

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 NICOLE R. COOK
Deputy Attorney General
4 State Bar No. 263607
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2143
7 Facsimile: (619) 645-2061
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:

Case No. 4066

ACCUSATION

13 **ANDREW BAKER**
14 **5352 Passero Avenue**
Riverside, CA 92505

15 **Pharmacy Technician License No. TCH**
16 **67940**

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, Department of Consumer Affairs.
- 23 2. On or about June 6, 2006, the Board of Pharmacy issued Pharmacy Technician
24 License Number TCH 67940 to Andrew Baker (Respondent). The Pharmacy Technician License
25 was in full force and effect at all times relevant to the charges brought herein and will expire on
26 July 31, 2011, unless renewed.

1 **JURISDICTION**

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

5 **JURISDICTION**

6 4. This Accusation is brought before the Board of Pharmacy (Board), Department of
7 Consumer Affairs, under the authority of the following laws. All section references are to the
8 Business and Professions Code unless otherwise indicated.

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

13 6. Section 4300, subdivision (a) of the Code states in pertinent part, "every license
14 issued may be suspended or revoked."

15 **STATUTORY PROVISIONS**

16 7. Section 4060 of the Code states:

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

8. 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:

....

(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.

....

9. Health and Safety Code section 11375(b)(2) states:

Every person who possesses any controlled substance specified in subdivision (c), unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be guilty of an infraction or a misdemeanor.

COST RECOVERY

10. 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.

DRUG

11. Lorazepam, sold under the brand name Ativan, is a Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(16), and is a dangerous drug pursuant to Business and Professions Code section 4022. Lorazepam is used in the treatment of anxiety disorders and for short-term (up to 4 months) relief of the symptoms of anxiety.

1 **FACTUAL ALLEGATIONS**

2 12. On or about September 3, 2010, at approximately 11:14 p.m., officers from the Los
3 Angeles Sheriff's Office initiated a traffic stop on Imperial Highway in Norwalk, of a vehicle
4 with expired registration. Respondent was identified of the driver of the vehicle. Following a
5 search of the vehicle, officers located in the driver's side door, a small plastic baggie with four
6 tablets of Lorazepam inside. Respondent told the officers that the Lorazepam belonged to another
7 individual, stating, "I think it belongs to my friend's grandma." Respondent was then arrested for
8 possession of a controlled substance.

9 13. On or about September 8, 2010, a misdemeanor complaint was filed in the criminal
10 proceeding entitled *People of the State of California v. Andrew Baker* in the Los Angeles
11 Superior Court case number 0BF04322, alleging a violation of Health and Safety Code section
12 11375(b)(2), for unlawfully possessing a designated controlled substance. On October 6, 2010,
13 Respondent pled guilty to violation of Health and Safety Code section 11375(b)(2). However, the
14 Court granted Respondent deferred entry of judgment for a period of 18 months under Penal Code
15 section 1000. The Court ordered Respondent to pay the diversion fee, not use or possess any
16 narcotics or dangerous drugs (except by valid prescription), and to enroll and complete an
17 approved controlled substance treatment program.

18 **FIRST CAUSE FOR DISCIPLINE**

19 (Unprofessional Conduct – Violating Laws Regulating Controlled Substances)

20 14. Respondent is subject to disciplinary action for unprofessional conduct under section
21 4301(j) of the Code in that Respondent possessed a controlled substance, Lorazepam, without a
22 valid prescription in violation of the California Uniform Controlled Substances Act (Health and
23 Safety Code Sections 11000, et. Seq.), as set forth in paragraphs 12-13 above, incorporated herein
24 by reference.

25 **SECOND CAUSE FOR DISCIPLINE**

26 (Unprofessional Conduct – Violation of Chapter)

27 15. Respondent is subject to disciplinary action for unprofessional conduct under section
28 4301(o) of the Code, in that Respondent violated the Pharmacy Act by illegally possessing a

1 controlled substance in violation of Code section 4060, and by violating Health and Safety Code
2 section 11375, as set forth in paragraphs 12-13 above, incorporated herein by reference.

3 PRAYER

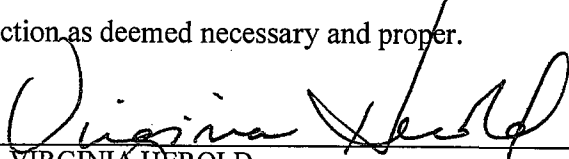
4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
5 and that following the hearing, the Board of Pharmacy issue a decision:

6 1. Revoking or suspending Pharmacy Technician License Number TCH 67940, issued
7 to Andrew Baker ;

8 2. Ordering Andrew Baker to pay the Board of Pharmacy the reasonable costs of the
9 investigation and enforcement of this case, pursuant to Business and Professions Code section
10 125.3;

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

12 DATED: 6/22/11


13 VIRGINIA HEROLD
14 Executive Officer
15 Board of Pharmacy
16 Department of Consumer Affairs
17 State of California
18 Complainant

17 SD2011800569
18 80508721.doc