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

In the Matter of the Accusation Against:	Case No. 5386
DIMITRI DEON ARCHIBALD 13772 Goldenwest Street, #140 Westminster, CA 92683 Pharmacy Technician Registration No. TCH 119075	DEFAULT DECISION AND ORDER [Gov. Code, §11520]
Respondent.	

FINDINGS OF FACT

1. On November 4, 2015, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 5386 against Dimitri Deon Archibald (Respondent) before the Board of Pharmacy (Board). (Accusation attached as Exhibit A.)
2. On March 22, 2012, the Board issued Pharmacy Technician Registration No. TCH 119075 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 5386 and will expire on April 30, 2017, unless renewed.
3. On November 10, 2015, Respondent was served by Certified and First Class Mail copies of Accusation No. 5386, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code section

1 4100, is required to be reported and maintained with the Board. Respondent's address of record
2 was and is 13772 Goldenwest Street #140, Westminster, CA 92683.

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

5 5. On November 16, 2015, the domestic return receipt for the aforementioned
6 documents sent by certified mail was returned by the U.S. Postal Service indicating receipt on
7 November 14, 2015.

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

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

14 7. Respondent failed to file a Notice of Defense within 15 days after service upon
15 him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation
16 No. 5386.

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

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

22 9. Pursuant to its authority under Government Code section 11520, the Board finds
23 Respondent is in default. The Board will take action without further hearing and, based on the
24 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
25 taking official notice of all the investigatory reports, exhibits and statements contained therein on
26 file at the Board's offices regarding the allegations contained in Accusation No. 5386, finds that
27 the charges and allegations in Accusation No. 5386, are separately and severally, found to be true
28 and correct by clear and convincing evidence.

10. Taking official notice of its own internal records, pursuant to Business and
Professions Code section 125.3, it is hereby determined that the reasonable costs for
Investigation and Enforcement is \$2,794.50 as of December 9, 2015.

1 **DETERMINATION OF ISSUES**

2 1. Based on the foregoing findings of fact, Respondent Dimitri Deon Archibald has
3 subjected his Pharmacy Technician Registration No. TCH 119075 to discipline.

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

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

8 a. Respondent has subjected his Pharmacy Technician Registration to
9 discipline under Code section 4301, subdivision (f), in that he committed acts involving moral
10 turpitude, dishonesty, fraud, deceit, or corruption.

11 b. Respondent has subjected his Pharmacy Technician Registration to
12 discipline under Code section 4301, subdivision (j), for violating statutes regulating controlled
13 substances and dangerous drugs, including Health and Safety Code sections 11170 and 11350,
14 subdivision (a), in that he possessed a controlled substance without a prescription.

15 c. Respondent has subjected his Pharmacy Technician Registration to
16 discipline under Code section 4301, subdivision (o) for violating Pharmacy Law, in that
17 Respondent possessed a controlled substance without a prescription in violation of Code section
18 4060.

19 d. Respondent has subjected his Pharmacy Technician Registration to
20 discipline under Code section 4301, for unprofessional conduct, in that Respondent possessed a
21 controlled substance without a prescription in violation of Code sections 4022 and 4059,
22 subdivision (a).

23 e. Respondent has subjected his Pharmacy Technician Registration to
24 discipline under Code section 4301 for unprofessional conduct in that he engaged in the activities
25 described in paragraphs a through d, above.

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1 **ORDER**

2 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 119075,
3 heretofore issued to Respondent Dimitri Deon Archibald, is revoked.

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

8 This Decision shall become effective on February 19, 2016.

9 It is so ORDERED on January 20, 2016.

10 BOARD OF PHARMACY
11 DEPARTMENT OF CONSUMER AFFAIRS
12 STATE OF CALIFORNIA

13 

14
15 By _____

16 Amy Gutierrez, Pharm.D.
17 Board President

18 81215632.DOC
19 DOJ Matter ID:SD2015700278

20 Attachment:
21 Exhibit A: Accusation

Exhibit A

Accusation

(DIMITRI DEON ARCHIBALD)

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Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 5386

13 **DIMITRI DEON ARCHIBALD**
13772 Goldenwest Street, #140
14 Westminster, CA 92683

ACCUSATION

15 Pharmacy Technician Registration No. TCH
16 119075

Respondent.

17
18
19 Complainant alleges:

20 **PARTIES**

21 1. Virginia Herold (Complainant) brings this Accusation solely in her official
22 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

23 2. On March 22, 2012, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 119075 to Dimitri Deon Archibald (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 April 30, 2017, unless renewed.

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1 9. Section 4060 of the Code states:

2 No person shall possess any controlled substance, except that furnished to
3 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
4 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
5 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
6 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant
7 pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or
8 a pharmacist pursuant to either Section 4052.1 or 4052.2. This section shall not
9 apply to the possession of any controlled substance by a manufacturer,
10 wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist,
11 veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or
12 physician assistant, when in stock in containers correctly labeled with the name
13 and address of the supplier or producer.

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

17 10. Section 4301 of the Code states in pertinent part:

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

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

27
28 (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.

29
30 (o) Violating or attempting to violate, directly or indirectly, or assisting in
31 or abetting the violation of or conspiring to violate any provision or term of this
32 chapter or of the applicable federal and state laws and regulations governing
33 pharmacy, including regulations established by the board or by any other state or
34 federal regulatory agency.

35 11. Health & Safety Code section 11170 states:

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

1 12. Health & Safety Code section 11350 states:

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

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

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

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

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

21

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

24 COST RECOVERY

25 15. Section 125.3 of the Code provides, in pertinent part, that the Board may request
26 the administrative law judge to direct a licentiate found to have committed a violation or
27 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
28 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.

DRUGS AT ISSUE

16 16. Diazepam is a Schedule IV controlled substance as designated by Health and
17 Safety Code, section 11057, subdivision (d)(9) and is a dangerous drug under section 4022.

1 17. Viagra is a brand name for sildenafil, a dangerous drug as designated under
2 section 4022. It is an erectile-dysfunction treatment drug.

3 **FACTUAL ALLEGATIONS**

4 18. At all times mentioned herein, Respondent was employed as a pharmacy
5 technician at CVS Pharmacy Permit Number 9497 located in Irvine, California.

6 19. Four to five months prior to March 12, 2014, while on duty as a pharmacy
7 technician, Respondent diverted or stole 22 tablets of diazepam 2 milligrams from CVS
8 Pharmacy Permit Number 9497 by taking the tablets out of the container and hiding them in his
9 pocket. Respondent did not have a prescription for possessing diazepam.

10 20. Approximately two weeks prior to March 12, 2014, Respondent diverted or stole
11 one Viagra tablet from CVS Pharmacy Permit Number 9497. Respondent did not have a
12 prescription for possessing the Viagra.

13 **FIRST CAUSE FOR DISCIPLINE**

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

15 21. Respondent has subjected his Pharmacy Technician Registration to discipline
16 under Code section 4301, subdivision (f), in that he committed acts involving moral turpitude,
17 dishonesty, fraud, deceit, or corruption, as set forth in paragraphs 18 through 20, above, which
18 are incorporated herein by reference.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Violations of Drug Laws)**

21 22. Respondent has subjected his Pharmacy Technician Registration to discipline
22 under Code section 4301, subdivision (j), for violating statutes regulating controlled substances
23 and dangerous drugs, including Health and Safety Code sections 11170 and 11350, subdivision
24 (a), in that he possessed a controlled substance without a prescription, as set forth in paragraphs
25 18 through 20, above, which are incorporated herein by reference.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Violations of Pharmacy Law)**

3 23. Respondent has subjected his Pharmacy Technician Registration to discipline
4 under Code section 4301, subdivision (o) for violating Pharmacy Law, in that Respondent
5 possessed a controlled substance without a prescription in violation of Code section 4060, as set
6 forth in paragraphs 18 through 20, above, which are incorporated herein by reference.

7 **FOURTH CAUSE FOR DISCIPLINE**

8 **(Possession of Controlled Substance without a Prescription)**

9 24. Respondent has subjected his Pharmacy Technician Registration to discipline
10 under Code section 4022 and 4059, subdivision (a), in that Respondent possessed a dangerous
11 drug and/or controlled substance without a prescription, as set forth in paragraphs 18 through
12 20, above, which are incorporated herein by reference.

13 **FIFTH CAUSE FOR DISCIPLINE**

14 **(Unprofessional Conduct)**

15 25. Respondent is subject to disciplinary action under Code section 4301 for
16 unprofessional conduct in that he engaged in the activities described in paragraphs 18 through
17 20, above, which are incorporated herein by reference.

18 **PRAYER**

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

- 21 1. Revoking or suspending Pharmacy Technician Registration Number TCH
22 119075, issued to Dimitri Deon Archibald;
- 23 2. Ordering Dimitri Deon Archibald to pay the Board of Pharmacy the reasonable
24 costs of the investigation and enforcement of this case, pursuant to Business and Professions
25 Code section 125.3; and

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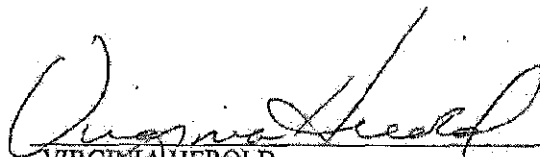
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3. Taking such other and further action as deemed necessary and proper.

DATED:

11/4/15



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

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