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

In the Matter of the Accusation Against: **MATTHEW ROBERT GRIGGS** **219 Backs Ln. #G** **Placentia, CA 92870** **Pharmacy Technician Registration No. TCH 96524** Respondent.	Case No. 5390 **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. 5390 against Matthew Robert Griggs (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about January 29, 2010, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 96524 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 5390,

expired on April 30, 2015 and was subsequently cancelled. This lapse in licensure, however, pursuant to Business and Professions Code section 118(b) and 4300.1 does not deprive the Board of its authority to institute or continue this disciplinary proceeding.

3. On or about June 5, 2015, Respondent was served by Certified and First Class Mail copies of the Accusation No. 5390, 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 4100, is required to be reported and maintained with the Board. Respondent's address of record was and is:

219 Backs Ln. #G
Placentia, CA 92870.

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

5. The aforementioned documents were not returned by the U.S. Postal Service.

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

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

7. Respondent failed to file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 5390.

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

> (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.

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 file at the Board's offices regarding the allegations contained in Accusation No. 5390, finds that the charges and allegations in Accusation No. 5390, are separately and severally, found to be true 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 $6,613.50 as of June 30, 2015.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Matthew Robert Griggs has subjected his Pharmacy Technician Registration No. TCH 96524 to discipline.

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

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

a. Respondent is subject to disciplinary action under Code section 4301(h), in that he administered controlled substances to himself to the extent or in a manner as to be dangerous or injurious to himself or to the extent it impaired his ability to conduct his practice safely.

b. Respondent is subject to disciplinary action under Code section 4301(j), for violating statutes regulating controlled substances and dangerous drugs, including Health & Safety Code sections 11350(a) and 11170, in that he possessed and administered controlled substances to himself.

c. Respondent is subject to disciplinary action under Code section 4301(o) for violating Pharmacy Law, in that Respondent furnished and possessed controlled substances without prescriptions in violation of Code sections 4059(a) and 4060.

d. Respondent is subject to disciplinary action under Code section 4301(o) for violating Pharmacy Law, in that Respondent compounded controlled substances while under the influence of controlled substances in violation of Code section 4327.

e. Respondent is subject to disciplinary action under Code section 4301(f), in that he committed act involving dishonesty, fraud and deceit.

f. Respondent is subject to disciplinary action under Code section 4301(g), in that he knowingly made or signed documents falsely representing the existence or nonexistence of facts.

g. Respondent is subject to disciplinary action under Code section 4301 for unprofessional conduct in that he engaged in the activities described in the aforementioned paragraphs.

ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 96524, heretofore issued to Respondent Matthew Robert Griggs, 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 September 4, 2015.

It is so ORDERED August 5, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By _____
Amy Gutierrez, Pharm.D.
Board President

81093437.DOC
DOJ Matter ID:SD2015700106

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

KAMALA D. HARRIS
Attorney General of California
GREGORY J. SALUTE
Supervising Deputy Attorney General
DESIREE I. KELLOGG
Deputy Attorney General
State Bar No. 126461
110 West "A" Street, Suite 1100
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2996
Facsimile: (619) 645-2061
Attorneys for Complainant

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

In the Matter of the Accusation Against: **MATTHEW ROBERT GRIGGS** **219 Backs Ln. #G** **Placentia, CA 92870** **Pharmacy Technician Registration No. TCH 96524** Respondent.	Case No. 5390 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about January 29, 2010, the Board of Pharmacy issued Pharmacy Technician Registration Number TCH 96524 to Matthew Robert Griggs (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2015, unless renewed.

JURISDICTION

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, subdivision (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

7. Section 4059(a) of the Code states in pertinent part:

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

8. 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, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either Section 4052.1 or 4052.2. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

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

9. Section 4301 of the Code states in pertinent part:

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.

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, 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 pharmacy, including regulations established by the board or by any other state or federal regulatory agency.

10. Section 4327 of the Code states:

Any person who, while on duty, sells, dispenses or compounds any drug while under the influence of any dangerous drug or alcoholic beverage shall be guilty of a misdemeanor.

11. Health & Safety Code section 11350 states:

Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of

subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code.

. . . .

12. Health & Safety Code section 11170 states:

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

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

For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the 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.

COST RECOVERY

14. 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.

DRUGS

15. Dilaudid, the brand name for hydromorphone, is a Schedule II controlled substance pursuant to Health and Safety Code section 11055(b)(1) and dangerous drug pursuant to Business and Professions Code section 4022.

16. Morphine, is a Schedule II controlled substance pursuant to Health and Safety Code section 11055(b)(1) and dangerous drug pursuant to Business and Professions Code section 4022.

17. Sublimaze, the brand name for fentanyl, is a Schedule II controlled substance pursuant to Health and Safety Code section 11055(c)(8) and dangerous drug pursuant to Business and Professions Code section 4022.

FACTUAL ALLEGATIONS

18. At all times mentioned herein, Respondent was employed as a pharmacy technician at Children's Hospital of Orange County located in Orange, California. As part of his duties, Respondent compounded infusion syringes containing narcotics.

19. In October 2013, Respondent removed 0.4ml of Dilaudid from a syringe, placed it in his pocket and later administered the Dilaudid to himself. He then filled the syringe with 0.4ml of saline, making it appear to his supervisor pharmacist that it contained Dilaudid which was being wasted by him.

20. Respondent began to divert narcotics periodically using this method but experienced withdrawal symptoms so he commenced diverting larger quantities of narcotics by printing a duplicate label for a narcotic infusion syringe, preparing it, stealing the syringe containing narcotics and administering it to himself. He would also take syringes containing Dilaudid, fentanyl and morphine from narcotic cabinets, sign them out of inventory and administer them to himself before and after work.

21. All 60 ml syringes of Dilaudid, fentanyl and morphine were stored in locked narcotic cabinets outside Pyxis[1] machines. The keys to open the narcotic cabinets were stored in Pyxis. Respondent accessed the keys to those narcotic cabinets 11 times when he was not scheduled to work and 5 times when he was on his lunch break or before or after his work shift.

22. Once on February 25, twice on March 27, once on March 29 and twice on April 5, 2014, Respondent accessed the keys to the cabinets which had syringes containing fentanyl (250/mcg/50ml, 500mcg/25ml, 2500/50ml and 1000mcg/50ml) from the Pyxis machines at the

[1] "Pyxis" is a trade name for the automatic single-unit dose medication dispensing system that records information such as patient name, physician orders, the date and time the medication was withdrawn, and the name of the licensed individual who withdrew and administered the medication. Each user/operator is given a user identification code to operate the control panel.

same time that the syringes of fentanyl were documented in the Controlled Substance Administration Record as being returned to the pharmacy. However, they were not documented in the pharmacy's inventory records as being returned to the pharmacy. Thus, these syringes of fentanyl were unaccounted for.

23. Once on March 10 and once on April 5, 2014, Respondent accessed the keys to the narcotic cabinets which had syringes containing Dilaudid (50mg/50ml, 10mg/50ml and 50mg/50ml)from the Pyxis machine at the same time that the 3 syringes of Dilaudid were documented in the Controlled Substance Administration Record as being returned to the pharmacy. However, they were not documented in the pharmacy's inventory records as being returned to the pharmacy. Thus, these syringes of Dilaudid were unaccounted for.

24. Once on March 24 and once on March 27, 2014, Respondent accessed the keys to the narcotic cabinet which had syringes containing morphine (100mg/50ml) from the Pyxis machine at the same time that the syringes of morphine were documented in the Controlled Substance Administration Record as being returned to the pharmacy. However, they were not documented in the pharmacy's inventory records as being returned to the pharmacy. Thus, these syringes of morphine were unaccounted for.

25. On April 18, 2014, Respondent accessed the key to a narcotic cabinet which had syringes containing Dilaudid from the Pyxis machine even though he was not scheduled to work that day. It was documented in the Controlled Substance Administration record that the syringe was delivered at 1300 hours with a subsequent entry indicating that it had been returned to the pharmacy. When a nurse contacted the pharmacist to request another syringe of Diluadid because that syringe of Dilaudid had not been administered to the patient, an investigation was initiated.

26. On April 22, 2014, Respondent was not scheduled to work at Children's Hospital of Orange County. Nonetheless, he entered the pharmacy at Children's Hospital of Orange County and accessed a computer. He presented a replacement label for a Dilaudid infusion to a pharmacist and told her he was "helping out the IV room." The pharmacist gave Respondent a vial of Dilaudid 50mg/5ml and Respondent informed her that he would obtain an IV bag from the storeroom. Respondent then entered a bathroom with the vial of Dilaudid, a bag of saline and a

syringe. He withdrew the Dilaudid into a syringe, placed it in his pocket and replaced the Dilaudid removed from the vial with saline. Security was called and confronted Respondent when he exited the bathroom. He then gave the vial with the top removed to the pharmacist-in-charge; it appeared to be full. The bathroom was immediately search and an IV bag overwrap was found in the bathroom. Laboratory results subsequently showed that the concentration of Dilaudid in the vial possessed by Respondent was 0.37mg/ml instead of 50mg/5ml.

FIRST CAUSE FOR DISCIPLINE

(Administration of Controlled Substance Injurious to Himself or to the Extent Impaired Ability to Conduct Practice Safely)

27. Respondent is subject to disciplinary action under Code section 4301(h), in that he administered controlled substances to himself to the extent or in a manner as to be dangerous or injurious to himself or to the extent it impaired his ability to conduct his practice safely, as set forth in paragraphs 18 through 26, which are incorporated herein by reference.

SECOND CAUSE FOR DISCIPLINE

(Violations of Drug Laws)

28. Respondent is subject to disciplinary action under Code section 4301(j), for violating statutes regulating controlled substances and dangerous drugs, including Health & Safety Code sections 11350(a) and 11170, in that he possessed and administered controlled substances to himself, as set forth in paragraphs 18 through 26, which are incorporated herein by reference.

THIRD CAUSE FOR DISCIPLINE

(Violations of Pharmacy Law)

29. Respondent is subject to disciplinary action under Code section 4301(o) for violating Pharmacy Law, in that Respondent furnished and possessed controlled substances without prescriptions in violation of Code sections 4059(a) and 4060, as set forth in paragraphs 18 through 26, which are incorporated herein by reference.

FOURTH CAUSE FOR DISCIPLINE

(Violations of Pharmacy Law)

30. Respondent is subject to disciplinary action under Code section 4301(o) for violating Pharmacy Law, in that Respondent compounded controlled substances while under the influence of controlled substances in violation of Code section 4327, as set forth in paragraphs 18 through 26, which are incorporated herein by reference.

FIFTH CAUSE FOR DISCIPLINE

(Commission of Acts involving Dishonesty, Fraud and Deceit)

31. Respondent is subject to disciplinary action under Code section 4301(f), in that he committed act involving dishonesty, fraud and deceit, as set forth in paragraphs 18 through 26, which are incorporated herein by reference.

SIXTH CAUSE FOR DISCIPLINE

(Administration of Controlled Substance to Extent Use Impaired Ability to Conduct Practice Safely)

32. Respondent is subject to disciplinary action under Code section 4301(g), in that he knowingly made or signed documents falsely representing the existence or nonexistence of facts, as set forth in paragraphs 18 through 26, which are incorporated herein by reference.

SEVENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

33. Respondent is subject to disciplinary action under Code section 4301 for unprofessional conduct in that he engaged in the activities described in paragraphs 18 through 26 above, which are incorporated herein by reference.

PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 96524, issued to Matthew Robert Griggs;

2. Ordering Matthew Robert Griggs to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 5/21/15

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

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