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

In the Matter of the Accusation Against:
MICHAEL VINCE ANTHONY SILVA
1824 Brahms Way
Modesto, CA 95358

Original Pharmacy Technician Registration
No. TCH 95703

Respondent.

Case No. 6158

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about August 11, 2017, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, (Board) filed Accusation No. 6158 against Michael Vince Anthony Silva (Respondent) before the Board. (Accusation attached as Exhibit A.)

2. On or about May 26, 2010, the Board issued Original Pharmacy Technician Registration Number TCH 95703 to Respondent. The Original Pharmacy Technician Registration expired on May 31, 2016, was canceled on September 4, 2016, and has not been renewed.

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1 3. On or about August 23, 2017, Respondent was served by Certified and First Class
2 Mail copies of Accusation No. 6158, 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:

7 1824 Brahms Way
8 Modesto, CA 95358.

9 4. Service of the Accusation was effective as a matter of law under the provisions of
10 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
11 124.

12 5. The aforementioned Certified and First Class Mail documents were never returned by
13 the 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. The Board takes official notice of its records and the fact that Respondent failed to
21 file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore
22 waived his right to a hearing on the merits of Accusation No. 6158.

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

1 taking official notice of all the investigatory reports, exhibits, and statements contained therein on
2 file at the Board's offices regarding the allegations contained in Accusation No. 6158, finds that
3 the charges and allegations in Accusation No. 6158, are separately and severally, found to be true
4 and correct by clear and convincing evidence.

5 10. Taking official notice of its own internal records, pursuant to Business and
6 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
7 and Enforcement are \$2,560.75 as of September 20, 2017.

8 DETERMINATION OF ISSUES

9 1. Based on the foregoing findings of fact, Respondent Michael Vince Anthony Silva
10 has subjected his Original Pharmacy Technician Registration Number TCH 95703 to discipline.

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

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

15 a. Violation of Business and Professions Code sections 4059(a) and 4060 in that from
16 on or about January 2013 through July 17, 2014, Respondent stole controlled substances from
17 CVS Pharmacy without a valid, current prescription for himself and then sold the controlled
18 substances to a friend, again without a valid, current prescription. The facts and circumstances
19 are as follows:

20 b. From on or about October 2009 through July 17, 2014, Respondent worked as a
21 Pharmacy Technician at CVS Pharmacy store number 9949, located in Ripon, California.

22 c. On or about July 31, 2014, the Board received an e-mail notification from CVS
23 Pharmacy regarding Respondent's admission to stealing controlled substances. The controlled
24 substances were hydrocodone/APAP 10/325mg, hydrocodone/APAP 7.5/325mg, and
25 hydrocodone/APAP 5/325mg.

26 d. Attached to the July 31, 2014 e-mail was a Voluntary Statement signed by
27 Respondent and dated July 17, 2014. According to the statement, Respondent admitted to
28 stealing hydrocodone/APAP 10/325mg, hydrocodone/APAP 7.5/325mg, and hydrocodone/APAP

1 5/325mg from CVS Pharmacy. Respondent admitted to stealing a total of 20,400 pills.
2 Respondent admitted that after stealing the hydrocodone/APAP, he would sell it to a friend.
3 Respondent admitted that the total dollar amount loss he caused to CVS Pharmacy was as
4 follows: 20,400 tablets of hydrocodone/APAP 10/325mg at a value of \$15,909.96; 750 tablets of
5 hydrocodone/APAP 7.5/325mg at a value of \$590.00; and 750 tablets of hydrocodone/APAP
6 5/325mg at a value of \$537.00.

7 e. On or about July 17, 2014, Respondent was interviewed by an officer with the Ripon
8 Police Department regarding his theft of controlled substances. During this interview,
9 Respondent admitted that he began stealing hydrocodone/APAP 10/325mg, 7.5/325mg, and
10 5/325mg in January 2013 from CVS Pharmacy. Respondent admitted that he would steal the
11 hydrocodone/APAP from CVS Pharmacy one to three times per week and sell the pills to a
12 friend. Respondent admitted that he usually stole the pills a handful at a time and then placed the
13 pills in his pocket. Respondent admitted that he had taken full 100-count bottles of
14 hydrocodone/APAP in the past.

15 f. Violation of Business and Professions Code section 4301(j), and sections 11171,
16 11173, 11350(a), and 11352(a) of the Health and Safety Code, in that Respondent violated the
17 statutes of this state regulating controlled substances and dangerous drugs as follows:

18 g. From on or about January 2013 through July 17, 2014, Respondent stole 20,400
19 tablets of hydrocodone/APAP from CVS Pharmacy without possessing a current, valid
20 prescription.

21 h. From on or about January 2013 through July 17, 2014, Respondent stole 20,400
22 tablets of hydrocodone/APAP from CVS Pharmacy and sold the tablets to a friend.

23 i. The facts and circumstances are described with more particularity in paragraphs 3(b)-
24 (e).

25 j. Violation of Business and Professions Code section 4301(f) in that from on or about
26 January 2013 through July 17, 2014, Respondent stole 20,400 tablets of hydrocodone/APAP from
27 CVS Pharmacy and sold the tablets to a friend. The facts and circumstances are described with
28 more particularity in paragraphs 3(b)-(e).

1 k. Violation of Business and Professions Code section 4301(q) in that Respondent failed
2 to cooperate with the Board in its investigation into his theft of hydrocodone/APAP from CVS
3 Pharmacy. The facts and circumstances are as follows:

4 l. On or about June 3, 2015, a Board Inspector sent a letter to Respondent at his address
5 of record seeking to speak with him regarding his theft of controlled substances from CVS
6 Pharmacy. On or about June 12, 2015, the letter was returned to the Board Inspector marked
7 "Return to Sender" and indicated that Respondent had moved but left no forwarding address.

8 m. On or about June 12, 2015, a Board Inspector sent a second letter to Respondent at his
9 address of record seeking to speak with him regarding his theft of controlled substances from
10 CVS Pharmacy. On or about June 19, 2015, this letter was returned to the Board Inspector
11 marked "Return to Sender."

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ORDER

IT IS SO ORDERED that Original Pharmacy Technician Registration No. TCH 95703, heretofore issued to Respondent Michael Vince Anthony Silva, 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 November 29, 2017.

It is so ORDERED on October 30, 2017.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

SA2017107277

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

(MICHAEL VINCE ANTHONY SILVA)

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Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 PHILLIP L. ARTHUR
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5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 322-0032
Facsimile: (916) 327-8643
7 E-mail: Phillip.Arthur@doj.ca.gov
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:
12
13 **MICHAEL VINCE ANTHONY SILVA**
1824 Brahms Way
Modesto, CA 95358
14
15 **Original Pharmacy Technician Registration**
No. TCH 95703
16
17 Respondent.

Case No. 6158

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, Department of Consumer Affairs.
- 22 2. On or about May 26, 2010, the Board of Pharmacy (Board) issued Original Pharmacy
23 Technician Registration Number TCH 95703 to Michael Vince Anthony Silva (Respondent). The
24 Original Pharmacy Technician Registration expired on May 31, 2016, was canceled on
25 September 4, 2016, and has not been renewed.

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1 **JURISDICTION**

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

4 4. Section 4300 of the Code states, in pertinent part:

5 "(a) Every license issued may be suspended or revoked. . . ."

6 5. Section 4300.1 of the Code states:

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

12 **BUSINESS AND PROFESSIONS CODE**

13 6. Section 4022 of the Code states, in pertinent part:

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

16 "(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without
17 prescription," "Rx only," or words of similar import.

18 ". . .

19 "(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
20 prescription or furnished pursuant to Section 4006."

21 7. Section 4059 of the Code states, in pertinent part:

22 "(a) A person may not furnish any dangerous drug, except upon the prescription of a
23 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
24 3640.7. A person may not furnish any dangerous device, except upon the prescription of a
25 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
26 3640.7. . . ."

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1 8. Section 4060 of the Code states:

2 "No person shall possess any controlled substance, except that furnished to a person upon
3 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
4 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse
5 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
6 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
7 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
8 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
9 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
10 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
11 nurse midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
12 labeled with the name and address of the supplier or producer.

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

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

17 "The board shall take action against any holder of a license who is guilty of unprofessional
18 conduct or whose license has been 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, deceit, or
22 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
23 whether the act is a felony or misdemeanor or not.

24 "...

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

27 “...
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1 veterinarian licensed to practice in this state, shall be punished by imprisonment pursuant to
2 subdivision (h) of Section 1170 of the Penal Code for three, four, or five years. . . .”

3 **COST RECOVERY**

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

8 **CONTROLLED SUBSTANCE**

9 15. “Hydrocodone w/APAP” or hydrocodone with acetaminophen tablets are produced
10 by several drug manufacturers. Hydrocodone bitartrate is semisynthetic narcotic analgesic, a
11 dangerous drug as defined in Code section 4022, a Schedule II controlled substance and narcotic
12 as defined by section 11055, subdivision (b) of the Health and Safety Code, and a Schedule II
13 controlled substance as defined by section 1308.12, subdivision (b) of Title 21 of the Code of
14 Federal Regulations. As of October 5, 2014, the substance was reclassified as a Schedule II drug.
15 Accordingly, before October 5, 2014, Hydrocodone bitartrate was classified as a Schedule III
16 controlled substance.

17 **BACKGROUND**

18 16. From on or about October 2009 through July 17, 2014, Respondent worked as a
19 Pharmacy Technician at CVS Pharmacy store number 9949, located in Ripon, California.

20 17. On or about July 31, 2014, the Board received an e-mail notification from CVS
21 Pharmacy regarding Respondent’s admission to stealing controlled substances. The controlled
22 substances were hydrocodone/APAP 10/325mg, hydrocodone/APAP 7.5/325mg, and
23 hydrocodone/APAP 5/325mg.

24 18. Attached to the July 31, 2014 e-mail was a Voluntary Statement signed by
25 Respondent and dated July 17, 2014. According to the statement, Respondent admitted to
26 stealing hydrocodone/APAP 10/325mg, hydrocodone/APAP 7.5/325mg, and hydrocodone/APAP
27 5/325mg from CVS Pharmacy. Respondent admitted to stealing a total of 20,400 pills.
28 Respondent admitted that after stealing the hydrocodone/APAP, he would sell it to a friend.

1 Respondent admitted that the total dollar amount loss he caused to CVS Pharmacy was as
2 follows: 20,400 tablets of hydrocodone/APAP 10/325mg at a value of \$15,909.96; 750 tablets of
3 hydrocodone/APAP 7.5/325mg at a value of \$590.00; and 750 tablets of hydrocodone/APAP
4 5/325mg at a value of \$537.00.

5 19. On or about July 17, 2014, Respondent was interviewed by an officer with the Ripon
6 Police Department regarding his theft of controlled substances. During this interview,
7 Respondent admitted that he began stealing hydrocodone/APAP 10/325mg, 7.5/325mg, and
8 5/325mg in January 2013 from CVS Pharmacy. Respondent admitted that he would steal the
9 hydrocodone/APAP from CVS Pharmacy one to three times per week and sell the pills to a
10 friend. Respondent admitted that he usually stole the pills a handful at a time and then place the
11 pills in his pocket. Respondent admitted that he had taken full 100-count bottles of
12 hydrocodone/APAP in the past.

13 20. On or about June 3, 2015, a Board Inspector sent a letter to Respondent at his address
14 of record seeking to speak with him regarding his theft of controlled substances from CVS
15 Pharmacy. On or about June 12, 2015, the letter was returned to the Board Inspector marked
16 "Return to Sender" and indicated that Respondent had moved but left no forwarding address.

17 21. On or about June 12, 2015, a Board Inspector sent a second letter to Respondent at his
18 address of record seeking to speak with him regarding his theft of controlled substances from
19 CVS Pharmacy. On or about June 19, 2015, this letter was returned to the Board Inspector
20 marked "Return to Sender."

21 **FIRST CAUSE FOR DISCIPLINE**

22 **(Unlawful Possession and Furnishing of a Controlled Substance)**

23 22. Respondent is subject to disciplinary action under sections 4059(a) and 4060 of the
24 Code in that from on or about January 2013 through July 17, 2014, Respondent stole controlled
25 substances from CVS Pharmacy without a valid, current prescription for himself and then sold the
26 controlled substances to a friend, again without a valid, current prescription. The facts and
27 circumstances are described with more particularity in paragraphs 16-19.

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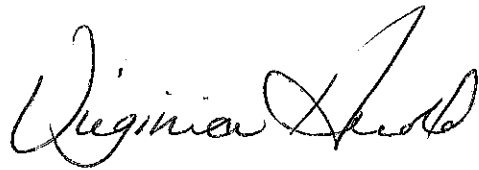
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PRAYER

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 Original Pharmacy Technician Registration Number TCH 95703, issued to Michael Vince Anthony Silva;
2. Ordering Michael Vince Anthony Silva to pay the Board of Pharmacy the reasonable costs of investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: 8/11/17



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

SA2017107277