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

11 In the Matter of the Accusation Against:

Case No. 4410

12 **LINDSEY NICOLE CARLSON**
13 **8889 Caminito Plaza Centro 7213**
San Diego, CA 92122

14 **Pharmacy Technician License No. TCH**
15 **94160**

A C C U S A T I O N

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

21 2. On or about November 16, 2009, the Board of Pharmacy issued Pharmacy Technician
22 License Number TCH 94160 to Lindsey Nicole Carlson (Respondent). The Pharmacy Technician
23 License was in full force and effect at all times relevant to the charges brought herein. Pharmacy
24 Technician License Number TCH 94160 expired on April 30, 2013 and has not been renewed.

25 **JURISDICTION**

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

1 4. Section 4300 of the Code states:

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

3 (b) The board shall discipline the holder of any license issued by the
4 board, whose default has been entered or whose case has been heard by the
5 board and found guilty, by any of the following methods:

6 (1) Suspending judgment.

7 (2) Placing him or her upon probation.

8 (3) Suspending his or her right to practice for a period not exceeding one
9 year.

10 (4) Revoking his or her license.

11 (5) Taking any other action in relation to disciplining him or her as the
12 board in its discretion may deem proper.

13 (e) The proceedings under this article shall be conducted in accordance
14 with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the
15 Government Code, and the board shall have all the powers granted therein. The
16 action shall be final, except that the propriety of the action is subject to review
17 by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure.

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

22 **STATUTORY AND REGULATORY PROVISIONS**

23 6. Section 4022 of the Code states

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

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

28 (b) Any device that bears the statement: "Caution: federal law restricts
this device to sale by or on the order of a _____," "Rx only," or words of
similar import, the blank to be filled in with the designation of the practitioner
licensed to use or order use of the device.

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

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1 pharmacy, including regulations established by the board or by any other state
2 or federal regulatory agency....

3 9. Code section 4327 states:

4 Any person who, while on duty, sells, dispenses or compounds any drug
5 while under the influence of any dangerous drug or alcoholic beverages shall be
6 guilty of a misdemeanor.

7 10. Health and Safety Code section 11170 states, "No person shall prescribe, administer,
8 or furnish a controlled substance for himself."

9 11. Title 16, California Code of Regulations, section 1704, states:

10 Each person holding a certificate, license, permit, registration or
11 exemption to practice or engage in any activity in the State of California under
12 any and all laws administered by the Board shall file a proper and current
13 residence address with the Board at its office in Sacramento and shall within 30
14 days notify the Board at its said office of any and all changes of residence
15 address, giving both the old and new address.

16 12. Title 16, California Code of Regulations, section 1770, states:

17 For the purpose of denial, suspension, or revocation of a personal or
18 facility license pursuant to Division 1.5 (commencing with Section 475) of the
19 Business and Professions Code, a crime or act shall be considered substantially
20 related to the qualifications, functions or duties of a licensee or registrant if to a
21 substantial degree it evidences present or potential unfitness of a licensee or
22 registrant to perform the functions authorized by his license or registration in a
23 manner consistent with the public health, safety, or welfare.

24 COST RECOVERY

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

29 DRUGS

30 14. Valium, the brand name for diazepam, is a Schedule IV controlled substance as
31 designated by Health and Safety Code section 11057(d), and is a dangerous drug pursuant to
32 Business and Professions Code section 4022. Diazepam is used to treat anxiety.

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FACTS

15. Respondent was employed at UCSD Edith and William Perlman Ambulatory Care Pharmacy (hereinafter "Pharmacy") since May 4, 2010 as a pharmacy technician.

16. In or about June, 2011, L.S., the Acting Interim Pharmacist-In-Charge of the Pharmacy observed changes in Respondent's behavior at work. L.S. noticed that Respondent was having a hard time staying awake and that her eyes appeared heavy and glossed over and that she performed her duties as a technician more slowly. On or about June 23, 2011, L.S. discussed these changes with Respondent, who attributed them to hectic pre-wedding planning and lack of rest. L.S. gave Respondent a verbal warning about her behavior and performance at work.

17. On or about July 1, 2011, L.S. observed Respondent helping a patient at the drop-off window of the Pharmacy and overhead the patient ask Respondent if she was okay. When L.S. looked at Respondent, Respondent appeared to be slipping in and out of consciousness; her eyes were shut; her speech slurred; and her body swayed. L.S. removed Respondent from her duties at the window and sent her home.

18. Respondent's behavior at work did not improve. L.S. noticed that Respondent was constantly taking breaks and was having a hard time staying focused. L.S. found that Respondent was frequently in the break room and was often missing from her assigned position. Respondent slept during her lunch break, which often exceeded one hour. She was often late to work and, on September 2, 2011, Respondent failed to appear for work without having first advised her manager. L.S. observed Respondent's speech to often be slurred and delayed, her eyes droopy, her body swaying and her handwriting sloppy.

19. On or about October 22, 2011, J.B., the Supervising Pharmacist at the Pharmacy, had a meeting with Respondent because he too had observed her looking tired and fatigued on more than one occasion. Respondent explained that she was an insomniac and that she fell asleep on her lunch break and was having a tough time waking up from that nap.

20. On October 28, 2011, Respondent was assigned to the mail department where her responsibilities included processing and filling prescriptions that had been mailed or faxed to the Pharmacy. Respondent was not able to complete her assignment despite having once been a

1 stellar pharmacy technician. Two other technicians were pulled from their regular duties to assist
2 Respondent.

3 21. Two pharmacy technicians reported that a 5 mg bag of zolpidem (Ambien) had been
4 missing since October 28, 2011 but later mysteriously re-appeared on November 3, 2011 in the
5 back of the controlled substance drawer. One of the technicians observed Respondent lingering
6 by the controlled substance drawer on October 28, 2011 even though there was no need for
7 Respondent to remove any drugs from the controlled substance drawer because the other
8 technician had pulled all of the controlled substances that were needed to fill prescriptions.

9 22. On October 28, 2011, J.B. observed that Respondent had slurred speech, appeared
10 disoriented and stumbled around. J.B. reported this behavior to his supervisor. Respondent was
11 sent to UCSD Center for Occupational Medicine and Environmental Health ("COEM") to be
12 evaluated for fitness for duty and for performance of a drug screen. Respondent submitted to a
13 drug screen on October 28, 2011.

14 23. November 2, 2011, Respondent was working as the pharmacy clerk or cashier. A
15 radiology technician came to the Pharmacy window to pick up a prescription and later advised
16 L.S. that Respondent was "obviously wasted."

17 24. On November 7, 2011, the Pharmacy was notified Respondent's drug screen was
18 positive and Respondent was placed on investigatory leave. She was later terminated for abusing
19 drugs and for reporting to work impaired.

20 25. Respondent's drug screen was positive for the following benzodiazepines:
21 nordiazepam, oxazepam and temazepam, which are all metabolites of diazepam. Nordiazepam,
22 oxazepam and temazepam may also be taken as individual drugs. However, according to the
23 California State Board of Pharmacy Controlled Substance Utilization Review and Evaluation
24 System (hereinafter "CURES") Report, the only benzodiazepine dispensed to Respondent by
25 prescription between 2009 and 2011 was clonazepam.

26 26. According to Respondent's CURES Report, the last time Respondent filled a
27 prescription for clonazepam was on September 28, 2010 for a 30-day supply of clonazepam,
28 which was about one year before the drug screen on October 28, 2011.

27. The metabolites of clonazepam were not found in the drug screen. The presence of all three metabolites of benzodiazepine in Respondent's drug screen indicates diazepam use. Diazepam was not listed in Respondent's CURES Report.

28. On March 13, 2012, the Board investigator received a letter sent to Respondent at her address of record that was returned with the notation: "FORWARD TIME EXP RTN TO SEND."

FIRST CAUSE FOR DISCIPLINE

**(Unprofessional Conduct – Use Of Controlled Substance In Manner Dangerous to Self or
Impairs Ability to Practice as Pharmacy Technician Safely)**

29. Respondent is subject to disciplinary action under Code section 4301, subdivision (h) for unprofessional conduct by administering to herself, a controlled substance, to the extent or in a manner that is dangerous or injurious to herself or to the extent that the use impairs Respondent's ability to practice as a pharmacy technician safely in that during the period June through October, 2011, Respondent was observed to be under the influence of a controlled substance, later identified as benzodiazepine, while working as a pharmacy technician, as more fully set forth in paragraphs 15-27 above and incorporated by this reference as though set forth in full herein.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Violation of Laws Regulating Controlled Substances)

30. Respondent is subject to disciplinary action under Code section 4301, subdivision (j), in conjunction with Code section 4060 and Health and Safety Code section 11170, for unprofessional conduct by violating statutes regulating controlled substances in this state or of the United States in that Respondent administered a controlled substance to herself, to wit, benzodiazepine, without a prescription, as more fully set forth in paragraphs 15-27 above and incorporated by this reference as though set forth in full herein.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct – Commission of Any Act Involving Moral Turpitude,**
3 **Dishonesty, Fraud or Deceit)**

4 31. Respondent is subject to disciplinary action under Code section 4301, subdivision (f),
5 for unprofessional conduct by committing acts involving moral turpitude, dishonesty, fraud or
6 deceit in that Respondent administered to herself, a controlled substance, without a prescription;
7 appeared for work as a pharmacy technician while under the influence and while her ability to
8 practice as a pharmacy technician was impaired; and, lied about the cause of her behavior when
9 confronted, as more fully set forth in paragraphs 15-27 above and incorporated by this reference
10 as though set forth in full herein.

11 **FOURTH CAUSE FOR DISCIPLINE**

12 **(Unprofessional Conduct – Dispensing Drugs While**
13 **Under the Influence of Controlled Substance)**

14 32. Respondent is subject to disciplinary action under Code section 4301, subdivision (o),
15 in conjunction with Code section 4327, for unprofessional conduct by violating or attempting to
16 violate any provision of the applicable federal and state laws and regulations governing
17 pharmacy, by selling and/or dispensing drugs while under the influence of a controlled substance,
18 as more fully set forth in paragraphs 15-27 above and incorporated by this reference as though set
19 forth in full herein.

20 **FIFTH CAUSE FOR DISCIPLINE**

21 **(Failure to Advise Board of Change in Address of Record)**

22 33. Respondent is subject to disciplinary action under Code section 4301, subdivision (o)
23 in conjunction with title 16, California Code of Regulations, section 1704, for unprofessional
24 conduct by violating or attempting to violate any provision of the applicable federal and state
25 laws and regulations governing pharmacy, including regulations established by the Board, in that
26 Respondent failed to advise the Board of a change in her address of record, as more fully set forth
27 in paragraph 28 above and incorporated by this reference as though set forth in full herein.

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1 PRAYER

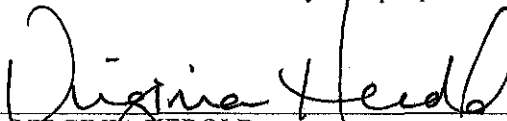
2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Board of Pharmacy issue a decision:

4 1. Revoking or suspending Pharmacy Technician License Number TCH 94160, issued
5 to Lindsey Nicole Carlson;

6 2. Ordering Lindsey Nicole Carlson to pay the Board of Pharmacy the reasonable costs
7 of the investigation and enforcement of this case, pursuant to Business and Professions Code
8 section 125.3; and,

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

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11 DATED: 7/22/13


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

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