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

In the Matter of the Accusation Against:
**IRA GARY WILENKIN
1910 W. Palmyra Avenue #34
Orange, CA 92868**
**Pharmacy Technician Registration No. TCH
99162**

Respondent.

Case No. 5812

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about May 3, 2016, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 5812 against Ira Gary Wilenkin (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about February 23, 2010, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 99162 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 5812 and will expire on April 30, 2017, unless renewed.

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1 3. On or about May 17, 2016, Respondent was served by Certified and First Class Mail
2 copies of the Accusation No. 5812, 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: 1910 W. Palmyra Avenue #34, Orange, CA 92868.

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 May 20, 2016, the domestic return receipt reflecting service of the
11 aforementioned documents via Certified Mail was returned by the U.S. Postal Service and signed.
12 The aforementioned documents sent to Respondent via First Class Mail were not returned by the
13 U.S. Postal Service.

14 6. Government Code section 11506(c) 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
17 parts of the accusation . . . not expressly admitted. Failure to file a notice of defense
18 . . . shall constitute a waiver of respondent's right to a hearing, but the agency in its
19 discretion 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 No.
22 5812.

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

24 (a) If the respondent either fails to file a notice of defense . . . or to appear at
25 the hearing, the agency may take action based upon the respondent's express
26 admissions or upon other evidence and affidavits may be used as evidence without
27 any notice to 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. 5812, finds that
2 the charges and allegations in Accusation No. 5812, 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 \$3,111.00 as of June 7, 2016.

7 DETERMINATION OF ISSUES

8 1. Based on the foregoing findings of fact, Respondent Ira Gary Wilenkin has subjected
9 his Pharmacy Technician Registration No. TCH 99162 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. Respondent has subjected his license to disciplinary action under section 4301,
15 subdivision (f) of the Code in that Respondent committed acts involving dishonesty, fraud, deceit,
16 or corruption, in that Respondent stole controlled substances from the controlled medication
17 storage room at PharMerica.

18 b. Respondent has subjected his license to disciplinary action under section 4301,
19 subdivision (h) of the Code in that Respondent administered to himself controlled substances to
20 the extent or in a manner as to be dangerous or injurious to himself or the public.

21 c. Respondent has subjected his license to disciplinary action under section 4301,
22 subdivision (j) of the Code for violation of Health and Safety Code sections 11170 in that
23 Respondent illegally obtained and administered to himself, controlled substances.

24 d. Respondent has subjected his license to disciplinary action under section 4301,
25 subdivision (o) of the Code for violation of Code sections 4059 and 4060 in that Respondent
26 illegally furnished controlled substances to himself and illegally possessed controlled substances
27 without a legitimate prescription.

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1 e. Respondent has subjected his license to disciplinary action under section 4301,
2 subdivision (i) of the Code in that Respondent administered controlled substances to himself
3 knowing he was an addict.

4 ORDER

5 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 99162, heretofore
6 issued to Respondent Ira Gary Wilenkin, is revoked.

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

11 This Decision shall become effective at 5:00 p.m. on August 15, 2016.

12 It is so ORDERED on July 15, 2016.

13 BOARD OF PHARMACY
14 DEPARTMENT OF CONSUMER AFFAIRS
15 STATE OF CALIFORNIA

16 

17
18 By _____

19 Amy Gutierrez, Pharm.D.
20 Board President

21 81365034.DOC
22 DOJ Matter ID:SD2016700705

23 Attachment:
24 Exhibit A: Accusation

Exhibit A

Accusation

(IRA GARY WILENKIN)

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7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 Case No. 5812

12 In the Matter of the Accusation Against:

13 **IRA GARY WILENKIN**
14 **1910 W. Palmyra Avenue #34**
Orange, CA 92868

ACCUSATION

15 **Pharmacy Technician Registration No. TCH**
16 **99162**

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 (Board), Department of Consumer Affairs.

23 2. On or about February 23, 2010, the Board issued Pharmacy Technician Registration
24 Number TCH 99162 to Ira Gary Wilenkin (Respondent). The Pharmacy Technician Registration
25 was in full force and effect at all times relevant to the charges brought herein and will expire on
26 April 30, 2017, unless renewed.

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JURISDICTION

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

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

5. 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

6. Section 4301 of the Code states:

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.

....

(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.

(i) Except as otherwise authorized by law, knowingly selling, furnishing, giving away, or administering, or offering to sell, furnish, give away, or administer, any controlled substance to an addict.

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

3

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

9

10 7. Section 4059 of the Code states:

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

16

17 8. Section 4060 of the Code states:

18 No person shall possess any controlled substance, except that furnished to a
19 person upon the prescription of a physician, dentist, podiatrist, optometrist,
20 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
21 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
22 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant
23 pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a
24 pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv)
25 of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This
26 section shall not apply to the possession of any controlled substance by a
27 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
28 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. Health and Safety Code section 11170 states that no person shall prescribe,
administer, or furnish a controlled substance for himself.

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1 **COST RECOVERY**

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

6 **DRUGS**

7 11. Tylenol #3, the brand name for APAP/Codeine 300mg/30 mg, is a Schedule III
8 controlled substance pursuant to Health and Safety Code section 11056(e)(2) and is a dangerous
9 drug pursuant to Business and Professions Code section 4022.

10 12. Tylenol #4, the brand name for APAP/Codeine 300mg/60 mg, is a Schedule III
11 controlled substance pursuant to Health and Safety Code section 11056(e)(2) and is a dangerous
12 drug pursuant to Business and Professions Code section 4022.

13 13. Ultram, the brand name for tramadol, is a Schedule IV controlled substance pursuant
14 to Health and Safety Code section 11057(g) and is a dangerous drug pursuant to Business and
15 Professions Code section 4022.

16 **FACTUAL ALLEGATIONS**

17 14. Respondent was employed as a pharmacy technician at PharMerica, located in
18 Cypress, California from May 2010 to September 2015. On or about August 28, 2015,
19 Respondent reported to the Pharmacy Director that he had an addiction problem and that he had
20 diverted up to six bottles of APAP/Codeine 300mg/30 mg (Tylenol #3) and "several bottles" of
21 tramadol over a three month period from the controlled medication storage room at PharMerica.
22 Respondent admitted that he was a recovering addict for many years; however, he had recently
23 become addicted again to codeine-based medications. Respondent admitted that he diverted the
24 drugs from PharMerica for self-use. Respondent informed the Pharmacy Director that he planned
25 to enroll in a substance abuse program. Respondent resigned from his position at PharMerica and
26 he was officially terminated on September 3, 2015.

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1 15. A drug audit for the time period of May 1, 2014 to August 28, 2015 reflected a loss of
2 592 tablets of APAP/Codeine 300mg/30 mg (Tylenol #3) and a loss of 7,650 tablets of tramadol
3 50 mg.

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Dishonest Act)**

6 16. Respondent has subjected his license to disciplinary action under section 4301,
7 subdivision (f) of the Code in that Respondent committed acts involving dishonesty, fraud, deceit,
8 or corruption, in that Respondent stole controlled substances from the controlled medication
9 storage room at PharMerica, as detailed in paragraphs 14 through 15, above, which are
10 incorporated herein by reference.

11 **SECOND CAUSE FOR DISCIPLINE**

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

13 17. Respondent has subjected his license to disciplinary action under section 4301,
14 subdivision (h) of the Code in that Respondent administered to himself controlled substances to
15 the extent or in a manner as to be dangerous or injurious to himself or the public, as detailed in
16 paragraphs 14 through 15, above, and which are incorporated herein by reference.

17 **THIRD CAUSE FOR DISCIPLINE**

18 **(Violating Statutes Regulating Controlled Substances)**

19 18. Respondent has subjected his license to disciplinary action under section 4301,
20 subdivision (j) of the Code for violation of Health and Safety Code sections 11170 in that
21 Respondent illegally obtained and administered to himself, controlled substances, as detailed in
22 paragraphs 14 through 15, above, and which are incorporated herein by reference.

23 **FOURTH CAUSE FOR DISCIPLINE**

24 **(Violating Laws Governing Pharmacy)**

25 19. Respondent has subjected his license to disciplinary action under section 4301,
26 subdivision (o) of the Code for violation of Code sections 4059 and 4060 in that Respondent
27 illegally furnished controlled substances to himself and illegally possessed controlled substances

28 ///

1 without a legitimate prescription, as detailed in paragraphs 14 through 15, above, and which are
2 incorporated herein by reference.

3 **FIFTH CAUSE FOR DISCIPLINE**

4 **(Administering Controlled Substances to Addict)**

5 20. Respondent has subjected his license to disciplinary action under section 4301,
6 subdivision (i) of the Code in that Respondent administered controlled substances to himself
7 knowing he was an addict, as detailed in paragraphs 14 through 15, above, and which are
8 incorporated herein by reference.

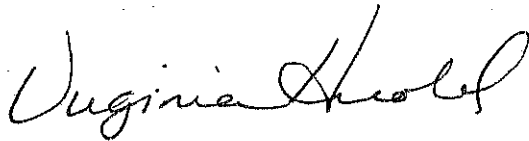
9 **PRAYER**

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 99162,
13 issued to Ira Gary Wilenkin;
- 14 2. Ordering Ira Gary Wilenkin to pay the Board of Pharmacy the reasonable costs of the
15 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

20
21 DATED: _____

5/3/16



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

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