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

In the Matter of the Accusation Against:
ROBERT JAMES PRESTON
25335 Delphinium Avenue
Moreno Valley, CA 92553
Pharmacy Technician Registration No. TCH
141009

Respondent.

Case No. 5829

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about June 9, 2016, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, filed Accusation No. 5829 against Robert James Preston (Respondent) before the Board. (Accusation attached as Exhibit A.)
2. On or about August 1, 2014, the Board issued Pharmacy Technician Registration No. TCH 141009 to Respondent. The Pharmacy Technician Registration expired on February 29, 2016, and has not been renewed.
3. On or about June 13, 2016, Respondent was served by Certified and First Class Mail copies of the Accusation No. 5829, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at

1 Respondent's address of record which, pursuant to Business and Professions Code section 4100,
2 is required to be reported and maintained with the Board. Respondent's address of record was
3 and is: 25335 Delphinium Avenue, Moreno Valley, CA 92553.

4 4. Service of the Accusation was effective as a matter of law under the provisions of
5 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
6 124.

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

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

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

14 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
15 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
16 5829.

17 8. California Government Code section 11520(a) 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 without
21 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. 5829, finds that
27 the charges and allegations in Accusation No. 5829, are separately and severally, found to be true
28 and correct by clear and convincing evidence.

10 10. Taking official notice of its own internal records, pursuant to Business and
11 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
12 and Enforcement is \$3,105.25 as of July 5, 2016.

DETERMINATION OF ISSUES

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2 1. Based on the foregoing findings of fact, Respondent Robert James Preston has
3 subjected his Pharmacy Technician Registration No. TCH 141009 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 Technician
6 Registration based upon the following violations alleged in the Accusation which are supported
7 by the evidence contained in the Default Decision Evidence Packet in this case.:

8 a. Cause exists to revoke Respondent's Pharmacy Technician Registration under
9 Business and Professions Code section 4301, subdivision (f) in that Respondent committed acts
10 involving dishonesty, fraud, deceit, or corruption, when Respondent stole controlled substances
11 from CVS.

12 b. Cause exists to revoke Respondent's Pharmacy Technician Registration under
13 Business and Professions Code section 4301, subdivision (h) in that Respondent administered to
14 himself controlled substances to the extent or in a manner as to be dangerous or injurious to
15 himself or the public.

16 c. Cause exists to revoke Respondent's Pharmacy Technician Registration under
17 Business and Professions Code section 4301, subdivision (j) for violation of Health and Safety
18 Code sections 11170 and 11171 in that Respondent illegally obtained and administered controlled
19 substances to himself and others.

20 d. Cause exists to revoke Respondent's Pharmacy Technician Registration under
21 Business and Professions Code section 4301, subdivision (o) for violation of Code sections 4059
22 and 4060 in that Respondent illegally furnished controlled substances to himself and others, and
23 illegally possessed controlled substances without a legitimate prescription.

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ORDER

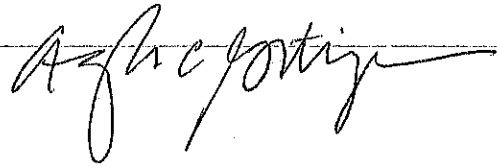
IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 141009 issued to Respondent Robert James Preston is revoked.

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 at 5:00 p.m. on September 9, 2016.

It is so ORDERED on August 10, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

81388628.DOC
DOJ Matter ID:SD2016700976

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

(ROBERT JAMES PRESTON)

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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 **ROBERT JAMES PRESTON**
25335 Delphinium Avenue
14 Moreno Valley, CA 92553
15 **Pharmacy Technician Registration No. TCH**
141009
16
17 **Respondent.**

Case No. 5829

A C C U S A T I O N

18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
21 as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.
22 2. On or about August 1, 2014, the Board issued Pharmacy Technician Registration
23 Number TCH 141009 to Robert James Preston (Respondent). The Pharmacy Technician
24 Registration expired on February 29, 2016, and has not been renewed.

25 **JURISDICTION**

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

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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.

....

(j) The violation of any of the statutes of this state, of 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.

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7. Section 4059 of the Code states:

(a) 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. A person may not furnish any dangerous device, 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, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. 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. Health and Safety Code section 11170 states that no person shall prescribe, administer, or furnish a controlled substance for himself.

10. Health and Safety Code section 1171 states that no person shall prescribe, administer, or furnish a controlled substance except under the conditions and in the manner provided by this division.

COST RECOVERY

11. 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.

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1 **DRUGS**

2 12. Alprazolam is a Schedule IV controlled substance pursuant to Health and Safety Code
3 section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code
4 section 4022.

5 13. Promethazine with codeine is a Schedule V controlled substance pursuant to Health
6 and Safety Code section 11058(c) and is a dangerous drug pursuant to Code section 4022.

7 **FACTUAL ALLEGATIONS**

8 14. Respondent was employed as a pharmacy technician at CVS Pharmacy in Rialto,
9 California. In October 2015, the CVS Pharmacy Diversion Manager conducted an audit of
10 promethazine with codeine (promethazine) for the dates of May 1, 2015 through September 23,
11 2015. The audit reflected a loss of 2,494 units of promethazine during that timeframe.
12 Thereafter, CVS conducted a full internal investigation, which included interviewing employees.

13 On November 10, 2015, Respondent was interviewed about the loss of promethazine. During the
14 interview, Respondent admitted to taking promethazine with codeine and alprazolam in order to
15 sell it to his friends. He stated that he used the money from these sales to help him pay bills.
16 Respondent also admitted to taking alprazolam 2 mg for his personal use.

17 15. After CVS notified the Board of Pharmacy of Respondent's diversion, the Board
18 initiated an investigation, including an audit of alprazolam and promethazine. The audit revealed
19 that between May 1, 2015 and November 10, 2015, CVS had a total loss 1,437 tablets of
20 alprazolam 2 mg, 4 tablets of alprazolam ER 2 mg, 2,668 ml of promethazine with codeine syrup,
21 and 599 ml of promethazine VC-codeine syrup.

22 16. CVS employees who worked with Respondent were also interviewed. Several
23 employees reported observing Respondent act in an unusual manner. One technician reported
24 that Respondent appeared "dazed" at work. Another technician reported that on two occasions,
25 Respondent appeared "altered," his speech was slurred, and his eyes were dilated. On one of
26 those occasions, this technician was asked to "keep an eye" on Respondent and not to let him
27 work with drugs. Respondent was sent home. The Pharmacist-in-Charge reported that
28 Respondent occasionally exhibited "erratic" behavior and appeared "out of it."

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Dishonest Act)**

3 17. Respondent has subjected his license to disciplinary action under section 4301,
4 subdivision (f) of the Code in that Respondent committed acts involving dishonesty, fraud, deceit,
5 or corruption, in that Respondent stole controlled substances from CVS, as detailed in paragraphs
6 14 through 16, above, which are incorporated herein by reference.

7 **SECOND CAUSE FOR DISCIPLINE**

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

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

13 **THIRD CAUSE FOR DISCIPLINE**

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

15 19. Respondent has subjected his license to disciplinary action under section 4301,
16 subdivision (j) of the Code for violation of Health and Safety Code sections 11170 and 11171 in
17 that Respondent illegally obtained and administered controlled substances to himself and others,
18 as detailed in paragraphs 14 through 16, above, and which are incorporated herein by reference.

19 **FOURTH CAUSE FOR DISCIPLINE**

20 **(Violating Laws Governing Pharmacy)**

21 20. Respondent has subjected his license to disciplinary action under section 4301,
22 subdivision (o) of the Code for violation of Code sections 4059 and 4060 in that Respondent
23 illegally furnished controlled substances to himself and others, and illegally possessed controlled
24 substances without a legitimate prescription, as detailed in paragraphs 14 through 16, above, and
25 which are incorporated herein by reference.

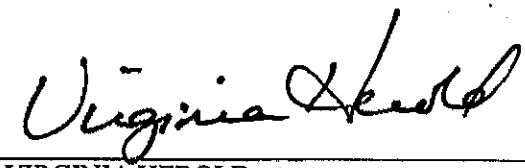
26 **PRAYER**

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

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- 1. Revoking or suspending Pharmacy Technician Registration Number TCH 141009, issued to Robert James Preston;
- 2. Ordering Robert James Preston 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: 6/9/16



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

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