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

In the Matter of the Accusation Against:

**DARIUS DONTE MANUAL
15001 Chadron Avenue, K-11
Gardena, CA 90249
Pharmacy Technician Registration No. TCH
111690**

Respondent.

Case No. 5276

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about May 21, 2015, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 5276 against Darius Donte Manual (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about March 15, 2011, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 111690 to Respondent. The Pharmacy Technician Registration expired on August 31, 2014, and has not been renewed.

1 3. On or about June 9, 2015, Respondent was served by Certified and First Class Mail
2 copies of the Accusation No. 5276, Statement to Respondent, Notice of Defense, Request for
3 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
4 Respondent's address of record which, pursuant to Business and Professions Code section 4100,
5 is required to be reported and maintained with the Board. Respondent's address of record was
6 and is:

7 15001 Chadron Avenue, K-11
8 Gardena, CA 90249.

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

12 5. On or about June 24, 2015, the aforementioned Certified Mail documents were
13 returned by the U.S. Postal Service marked "Not Deliverable As Addressed, Unable to Forward."

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

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

20 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
21 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation
22 No. 5276.

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. 5276, finds that
2 the charges and allegations in Accusation No. 5276, 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 \$3,823.50 as of September 28, 2015.

7 DETERMINATION OF ISSUES

8 1. Based on the foregoing findings of fact, Respondent Darius Donte Manual has
9 subjected his Pharmacy Technician Registration No. TCH 111690 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 evidence contained in the Default Decision Evidence Packet in this case.:

14 a. Business and Professions Code sections 4300 and 4301, subdivision (l), and
15 California Code of Regulations, title 16, section 1770, for conviction of a substantially related
16 crime, unprofessional conduct.

17 b. Business and Professions Code sections 4300 and 4301, subdivision (f), for acts
18 involving moral turpitude, dishonesty, fraud, deceit, or corruption, unprofessional conduct.

19 c. Business and Professions Code sections 4300 and 4301, subdivision (j), and Health
20 and Safety Code sections 11170, 11173, subdivision (a), and 11350, subdivision (a), United
21 States Code Service, title 21, section 844, for drug statute violations, unprofessional conduct.

22 d. Business and Professions Code sections 4300 and 4301, subdivision (o), for violating
23 4059 and 4060, Pharmacy Law, possession of a controlled substance, unprofessional conduct.

24 e. Business and Professions Code sections 4300 and 4301, subdivision (h), for
25 dangerous use of a controlled substance, unprofessional conduct.

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ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 111690, heretofore issued to Respondent Darius Donte Manual, 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 December 9, 2015.

It is so ORDERED November 9, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____

Amy Gutierrez, Pharm.D.
Board President

51920553.DOC
DOJ Matter ID:LA2014512419

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

(DARIUS DONTÉ MANUAL)

1 KAMALA D. HARRIS
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2 ARMANDO ZAMBRANO
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7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 5276

12 **DARIUS DONTE MANUAL**
15001 Chadron Avenue, K-11
13 Gardena, CA 90249

ACCUSATION

14 Pharmacy Technician Registration No. TCH 111690

15 Respondent.

16
17
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 (Board).

23 2. On or about March 15, 2011, the Board issued Pharmacy Technician Registration No.
24 TCH 111690 to Darius Donte Manual (Respondent). The Pharmacy Technician Registration was
25 cancelled on August 31, 2014, and has not been renewed.

26 **JURISDICTION**

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

1 3. Section 4300, subdivision (a), states that "[e]very license issued may be suspended or
2 revoked."

3 4. Section 4300.1 states:

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

9 **STATUTORY PROVISIONS**

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

18

19 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous
20 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
21 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
22 to the extent that the use impairs the ability of the person to conduct with safety to the public the
23 practice authorized by the license.

24

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

27

28 "(l) The conviction of a crime substantially related to the qualifications, functions, and

1 duties of a licensee under this chapter.

2

3 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
4 violation of or conspiring to violate any provision or term of this chapter or of the applicable
5 federal and state laws and regulations governing pharmacy, including regulations established by
6 the board or by any other state or federal regulatory agency. . . ."

7 **PHARMACY LAW**

8 6. Section 4059, subdivision (a), states:

9 "A person may not furnish any dangerous drug, except upon the prescription of a physician,
10 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A
11 person may not furnish any dangerous device, except upon the prescription of a physician, dentist,
12 podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7."

13 7. Section 4060 states:

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

25 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a
26 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs
27 and devices."

28 8. Section 4327 states that "[a]ny person who, while on duty, sells, dispenses or

1 compounds any drug while under the influence of any dangerous drug or alcoholic beverages
2 shall be guilty of a misdemeanor.”

3 **DRUG STATUTES**

4 9. Health and Safety Code section 11170 states that “[n]o person shall prescribe,
5 administer, or furnish a controlled substance for himself.”

6 10. Health and Safety Code section 11173, subdivision (a), states that “[n]o person shall
7 obtain or attempt to obtain controlled substances, or procure or attempt to procure the
8 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,
9 or subterfuge; or (2) by the concealment of a material fact.”

10 11. Health and Safety Code section 11350, subdivision (a), states that:

11 “Except as otherwise provided in this division, every person who possesses (1) any
12 controlled substance specified in subdivision (b), (c), (e), or paragraph (1) of subdivision (f) of
13 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or
14 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section
15 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic
16 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian
17 licensed to practice in this state, shall be punished by imprisonment in a county jail for not more
18 than one year, except that such person shall instead be punished pursuant to subdivision (h) of
19 Section 1170 of the Penal Code if that person has one or more prior convictions for an offense
20 specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of
21 the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290
22 of the Penal Code.”

23 12. United States Code Service, title 21, section 844 states, in pertinent part:

24 “(a) Unlawful acts; penalties. It shall be unlawful for any person knowingly or
25 intentionally to possess a controlled substance unless such substance was obtained directly, or
26 pursuant to a valid prescription. . . .

27 “(c) “Drug, narcotic, or chemical offense” defined. As used in this section, the term “
28 drug, narcotic, or chemical offense” means any offense which proscribes the possession,

1 distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess,
2 distribute, manufacture, cultivate, sell or transfer any substance the possession of which is
3 prohibited under this title."

4 **REGULATORY PROVISION**

5 13. California Code of Regulations, title 16, section 1770 states:

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

12 **COST RECOVERY**

13 14. Section 125.3 provides that the Board may request the administrative law judge to
14 direct a licentiate found to have committed a violation or violations of the licensing act to pay a
15 sum not to exceed the reasonable costs of the investigation and enforcement of the case.

16 **CONTROLLED SUBSTANCES / DANGEROUS DRUGS**

17 15. Hydrocodone, with a trade name of Vicodin, is a Schedule III controlled substance
18 pursuant to Health and Safety Code section 11056(e)(4), and is categorized as a dangerous drug
19 pursuant to section 4022.

20 **FIRST CAUSE FOR DISCIPLINE**

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

22 16. Respondent is subject to disciplinary action under sections 4300 and 4301,
23 subdivision (l); in conjunction with California Code of Regulations, title 16, section 1770, on the
24 grounds of unprofessional conduct, in that Respondent committed a crime substantially related to
25 the qualifications, functions or duties of a licensee or registrant which to a substantial degree
26 evidences his present or potential unfitness to perform the functions authorized by his license or
27 registration in a manner consistent with the public health, safety, or welfare. The circumstances
28 are as follows:

1 a. On or about April 18, 2013, after pleading nolo contendere, Respondent was
2 convicted of one misdemeanor count of violating Vehicle Code section 14601.1(a) [driving when
3 privilege suspended or revoked] in the criminal proceeding entitled *The People of the State of*
4 *California v. Dartus Donte Manual* (Super. Ct. L.A. County, 2013, No. 2SY04972). The Court
5 placed Respondent on three years probation, and ordered him to complete 150 hours of
6 community service.

7 b. The circumstances underlying the conviction are that on or about May 17, 2012,
8 Respondent drove a vehicle without a rear license plate, and admittedly, drove a vehicle when his
9 license was suspended from a previous incident. Respondent's vehicle was towed with a 30 day
10 hold.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

13 17. Respondent is subject to disciplinary action under sections 4300 and 4301,
14 subdivision (f), on the grounds of unprofessional conduct, in that Respondent committed acts
15 involving moral turpitude, dishonesty, fraud, deceit, or corruption. The circumstances are as
16 follows:

17 a. On or about December 8, 2013, and December 9, 2013, Respondent involved himself
18 in a scheme with others while he was employed and on duty as a pharmacy technician at the CVS
19 on Sepulveda in Los Angeles, California. Respondent sold \$44,235.00 of Visa gift cards, 104
20 cards at \$450 each, to two individuals who used various credit cards until each credit card stopped
21 accepting transactions. Respondent was paid \$250.00 cash for each day he sold the Visa gift
22 cards.

23 b. On or about December 10, 2013, Respondent's employer CVS investigated the large
24 amount of pre-paid gift card purchases made by Respondent, and prior to each transaction,
25 Respondent was videoed on his telephone, and working with two other individuals, separately for
26 each date, December 8, 2013, and December 9, 2013.

27 c. On or about December 12, 2013, during the investigation, Respondent admitted, in
28 addition to his involvement in the \$44,235.00 of Visa pre-paid gift card sales, that for the prior six

1 months, he stole 350 tablets of Vicodin, valued at \$183.11, and approximately \$30.00 of food and
2 drink, and approximately \$50.00 of other items, dog shirts, sweat pants, cards and cigarettes, from
3 his employer CVS.

4 d. Further, on or about December 12, 2013, Respondent admitted that while on duty as a
5 pharmacy technician and without a valid prescription, he would administer to himself 7.5/750gm
6 Vicodin taken from pharmacy inventory without payment. Respondent claimed that he needed
7 and used the Vicodin in able to complete the duties of a Pharmacy Technician. In addition,
8 Respondent admitted that it was medically necessary for him to use the Vicodin at a cost of
9 approximately \$1,000.00 per month.

10 e. Subsequently, on or about July 21, 2014, in a criminal action entitled *The People of*
11 *the State of California v. Darius Donte Manual* (Super. Ct. L.A. County, No. SA087293) the
12 Court dismissed the complaint due to delay – action not brought to court in time. The complaint
13 filed on or about May 8, 2014, alleged felony violations of Penal Code section 487(a) [grand theft
14 by embezzlement], and 484H(a) [fraudulently furnished goods, or services on access card].

15 THIRD CAUSE FOR DISCIPLINE

16 (Drug Statute Violation)

17 18. Respondent is subject to disciplinary action under section 4300, 4301, subdivision (j),
18 for violating Health and Safety Code sections 11170, 11173, subdivision (a), and 11350,
19 subdivision (a), and United States Code Service, title 21, section 844, on the grounds of
20 unprofessional conduct, in that in or about June 2013 through December 12, 2013, while on duty
21 as a Pharmacy technician, Respondent furnished himself Vicodin, was in possession of Vicodin
22 without a valid prescriptions, and obtained or procured Vicodin by fraud, deceit,
23 misrepresentation, or subterfuge; or by the concealment of a material fact. Complainant refers to
24 and by this reference incorporates the allegations set forth above in paragraph 17, subparagraphs a
25 through e, inclusive, as though set forth fully.

26 FOURTH CAUSE FOR DISCIPLINE

27 (Pharmacy Law Violations)

28 19. Respondent is subject to disciplinary action under section 4300, 4301,

1 subdivision (o), for violating section 4059 and 4060, on the grounds of unprofessional conduct, in
2 that in or about June 2013 through December 12, 2013, while on duty as a Pharmacy technician,
3 Respondent was in possession of Vicodin, a controlled substance and dangerous drug, without a
4 valid prescriptions. Complainant refers to and by this reference incorporates the allegations set
5 forth above in paragraph 17 and 18, inclusive, as though set forth fully.

6 **FIFTH CAUSE FOR DISCIPLINE**

7 **(Dangerous Use of a Controlled Substance)**

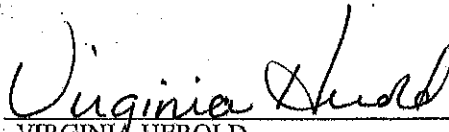
8 20. Respondent is subject to disciplinary action under section 4300, and 4301,
9 subdivision (h), on the grounds of unprofessional conduct, in that in or about June 2013 through
10 December 12, 2013, while on duty as a Pharmacy technician, Respondent used Vicodin, a
11 controlled substance, to the extent or in a manner as to be dangerous or injurious to himself or
12 others. Complainant refers to and by this reference incorporates the allegations set forth above in
13 paragraph 17 through 19, inclusive, as though set forth fully.

14 **PRAYER**

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

- 17 1. Revoking or suspending Pharmacy Technician Registration No. TCH 111690, issued
18 to Darius Donte Manual
- 19 2. Ordering Darius Donte Manual to pay the Board the reasonable costs of the
20 investigation and enforcement of this case, pursuant to section 125.3; and
- 21 3. Taking such other and further action as deemed necessary and proper.

22
23 DATED: 5/21/15


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

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