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

In the Matter of the Accusation Against:
ELMORE CORBIN, JR.
9545 Pathway Street
Santee, CA 92071

**Designated representative License No. EXC
13082**

Respondent.

Case No. 5343

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about May 28, 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. 5343 against Elmore Corbin, Jr. (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about March 28, 1996, the Board of Pharmacy (Board) issued Designated representative License No. EXC 13082 to Respondent. The Designated representative License was in full force and effect at all times relevant to the charges brought in Accusation No. 5343 and expired on March 1, 2015. This lapse in licensure, however, pursuant to Business and Professions Code section 118(b) and Business and Professions Code section 4300.1 does not deprive the Board of its authority to institute or continue this disciplinary proceeding.

1 3. On or about June 15, 2015, Respondent was served by Certified and First Class Mail
2 copies of the Accusation No. 5343, 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: 9545 Pathway Street, Santee, CA 92071.

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 June 29, 2015, the aforementioned documents served by First Class mail
11 were returned by the U.S. Postal Service marked "Not at this Address; attempted- not known." On
12 or about June 30, 2015, the aforementioned documents served by Certified Mail were returned by
13 the U.S. Postal Service marked "RTS; attempted- not known." The address on the documents
14 was the same as the address on file with the Board. Respondent failed to maintain an updated
15 address with the Board and the Board has made attempts to serve the Respondent at the address
16 on file. Respondent has not made himself available for service and therefore, has not availed
17 himself of his right to file a notice of defense and appear at hearing.

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

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

24 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
25 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
26 5343.

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

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

1 9. Pursuant to its authority under Government Code section 11520, the Board finds
2 Respondent is in default. The Board will take action without further hearing and, based on the
3 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
4 taking official notice of all the investigatory reports, exhibits and statements contained therein on
5 file at the Board's offices regarding the allegations contained in Accusation No. 5343, finds that
6 the charges and allegations in Accusation No. 5343, are separately and severally, found to be true
7 and correct by clear and convincing evidence.

8 10. Taking official notice of its own internal records, pursuant to Business and
9 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
10 and Enforcement is \$1,037.50 as of July 1, 2015.

11 DETERMINATION OF ISSUES

12 1. Based on the foregoing findings of fact, Respondent Elmore Corbin, Jr. has subjected
13 his Designated representative License No. EXC 13082 to discipline.

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

15 3. The Board of Pharmacy is authorized to revoke Respondent's Designated
16 representative License based upon the following violations alleged in the Accusation which are
17 supported by the evidence contained in the Default Decision Evidence Packet in this case.:

18 a. Respondent committed acts involving dishonesty, fraud, deceit, or corruption, when
19 he tampered and stole controlled substances from his employer while working as a designated
20 representative, in violation of Business and Professions Code section 4301(f).

21 b. Respondent administered to himself controlled substances to the extent or in a manner
22 as to be dangerous or injurious to himself or the public, or to the extent that it impaired his ability
23 to practice safely, as evidenced by Respondent's admissions that he used hydrocodone and
24 propoxyphene that was stolen from his employer and that he was addicted to narcotics, in
25 violation of Business and Professions Code section 4301(h).

26 c. Respondent has subjected his license to disciplinary action under section 4301,
27 subdivisions (j) and (o) of the Code for violation of Health and Safety Code section 11350(a) and
28 Business and Professions Code section 4060 in that Respondent illegally Respondent illegally

1 possessed controlled substances without a prescription, as evidenced by Respondent's
2 admissions that he stole hydrocodone and propoxyphene from his employer for his personal use.

3 d. Respondent has subjected his license to disciplinary action under section 4301,
4 subdivision (p) of the Code in that Respondent's conduct would have warranted the denial of a
5 license.

6 ORDER

7 IT IS SO ORDERED that Designated representative License No. EXC 13082, heretofore
8 issued to Respondent Elmore Corbin, Jr., is revoked.

9 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
10 written motion requesting that the Decision be vacated and stating the grounds relied on within
11 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
12 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

13 This Decision shall become effective on September 8, 2015.

14 It is so ORDERED August 7, 2015.

15 BOARD OF PHARMACY
16 DEPARTMENT OF CONSUMER AFFAIRS
17 STATE OF CALIFORNIA

18 

19
20 By _____

21 Amy Gutierrez, Pharm.D.
22 Board President

23
24 81091764.DOC
DOJ Matter ID:SD2014708302

25 Attachment:
26 Exhibit A: Accusation

Exhibit A

Accusation

(ELMORE CORBIN, JR.)

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 NICOLE R. TRAMA
Deputy Attorney General
4 State Bar No. 263607
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2143
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:

13 **ELMORE CORBIN, JR.**
14 **9545 Pathway Street**
Santee, CA 92071

15 **Designated representative License No. EXC**
16 **13082**

17 Respondent.

Case No. 5343

A C C U S A T I O N

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 March 28, 1996, the Board of Pharmacy issued Designated
24 Representative License Number EXC 13082 to Elmore Corbin, Jr. (Respondent). The Designated
25 Representative License was in full force and effect at all times relevant to the charges brought
26 herein and will expire on March 1, 2015, unless renewed.
- 27
28

JURISDICTION

1
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 unless otherwise indicated.

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

7 5. Section 4300.1 of the Code states:

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

STATUTORY PROVISIONS

13 6. Section 482 of the Code states:

14 Each board under the provisions of this code shall develop criteria to
15 evaluate the rehabilitation of a person when:

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

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

18 Each board shall take into account all competent evidence of rehabilitation
19 furnished by the applicant or licensee.

20 7. Section 492 of the Code states:

21 Notwithstanding any other provision of law, successful completion of any
22 diversion program under the Penal Code, or successful completion of an alcohol
23 and drug problem assessment program under Article 5 (commencing with section
24 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any
25 agency established under Division 2 ([Healing Arts] commencing with Section
26 500) of this code, or any initiative act referred to in that division, from taking
27 disciplinary action against a licensee or from denying a license for professional
28 misconduct, notwithstanding that evidence of that misconduct may be recorded in
a record pertaining to an arrest.

1 8. Section 4022 of the Code states:

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

4 (a) Any drug that bears the legend: "Caution: federal law prohibits
5 dispensing 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
9 use 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 9. Section 4022.5 of the Code states:

13 (a) "Designated representative" means an individual to whom a license has
14 been granted pursuant to Section 4053. A pharmacist fulfilling the duties of
15 Section 4053 shall not be required to obtain a license as a designated
16 representative.

17 (b) "Designated representative-in-charge" means a designated representative
18 or a pharmacist proposed by a wholesaler or veterinary food-animal drug retailer
19 and approved by the board as the supervisor or manager responsible for ensuring
20 the wholesaler's or veterinary food-animal drug retailer's compliance with all state
21 and federal laws and regulations pertaining to practice in the applicable license
22 category.

23 10. Section 4053 of the Code states:

24 (a) Notwithstanding Section 4051, the board may issue a license as a
25 designated representative to provide sufficient and qualified supervision in a
26 wholesaler or veterinary food-animal drug retailer. The designated representative
27 shall protect the public health and safety in the handling, storage, and shipment of
28 dangerous drugs and dangerous devices in the wholesaler or veterinary food-
animal drug retailer.

(b) An individual may apply for a designated representative license. In order
to obtain and maintain that license, the individual shall meet all of the following
requirements:

(1) He or she shall be a high school graduate or possess a general education
development certificate equivalent.

(2) He or she shall have a minimum of one year of paid work experience in a
licensed pharmacy, or with a drug wholesaler, drug distributor, or drug
manufacturer, in the past three years, related to the distribution or dispensing of

1 dangerous drugs or dangerous devices or meet all of the prerequisites to take the
2 examination required for licensure as a pharmacist by the board.

3 (3) He or she shall complete a training program approved by the board that,
4 at a minimum, addresses each of the following subjects:

5 (A) Knowledge and understanding of California law and federal law relating
6 to the distribution of dangerous drugs and dangerous devices.

7 (B) Knowledge and understanding of California law and federal law relating
8 to the distribution of controlled substances.

9 (C) Knowledge and understanding of quality control systems.

10 (D) Knowledge and understanding of the United States Pharmacopoeia
11 standards relating to the safe storage and handling of drugs.

12 (E) Knowledge and understanding of prescription terminology,
13 abbreviations, dosages, and format.

14 (4) The board may, by regulation, require training programs to include
15 additional material.

16 (5) The board may not issue a license as a designated representative until the
17 applicant provides proof of completion of the required training to the board.

18 (c) The veterinary food-animal drug retailer or wholesaler shall not operate
19 without a pharmacist or a designated representative on its premises.

20 (d) Only a pharmacist or a designated representative shall prepare and affix
21 the label to veterinary food-animal drugs.

22 (e) Section 4051 shall not apply to any laboratory licensed under Section
23 351 of Title III of the Public Health Service Act (Public Law 78-410).

24 11. Section 4059 of the Code states:

25 (a) A person may not furnish any dangerous drug, except upon the
26 prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or
27 naturopathic doctor pursuant to Section 3640.7. A person may not furnish any
28 dangerous device, except upon the prescription of a physician, dentist, podiatrist,
optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

....

12. Section 4060 of the Code states:

No person shall possess any controlled substance, except that furnished to a
person upon the prescription of a physician, dentist, podiatrist, optometrist,

1 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
2 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
3 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant
4 pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a
5 pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv)
6 of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This
7 section shall not apply to the possession of any controlled substance by a
8 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
9 optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
10 practitioner, or physician assistant, when in stock in containers correctly labeled
11 with the name and address of the supplier or producer.

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

15 13. Section 4301 of the Code states:

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

20

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

24

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

. . . .

(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

1 pharmacy, including regulations established by the board or by any other state or
2 federal regulatory agency.

3 (p) Actions or conduct that would have warranted denial of a license.
4

5 14. Health and Safety Code section 11350 states:

6 (a) Except as otherwise provided in this division, every person who
7 possesses (1) any controlled substance specified in subdivision (b) or (c), or
8 paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14),
9 (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or
10 (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any
11 controlled substance classified in Schedule III, IV, or V which is a narcotic drug,
12 unless upon the written prescription of a physician, dentist, podiatrist, or
13 veterinarian licensed to practice in this state, shall be punished by imprisonment
14 pursuant to subdivision (h) of Section 1170 of the Penal Code.

10 COST RECOVERY

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

15 DRUGS

16 16. Hydrocodone/APAP is a Schedule II controlled substance pursuant to Health and
17 Safety Code section 11055, subdivision (1)(I), and a dangerous drug pursuant to Business and
18 Professions Code section 4022.

19 17. Propoxyphene Napsylate/APAP was a Schedule IV controlled substance pursuant to
20 Health and Safety Code section 11057, subdivision (c), and a dangerous drug pursuant to
21 Business and Professions Code section 4022 but was removed from the market in 2010 due to
22 dangerous side effects.

23 FACTUAL ALLEGATIONS

24 18. Respondent was the Purchasing Manager and licensed Designative Representative of
25 Stat Pharmaceuticals Inc., a licensed drug wholesaler ("Stat"). A Designative Representative is
26 an individual who performs clerical, inventory control, housekeeping, delivery, maintenance, or
27 similar functions related to the distribution or dispensing of dangerous drugs or dangerous
28 devices. In February 2014, Stat notified the Drug Enforcement Agency (DEA) that Respondent

1 tampered with expired controlled substances contained in their locked inventory cage.
2 Respondent admitted to Stat personnel that he had been stealing expired controlled substances for
3 personal use for years. Respondent also admitted to Stat that he tampered with the bottles and
4 replaced the expired controlled drugs with expired non-controlled drugs.

5 19. On February 14, 2014, DEA investigators conducted an inspection of Stat and
6 discovered that expired controlled drugs had been tampered with. Specifically, the DEA
7 investigators observed that the seals of three bottles were broken and the controlled drugs had
8 been replaced with non-controlled drugs.

9 20. On February 24, 2014, Respondent and his girlfriend were interviewed by DEA
10 investigators. Respondent's girlfriend surrendered two prescription pill bottles found in
11 Respondent's vehicle that contained Propoxyphene Napsylate/APAP and Ibuprofen. Respondent
12 admitted to the DEA that he stole expired drugs since mid-2011 and that he knew it was wrong.
13 Respondent explained that he took prescribed Hydrocodone for several years and needed more
14 than what was prescribed. Respondent then began taking handfuls of the expired Hydrocodone
15 from the Stat safe and refilling the bottles with expired non-controlled drugs that were stored
16 outside the cage. Respondent admitted to the DEA that he continued to take drugs from the safe
17 including Propoxyphene and that he had an addiction problem.

18 21. The People of the State of California issued a felony complaint against Respondent in
19 San Diego County Superior Court Case Number CD254914 alleging a violation of Health and
20 Safety Code section 11350(a), possession of a controlled substance and Penal Code section 459,
21 burglary. On or about June 6, 2014, Respondent pled guilty to violation of Health and Safety
22 Code section 11350(a), possession of a controlled substance (Hydrocodone). However,
23 Respondent was granted deferred entry of judgment pursuant to Penal Code section 1000 for a
24 period of 18- months.

25 **FIRST CAUSE FOR DISCIPLINE**

26 **(Dishonest Act)**

27 22. Respondent has subjected his license to disciplinary action under section 4301,
28 subdivision (f) of the Code in that Respondent committed acts involving dishonesty, fraud, deceit,

1 or corruption, when he tampered and stole controlled substances from his employer while
2 working as a designated representative, as detailed in paragraphs 18 through 21, above, and
3 which are incorporated herein by reference.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Use of Controlled Substances in Dangerous Manner)**

6 23. Respondent has subjected his license to disciplinary action under section 4301,
7 subdivision (h) of the Code in that Respondent administered to himself controlled substances to
8 the extent or in a manner as to be dangerous or injurious to himself or the public, or to the extent
9 that it impaired his ability to practice safely, as evidenced by Respondent's admissions that he
10 used hydrocodone and propoxyphene that was stolen from his employer and that he was addicted
11 to narcotics, as detailed in paragraphs 18 through 21, above, and which are incorporated herein by
12 reference.

13 **THIRD CAUSE FOR DISCIPLINE**

14 **(Unlawful Possession of a Controlled Substance)**

15 24. Respondent has subjected his license to disciplinary action under section 4301,
16 subdivisions (j) and (o) of the Code for violation of Health and Safety Code section 11350(a) and
17 Business and Professions Code section 4060 in that Respondent illegally Respondent illegally
18 possessed controlled substances without a prescription, as evidenced by Respondent's
19 admissions that he stole hydrocodone and propoxyphene from his employer for his personal use,
20 as detailed in paragraphs 18 through 21, above, and which are incorporated herein by reference.

21 **FOURTH CAUSE FOR DISCIPLINE**

22 **(Acts that Would Have Warranted Denial of License)**

23 25. Respondent has subjected his license to disciplinary action under section 4301,
24 subdivision (p) of the Code in that Respondent's conduct would have warranted the denial of a
25 license, as detailed in paragraphs 18 through 21, above, and which are incorporated herein by
26 reference.

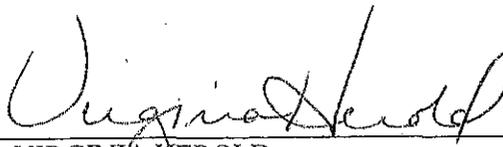
1 **PRAYER**

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

- 4 1. Revoking or suspending Designated representative License Number EXC 13082,
5 issued to Elmore Corbin, Jr.;
- 6 2. Ordering Elmore Corbin, Jr. to pay the Board of Pharmacy the reasonable costs of the
7 investigation and enforcement of this case, pursuant to Business and Professions Code section
8 125.3;
- 9 3. Taking such other and further action as deemed necessary and proper.

10
11
12 DATED: _____

5/28/15



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

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