of the Accusation Against:

EILEEN JEANNE ASISTIN
1877 Whaley Avenue
San Diego, CA 92104

Pharmacy Technician Registration
No. TCH 49143

Respondent.

Case No. 5136

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about July 26, 2014, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 5136 against Eileen Jeanne Asistin (Respondent) before the Board of Pharmacy.

(A copy of the Accusation is attached as Exhibit A.)

2. On or about August 21, 2003, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 49143 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 5136 and will expire on June 30, 2015, unless renewed.

3. On or about August 7, 2014, Respondent was served by Certified and First Class Mail copies of the Accusation No. 5136, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at

1 Respondent's address of record which, pursuant to Business and Professions Code section 4100
2 and California Code of Regulations, title 16, section 1704, is required to be reported and
3 maintained with the Board. Respondent's address of record was and is:

4 1877 Whaley Avenue
5 San Diego, CA 92104

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

9 5. On or about September 2, 2014, the aforementioned documents served by Certified
10 Mail were returned by the U.S. Postal Service undelivered. The address on the documents was
11 the same as the address on file with the Board. Respondent failed to maintain an updated address
12 with the Board and the Board has made attempts to serve the Respondent at the address on file.
13 Respondent has not made herself available for service and therefore, has not availed herself of her
14 right to file a notice of defense and appear at hearing.

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 15 days after service upon her of
22 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 5136.

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

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

28 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 Evidence Packet in this matter, as well as
taking official notice of all the investigatory reports, exhibits and statements contained therein on

1 file at the Board's offices regarding the allegations contained in Accusation No. 5136, finds that
2 the charges and allegations in Accusation No. 5136, are separately and severally, found to be true
3 and correct by clear and convincing evidence.

4 10. Taking official notice of its own internal records, pursuant to Business and
5 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
6 and Enforcement is \$882.50 as of September 22, 2014.

7 **DETERMINATION OF ISSUES**

8 1. Based on the foregoing findings of fact, Respondent Eileen Jeanne Asistin has ___
9 subjected her Pharmacy Technician Registration No. TCH 49143 to discipline.

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

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

14 a. Respondent has subjected her registration to discipline under section 4301,
15 subdivision (f) of the Code for unprofessional conduct in that on or between November 2011 and
16 November 2013, Respondent obtained controlled substances and dangerous drugs from her
17 employer/pharmacy using fraud, deceit, and dishonesty.

18 b. Respondent has subjected her registration to discipline under section 4301,
19 subdivision (j) of the Code for unprofessional conduct in that on or between November 2011 and
20 November 2013, Respondent knowingly violated Business and Professions Code sections 4059,
21 4060, and 4324, and Health and Safety Code sections 11350 and 11378.

22 c. Respondent has subjected her registration to discipline under section 4301,
23 subdivision (o) of the Code for unprofessional conduct in that on or between November 2011 and
24 November 2013, Respondent violated Title 21 U.S.C. section 843, subdivision (a)(3), Board of
25 Pharmacy Regulations (California Code of Regulations, Title 16, Section 1700, et seq.), and the
26 California Uniform Controlled Substances Act (Health and Safety Code 11000, et seq.), when she
27 obtained controlled substances using fraud and deceit.

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Exhibit A

Accusation

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2 LINDA K. SCHNEIDER
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3 State Bar No. 101336
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8
9 **BEFORE THE**
10 **BOARD OF PHARMACY**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. 5136

13 **EILEEN JEANNE ASISTIN**
14 **1877 Whaley Avenue**
San Diego, CA 92104

ACCUSATION

15 **Pharmacy Technician Registration**
16 **No. TCH 49143**

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 21, 2003, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 49143 to Eileen Jeanne Asistin (Respondent). The Pharmacy
25 Technician Registration was in full force and effect at all times relevant to the charges brought
26 herein and will expire on June 30, 2015, unless renewed.

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1 JURISDICTION

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

5 4. Section 4300, subdivision (a) of the Code states: "Every license issued may be
6 suspended or revoked."

7 5. Section 4300.1 of the Code states:

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

12 STATUTORY PROVISIONS

13 6. Section 4301 of the Code states:

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

18

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

22

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

25

26 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
27 abetting the violation of or conspiring to violate any provision or term of this chapter
28 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.

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1 7. Section 4022 of the Code states

2 "Dangerous drug" or "dangerous device" means any drug or device unsafe for
3 self-use in humans or animals, and includes the following:

4 (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing
5 without prescription," "Rx only," or words of similar import.

6 (b) Any device that bears the statement: "Caution: federal law restricts this
7 device to sale by or on the order of a _____," "Rx only," or words of similar
8 import, the blank to be filled in with the designation of the practitioner licensed to use
9 or order use of the device.

10 (c) Any other drug or device that by federal or state law can be lawfully
11 dispensed only on prescription or furnished pursuant to Section 4006.

12 8. Section 4059, subdivision (a) of the Code states:

13 A person may not furnish any dangerous drug, except upon the prescription of a
14 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
15 pursuant to Section 3640.7. A person may not furnish any dangerous device, except
16 upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or
17 naturopathic doctor pursuant to Section 3640.7.

18 9. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
19 controlled substance, except that furnished to a person upon the prescription of a physician,
20 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor.

21 10. Section 4324 of the Code states:

22 (a) Every person who signs the name of another, or of a fictitious person, or
23 falsely makes, alters, forges, utters, publishes, passes, or attempts to pass, as genuine,
24 any prescription for any drugs is guilty of forgery and upon conviction thereof shall
25 be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal
26 Code, or by imprisonment in a county jail for not more than one year.

27 (b) Every person who has in his or her possession any drugs secured by a
28 forged prescription shall be punished by imprisonment pursuant to subdivision (h) of
Section 1170 of the Penal Code, or by imprisonment in the county jail for not more
than one year.

 11. United States Code, title 21, section 843 states, in pertinent part:

 (a) It shall be unlawful for any person knowingly or intentionally –

 (3) to acquire or obtain possession of a controlled substance by
misrepresentation, fraud, forgery, deception, or subterfuge;

1 **REGULATORY PROVISIONS**

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

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

7 **COSTS**

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

14 **DRUGS**

15 14. Alprazolam is a Schedule IV controlled substance under California Health and Safety
16 Code section 11057, subdivision (d)(1), and is classified as a dangerous drug pursuant to Business
17 and Professions Code section 4022.

18 15. Clonazepam is a Schedule IV controlled substance under California Health and
19 Safety Code section 11057, subdivision (d)(7), and is a dangerous drug pursuant to Business and
20 Professions Code section 4022.

21 16. Hydrocodone is a Schedule II controlled substance as designated by Health and Safety
22 Code section 11055, subdivision (b)(1)(I), and is a dangerous drug pursuant to Business and
23 Professions Code section 4022.

24 17. Oxycodone is a Schedule II controlled substance as designated by Health and Safety
25 Code section 11055, subdivision (b)(1)(N), and is a dangerous drug pursuant to Business and
26 Professions Code section 4022.

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1 18. Phentermine is a Schedule IV controlled substance as designated by Health and
2 Safety Code section 11057, subdivision (f)(4), and is a dangerous drug pursuant to Business and
3 Professions Code section 4022.

4 19. Temazepam is a Schedule IV controlled substance as designated by Health and Safety
5 Code section 11057, subdivision (d), and is a dangerous drug pursuant to Business and
6 Professions Code section 4022.

7 **FACTUAL ALLEGATIONS**

8 20. At all times referenced herein, Respondent was employed as a pharmacy technician at
9 a San Diego Costco pharmacy. On or about November 18, 2013, the San Diego Field Office of
10 the Drug Enforcement Agency (DEA) received a request for assistance from a Costco
11 representative. The representative told DEA agents that Respondent had been videotaped on their
12 surveillance cameras stealing medications from their pharmacy during her work shift on
13 November 16, 2013. Costco loss prevention officers had confronted Respondent at the pharmacy
14 and she admitted stealing alprazolam as seen in the video. Inside Respondent's purse, loss
15 prevention officers recovered prescription bottles containing various quantities of controlled
16 substances as follows: 180 tablets of alprazolam, 52 tablets of temazepam, 71.5 tablets of
17 phentermine, and 39 tablets of uncontrolled medications. Respondent consented to allowing
18 Costco employees to enter her residence to obtain additional stolen medications she had stored
19 there. The DEA agents took custody of the drugs found in Respondent's purse. Under
20 questioning, Respondent told the DEA agents that she had recently started using alprazolam given
21 to her by a friend, and admitted she had been stealing small amounts of temazepam and
22 alprazolam from the pharmacy for the last several months. The DEA agents received
23 Respondent's consent to search her residence. While there, they recovered prescription bottles
24 containing various quantities of controlled substances as follows: 75 tablets of hydrocodone, 4
25 tablets of oxycodone, 6.5 tablets of alprazolam, 30 tablets of clonazepam, 33 tablets of
26 uncontrolled medications, and a sealed bottle of 30 tablets of Cialis. The bottle for clonazepam
27 contained a prescription label for another patient. One prescription bottle for alprazolam was
28 issued in November 2011 in Respondent's name. Respondent was transported to the DEA field

1 office where she then admitted she first tried alprazolam two years earlier. Respondent stated that
2 she entered false information into the prescription software at the Costco pharmacy to see if her
3 insurance would pay for the alprazolam, and she found that it would. She claimed that she
4 cancelled the prescription in the system and never filled it, but she did print a label for the bottle.
5 Respondent admitted that she printed the label and affixed it to the bottle so as to appear she had a
6 legitimate prescription for the stolen alprazolam. Respondent also admitted to stealing various
7 controlled and uncontrolled drugs from the pharmacy during her employment at Costco, including
8 the bottle of Cialis which she stole for a family member but had not yet given it to him.
9 Respondent was arrested by the DEA agents on November 18, 2013, and charged with violating
10 Health and Safety Code section 11350 (illegal possession of controlled substances), Health and
11 Safety Code section 11375 (illegal possession of designated controlled substances), and Penal
12 Code section 487 (grand theft).

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(Commission of Acts Involving Dishonesty, Fraud, Deceit & Corruption)**

15 21. Respondent has subjected her registration to discipline under section 4301,
16 subdivision (f) of the Code for unprofessional conduct in that on or between November 2011 and
17 November 2013, Respondent obtained controlled substances and dangerous drugs from her
18 employer/pharmacy using fraud, deceit, and dishonesty, as described in paragraph 20, above.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Violation of California Statutes Regulating Controlled Substances)**

21 22. Respondent has subjected her registration to discipline under section 4301,
22 subdivision (j) of the Code for unprofessional conduct in that on or between November 2011 and
23 November 2013, Respondent knowingly violated Business and Professions Code sections 4059,
24 4060, and 4324, and Health and Safety Code sections 11350 and 11378, as described in paragraph
25 20, above.

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1 THIRD CAUSE FOR DISCIPLINE

2 (Violation of Federal & State Laws & Regulations Governing Pharmacy)

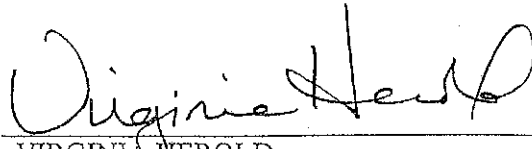
3 23. Respondent has subjected her registration to discipline under section 4301,
4 subdivision (o) of the Code for unprofessional conduct in that on or between November 2011 and
5 November 2013, Respondent violated Title 21 U.S.C. section 843, subdivision (a)(3), Board of
6 Pharmacy Regulations (California Code of Regulations, Title 16, Section 1700, et seq.), and the
7 California Uniform Controlled Substances Act (Health and Safety Code 11000, et seq.), when she
8 obtained controlled substances using fraud and deceit, as described in paragraph 20, above.

9 **PRAYER**

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

- 12 1. Revoking or suspending Pharmacy Technician Registration Number TCH 122019,
13 issued to Eileen Jeanne Asistin;
- 14 2. Ordering Eileen Jeanne Asistin to pay the Board of Pharmacy the reasonable costs of
15 the investigation and enforcement of this case, pursuant to Business and Professions Code section
16 125.3;
- 17 3. Taking such other and further action as deemed necessary and proper.

18
19 DATED: 7/26/14



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

26
27 SD2014707172
28