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Attorneys for Complainant

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

In the Matter of the Accusation Against: LA DONNA MARIE ALLEN P.O. Box 2204 San Rafael, CA 94912 Pharmacy Technician Registration No. TCH 57325 Respondent.	Case No. 3168 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about September 22, 2008, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 3168 against La Donna Marie Allen (Respondent) before the Board of Pharmacy.

2. On or about July 27, 2004, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 57325 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2009, unless renewed.

3. On or about September 25, 2008, Denise Hosman, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation No.

3168, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is: P.O. Box 2204, San Rafael, CA 94912. A copy of the Accusation is attached as Exhibit A, and is incorporated herein by reference.

4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c).

5. On or about October 21, 2008, the aforementioned certified mail documents were returned by the U.S. Postal Service marked "Unclaimed."

6. Government Code section 11506 states, in pertinent part:

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

7. Respondent failed to file a Notice of Defense within 15 days after service upon her of the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 3168.

8. California Government Code section 11520 states, in pertinent part:

> (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.

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 evidence on file herein, finds that the allegations in Accusation No. 3168 are true.

10. The total cost for investigation and enforcement in connection with the Accusation are $4,568.25 as of November 14, 2008.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent La Donna Marie Allen has subjected her Pharmacy Technician Registration No. TCH 57325 to discipline.

2. A copy of the Accusation is attached.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician Registration based upon the following violations alleged in the Accusation:

a. Respondent is subject to disciplinary action under Business and Professions Code (Code) section 4301(j) in conjunction with Health and Safety Code section 11170 for unlawfully prescribing controlled substances to herself, when she fraudulently authorized prescriptions and prescription refills for herself.

b. Respondent is subject to disciplinary action under Code section 4301(j) in conjunction with Code section 4059(a) in that she furnished dangerous drugs without a valid prescription from a physician, dentist, podiatrist, optometrist, veterinarian or naturopathic doctor to herself and another technician when she fraudulently authorized prescriptions and prescription refills for herself and the other technician.

c. Respondent is subject to disciplinary action under Code section 4301(j) in conjunction with Health and Safety Code section 11173(a) for obtaining controlled substances by fraud, deceit, misrepresentation or subterfuge, when Respondent fraudulently authorized prescriptions for herself and another technician that had not been prescribed or authorized by a doctor.

d. Respondent is subject to disciplinary action under Code section 4301(j) in conjunction with Code section 4060 in that she possessed controlled substances without a valid prescription or authorization.

e. Respondent is subject to disciplinary action under Code section 4301(f) for acts of dishonesty, fraud or deceit in that she unlawfully prescribed controlled substances for herself and another technician in order to gain possession of controlled substances.

f. Respondent is subject to disciplinary action under Code section 4301(g) in conjunction with Health and Safety Code section 11173(b) for unprofessional conduct in that she knowingly made and signed documents that falsely represented the

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existence of facts when she fraudulently authorized prescriptions and prescription refills for herself and another technician.

g. Respondent is subject to disciplinary action under Code section 4301(o) for conspiracy to violate the provisions of the regulations governing pharmacy by conspiring with another technician to falsify prescriptions and refills for controlled substances without prescriber authorization.

ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 57325, heretofore issued to Respondent La Donna Marie Allen, 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 on February 5, 2009.

It is so ORDERED January 6, 2009

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By Kenneth H. Schell
KENNETH H. SCHELL
Board President

80308342.wpd
DOJ docket number:SD2008800958

Attachment:

Exhibit A: Accusation No. 3168

Exhibit A

Accusation No. 3168

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

In the Matter of the Accusation Against: LA DONNA MARIE ALLEN P.O. Box 2204 San Rafael, CA 94912 Pharmacy Technician Registration No. TCH 57325 Respondent.	Case No. 3168 **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 July 27, 2004, the Board of Pharmacy issued Pharmacy Technician Registration Number TCH 57325 to La Donna Marie Allen (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 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 of the Business and Professions Code (Code).

4. Section 4300(a) of the Code states in pertinent part that every license issued may be suspended or revoked.

5. 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:
>
> . . . .
>
> (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.
>
> (g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.
>
> . . . .
>
> (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.

6. Section 4021 of the Code states "'Controlled substance' means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code."

7. Section 4022 of the Code states

> "Dangerous drug" or "dangerous device" means any drug or device 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.

(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.

8. Section 4026 of the Code states that "'Furnish' means to supply by any means, by sale or otherwise."

9. Section 4059(a) of the Code states, in pertinent part, that 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.

10. Section 4060 of the Code provides, in pertinent part, that no person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, or veterinarian.

11. Section 125.3 of the Code states, 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.

12. Health and Safety Code section 11170 provides that no person shall prescribe, administer, or furnish a controlled substance for himself.

13. Health and Safety Code section 11173(a) provides, in pertinent part, that no person shall obtain, or attempt to obtain controlled substances by fraud, deceit, misrepresentation, or subterfuge.

14. Health and Safety Code section 11173(b) provides, in pertinent part, that no person shall make a false statement in any prescription, order, report, or record, required by this division.

DRUGS

15. At all times material herein, Norco was and is a trade name for the generic drug hydrocodone with acetaminophen which is designated by Health and Safety Code section 11056(e)(4) as a narcotic drug and a Schedule III controlled substance, and by Business and

Professions Code section 4022 as a dangerous drug, and is used as a narcotic analgesic in the relief of pain.

16. At all times material herein, Xanax was and is a trade name for the generic drug alprazolam which is designated by Health and Safety Code section 11057(d)(1) as a Schedule IV controlled substance, and by Business and Professions Code section 4022 as a dangerous drug, and is used in the treatment of anxiety.

FACTS

17. In or about January 2006 through July 2006, Respondent and her roommate, S.B. (TCH S.B.), were both employed as pharmacy technicians at Sav-On Drugs, located in Palm Desert, California.

18. It was discovered that Respondent and TCH S.B. were fraudulently authorizing prescription refills for each other while they were working at Sav-Ons Drugs.

19. Respondent fraudulently authorized the following prescriptions and refills for TCH S.B.:

Date	Rx No.	Drug	Quantity
1/06/06	1145324	Alprazolam 0.25 mg	30
3/20/06	1168730	Alprazolam 0.25 mg	60
4/21/06	1168730	Alprazolam 0.25 mg	60
6/30/06	1197903	Alprazolam 0.25 mg	60

20. Respondent fraudulently authorized the following prescriptions and refills for herself:

Date	Rx No.	Drug	Quantity
6/15/06	1194119	Hydrocodone/APAP 10-325	100 (with 5 refills fraudulently authorized)
6/15/06	1194120	Alprazolam 1 mg	60 (with 5 refills fraudulently authorized)
7/03/06	1194119	Hydrocodone/APAP 10-325	100

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21. TCH S.B. fraudulently authorized the following prescription refills for Respondent:

Date	Rx No.	Drug	Quantity
3/09/06	1165120	Hydrocodone/APAP 5-325	100
3/30/06	1165120	Hydrocodone/APAP 5-325	100

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Unlawful Prescribing of Controlled Substances to Oneself)

22. Respondent is subject to disciplinary action under section 4301(j) in conjunction with H&S Code section 11170 for unlawfully prescribing controlled substances to herself, when she fraudulently authorized prescriptions and prescription refills for herself as more particularly alleged in paragraph 20 above and incorporated herein by reference.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Furnishing Dangerous Drugs Without a Prescription)

23. Respondent is subject to disciplinary action under section 4301(j) in conjunction with section 4059(a) in that she furnished dangerous drugs without a valid prescription from a physician, dentist, podiatrist, optometrist, veterinarian or naturopathic doctor to herself and TCH S.B. when she fraudulently authorized prescriptions and prescription refills for herself and TCH S.B. as more particularly alleged in paragraphs 19, 20 and 21 above and incorporated herein by reference.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Obtaining Controlled Substances by Fraud, Subterfuge)

24. Respondent is subject to disciplinary action under section 4301(j) in conjunction with H&S Code section 11173(a) for obtaining controlled substances by fraud, deceit, misrepresentation or subterfuge, when Respondent fraudulently authorized prescriptions for herself and TCH S.B. that had not been prescribed or authorized by a doctor and as more particularly alleged in paragraphs 19, 20 and 21 above and incorporated herein by reference.

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FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Possession of Controlled Substances Without a Prescription)

25. Respondent is subject to disciplinary action under section 4301(j) in conjunction with section 4060 in that she possessed controlled substances without a valid prescription or authorization, as more particularly alleged in paragraph 20 above and incorporated herein by reference.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Act of Dishonesty, Fraud and Deceit)

26. Respondent is subject to disciplinary action under section 4301(f) for acts of dishonesty, fraud or deceit in that she unlawfully prescribed controlled substances for herself and TCH S.B. in order to gain possession of controlled substances as more particularly alleged in paragraphs 19, 20 and 21 above and incorporated herein by reference.

SIXTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Signing Documents that Falsely Represents the Existence of a State of Facts)

27. Respondent is subject to disciplinary action under section 4301(g) in conjunction with H&S Code section 11173(b) for unprofessional conduct in that she knowingly made and signed documents that falsely represented the existence of facts when she fraudulently authorized prescriptions and prescription refills for herself and TCH S.B. as more particularly alleged in paragraphs 19, 20 and 21 above and incorporated herein by reference.

SEVENTH CAUSE FOR DISCIPLINE

(Conspiring to Falsify Prescriptions)

28. Respondent is subject to disciplinary action under section 4301(o) for conspiracy to violate the provisions of the regulations governing pharmacy by conspiring with TCH S.B. to falsify prescriptions and refills for controlled substances without prescriber authorization as more particularly alleged in paragraphs 19, 20 and 21 above and incorporated herein by reference.

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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 Pharmacy Technician Registration Number TCH 57325, issued to La Donna Marie Allen;

2. Ordering La Donna Marie Allen 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; and

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

DATED: 9/22/08

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

80130780.wpd

DECLARATION OF SERVICE
(Certified & First Class Mail (separate mailing))

Case Name: Accusation Against: La Donna Marie Allen

Board of Pharmacy Case No. 3168

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 110 West "A" Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266

I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On September 25, 2008, I served the attached **Statement to Respondent; Accusation; Notice of Defense (2 copies); Request for Discovery; Copy of Government Code sections 11507.5, 11507.6 and 11507.7** by placing a true copy thereof enclosed in a sealed envelope as certified mail with postage thereon fully prepaid and return receipt requested, and another true copy of the **Statement to Respondent; Accusation; Notice of Defense (2 copies); Request for Discovery; Copy of Government Code sections 11507.5, 11507.6 and 11507.7** was enclosed in a second sealed envelope as first class mail with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General, addressed as follows:

La Donna Marie Allen
P.O. Box 2204
San Rafael, CA 94912

Certified Article No.
7008 0150 0001 0694 4890

Courtesy copies via 1st class mail only to:

Board of Pharmacy
Virginia K. Herold
Susan Cappello
Veronica Hagen
1625 North Market Blvd., Suite N219
Sacramento, CA 95834

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on September 25, 2008, at San Diego, California.

D. Hosman
Typed Name

D. Hosman
Signature

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