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

In the Matter of the Accusation Against: **TANYA ELIZABETH DYER, A.K.A.** **TANYA ELIZABETH GARDNER** 3143 CEANOTHUS AVE. CHICO, CA 95973 ORIGINAL PHARMACY TECHNICIAN REGISTRATION NUMBER TCH. 25254 Respondent.	Case No. 3339 **A C C U S A T I O N**

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 March 10, 1998, the Board of Pharmacy issued Original Pharmacy Technician Registration Number TCH 25254 to Tanya Elizabeth Dyer, a.k.a Tanya Elizabeth Gardner (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2009, unless renewed.

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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 (Code) unless otherwise indicated.

4. Section 4300, Subdivision (a), of the Code provides that any license issued may be suspended or revoked. Subdivision (b) provides the Board may discipline a licensee by probation, suspension, revocation, or any other action deemed proper by the Board.

5. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

STATUTORY PROVISIONS

6. 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:
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> (a) Gross immorality.
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> (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.
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> (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.
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> (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.
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> (k) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances.
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> (l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United

States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

(p) Actions or conduct that would have warranted denial of a license.

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

"Dangerous drug" means any drug unsafe for self-use in humans or animals, and includes the following:

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

8. Section 480 of the Code states, in pertinent part:

(a) A board may deny a license regulated by this code on the grounds of:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilt or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another or substantially injure another.

(3)(A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

9. Section 490 of the Code states, in pertinent part:

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has

been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

10. Health and Safety Code section 11173, subdivision (a), states, in pertinent part, that no person "shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances by fraud, deceit, misrepresentation, or subterfuge. . . ."

REGULATIONS

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

For the purpose of denial, suspension, or revocation of a personal 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."

DRUGS

12. **"Klonopin"** a brand name for Clonazepam, a benzodiazepine, is a Schedule IV controlled substance as designated by Health and Safety Code section 11057, subdivision (d). Klonopin is a dangerous drug within the meaning of Code section 2044 in that it can be lawfully dispensed only on prescription.

COST RECOVERY

13. 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.

FIRST CAUSE FOR DISCIPLINE

(Criminal Convictions)

14. Respondent's original Registered Pharmacy Technician license is subject to disciplinary action on the grounds of unprofessional conduct within the meaning of Code sections 490 and 4301, subdivision (l), in that she was convicted of crimes substantially related to the practice of a Registered Pharmacy Technician, as follows:

15. On or about May 16, 2007, in the case titled *People v. Tanya Elizabeth Dyer*, Butte County Superior Court Case No. SCR60312. Respondent was convicted on her plea of no contest to violation of Health & Safety Code section 11173, subdivision (a) [attempting to obtain a controlled substance by fraud, deceit, misrepresentation or subterfuge], a misdemeanor. Among other things, Respondent was ordered to: complete 50 hours of community service within six months of the conviction date; summary probation for 36 months; submit to testing and totally refrain from controlled substances; attend AA/NA at least three times per week; submit to searches of controlled substances and/or paraphernalia; and payment of fees and fines.

The underling circumstances are: On or about April 1, 2007, Respondent attempted to obtain Klonopin, a controlled substance, by fraud, deceit, misrepresentation, or subterfuge from a chain drugstore in Chico, California.

16. On or about March 7, 2006, in the case titled *People v. Tanya Dyer*, Butte County Superior Court Case No. SCR53885. Respondent was convicted on her plea of no contest to violation of Vehicle Code section 23152, subdivision (a) [driving a motor vehicle under the influence of alcohol or drugs, or combined influence of alcohol or drugs], a misdemeanor. Among other things, Respondent was ordered to: conditional revocable release for 36 months; serve 48 hours in county jail; successfully complete a level 1 DUI school; not to refuse a chemical test pursuant to the Vehicle Code; and pay restitution, fines, and fees.

The underlying circumstances are as follows: On or about January 3, 2006, Respondent drove her vehicle while under the influence of alcohol and/or drugs or combined, when she drove into a parked vehicle in Chico, California, and fled the scene.

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SECOND CAUSE FOR DISCIPLINE

(More than One Criminal Conviction Involving Dangerous Drug)

17. Respondent's Original Registered Pharmacy Technician license is subject to disciplinary action on the grounds of unprofessional conduct within the meaning of Code section 4301, subdivision (k), in that she was convicted of more than one misdemeanor involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances, as set forth more fully in paragraphs, 15, and 16, above.

THIRD CAUSE FOR DISCIPLINE

(Violation of Federal or State Statute Regulating a Controlled Substance)

18. Respondent's Original Registered Pharmacy Technician license is subject to disciplinary action on the grounds of unprofessional conduct within the meaning of Code section 4301, subdivision (j), in that Respondent violation Health and Safety Code section 11173, subdivision (a), which regulates controlled substances, as set forth more fully in paragraph 16, above.

FOURTH CAUSE FOR DISCIPLINE

(Self Administration of Controlled Substance or Alcohol in Dangerous Manner or Injurious to Self or Others)

19. Respondent's Original Registered Pharmacy Technician license is subject to disciplinary action on the grounds of unprofessional conduct within the meaning of Code section 4301, subdivision (h), in that Respondent self-administered a controlled substance and/or used a dangerous drug in the extent or in a manner dangerous to herself or others, to the extent that its use impairs her ability to conduct the practice of Registered Pharmacist Technician, as set forth more fully in paragraphs 15 and 16 above.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Gross Immorality)

20. Respondent's Original Registered Pharmacy Technician license is subject to disciplinary action on the grounds of unprofessional conduct within the meaning of Code section

4301, subdivision (a), in that she committed acts of gross immorality, as set forth more fully in paragraphs 15 and 16 above.

SIXTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Moral Turpitude, Dishonesty, Fraud, Etc.)

21. Respondent's Original Registered Pharmacy Technician license is subject to disciplinary action on the grounds of unprofessional conduct within the meaning of Code sections 4301, subdivision (f), and 480, subdivision (a)(10), (12), and (3) in that she committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption, as set forth more fully in paragraphs 15 and 16 above.

SEVENTH CAUSE FOR DISCIPLINE

22. Respondent's Original Registered Pharmacy Technician license is subject to disciplinary action on the grounds of unprofessional conduct within the meaning of Code section 4301, subdivision (p), in that she committed acts that would have warranted denial of a license pursuant to Code section 475, as set forth more fully in paragraphs 15 and 16 above.

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 25254, issued to Tanya Elizabeth Dyer, a.k.a. Tanya Elizabeth Gardner;

2. Ordering Tanya Elizabeth Dyer, a.k.a. Tanya Elizabeth Gardner 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: 9/17/09

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