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7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 3339

12 **TANYA ELIZABETH DYER, A.K.A.**  
13 **TANYA ELIZABETH GARDNER**

**DEFAULT DECISION AND ORDER**

14 3143 Ceanothus Ave.  
15 Chico, CA 95973

[Gov. Code, §11520]

16 Pharmacy Technician Registration  
17 Number TCH 25254

Respondent.

18 **FINDINGS OF FACT**

19  
20 1. On or about September 17, 2009, Complainant Virginia Herold, in her official  
21 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs,  
22 filed Accusation No. 3339 against Tanya Elizabeth Dyer, a.k.a. Tanya Elizabeth Gardner,  
23 (Respondent) before the Board of Pharmacy.

24 2. On or about March 10, 1998, the Board of Pharmacy (Board) issued Original  
25 Pharmacy Technician Registration Number TCH 25254 to Respondent. The Pharmacy  
26 Technician Registration was in full force and effect at all times relevant to the charges brought  
27 herein. The Pharmacy Technician Registration expired on November 30, 2009, and has not been  
28 renewed.

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2 3. On or about September 24, 2009, Scotty Jorgenson, an employee of the Department  
3 of Justice, served by Certified Mail a copy of Accusation No. 3339 and Statement to Respondent,  
4 Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and  
5 11507.7 (Related Documents) to Respondent's address of record with the Board, which was and  
6 is: 3142 Ceanothus Avenue, Chico, California, 95973. A true and correct copy of the Accusation  
7 is attached hereto, marked as Exhibit A, and incorporated herein by this reference.

8 4. On or about October 29, 2009, Lisa Talani, an employee of the Department of Justice,  
9 served by First Class mail a copy of Accusation No. 3339 and Related Documents at  
10 Respondent's address of record with the Board, which was and is: 3142 Ceanothus Avenue,  
11 Chico, California, 95973. A true and correct copy of the Proof of Service by First Class mail is  
12 attached to the Accusation, Exhibit A, hereto.

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

15 6. On or about September 25, 2009, the aforementioned documents served by Certified  
16 Mail were returned by the U.S. Postal Service marked "unclaimed," "return to sender," and  
17 "unable to forward". The aforementioned documents served by First Class Mail were not  
18 returned.

19 7. Government Code section 11506 states, in pertinent part:  
20 (c) The respondent shall be entitled to a hearing on the merits if the respondent  
21 files a notice of defense, and the notice shall be deemed a specific denial of all parts  
22 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.

23 8. Respondent failed to file a Notice of Defense within 15 days after service upon her of  
24 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 3339.

25 9. California Government Code section 11520 states, in pertinent part:  
26 (a) If the respondent either fails to file a notice of defense or to appear at the  
27 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  
28 respondent.

1 10. Pursuant to its authority under Government Code section 11520, the Board finds  
2 Respondent is in default. The Board will take action without further hearing and, based on the  
3 evidence on file herein, finds that the allegations in Accusation No. 3339 are true.

4 11. The total cost for investigation and enforcement in connection with the Accusation  
5 are \$4,108.00 as of December 15, 2009.

6 **DETERMINATION OF ISSUES**

7 1. Based on the foregoing Findings of Fact, Respondent Tanya Elizabeth Dyer has  
8 subjected her Pharmacy Technician Registration Number TCH 25254 to discipline.

9 2. A copy of the Accusation is attached hereto, marked as Exhibit A, and incorporated  
10 herein by this reference.

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

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

14 a. Respondent violated Business & Professions Code (Code) sections 490 and 4301,  
15 subdivision (l), in that Respondent was convicted of crimes as follows: (1) on or about May 16,  
16 2007, Respondent violated Health & Safety Code section 11173, subdivision (a) [attempting to  
17 obtain a controlled substance (Klonopin) by fraud, deceit, misrepresentation, or subterfuge] from  
18 a chain drugstore in Chico, California; and (2) on or about March 7, 2006, Respondent violated  
19 Vehicle Code section 23152, subdivision (a) [driving a motor vehicle under the influence of  
20 alcohol or drugs, or combined influence of alcohol or drugs]. (See Exhibit A, First Cause for  
21 Discipline.)

22 b. Respondent violated Code section 4301, subdivision (k), in that Respondent was  
23 convicted of more than one misdemeanor involving the use, consumption, or self-administration  
24 of any dangerous drug or alcoholic beverage, or any combination of those substances. (See  
25 Exhibit A, Second Cause for Discipline).

26 c. Respondent violated Code section 4301, subdivision (j), in that Respondent violated  
27 Health & Safety Code section 11173(a). (See Exhibit A, Third Cause for Discipline.)  
28

1 d. Respondent violated Code section 4301, subdivision (h), in that Respondent self-  
2 administered a controlled substance and/or used a dangerous drug in the extent or in a manner  
3 dangerous to herself or others, to the extent that its use impairs her ability to conduct with safety  
4 to the public the practice of Registered Pharmacist Technician. (See Exhibit A, Fourth Cause for  
5 Discipline.)

6 e. Respondent violated Code section 4301, subdivision (a), in that Respondent  
7 committed acts of gross immorality. (See Exhibit A, Fifth Cause for Discipline.)

8 f. Respondent violated Code section 4301(f), and 480, subdivision<sup>1</sup> (a)(1), (2), and (3),  
9 in that Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, or  
10 corruption. (See Exhibit A, Sixth Cause for Discipline.)

11 g. Respondent violated Code section 4301(p) in that Respondent committed acts that  
12 would have warranted denial of a license pursuant to Code section 475. (See Exhibit A, Seventh  
13 Cause for Discipline.)

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27 <sup>1</sup> The Accusation (Exhibit A, hereto), at page 7, paragraph 21, line 7, incorrectly refers to  
28 Code section 480(a)(10), (12), and (3). The Board hereby amends Exhibit A, page 7, paragraph  
21, line 7 to correctly refer to Code section 480(a)(1), (2), and (3).

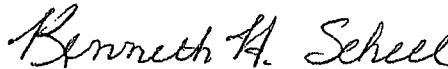
1 ORDER

2 **IT IS SO ORDERED** that Pharmacy Technician Registration Number TCH 25254,  
3 heretofore issued to Respondent Tanya Elizabeth Dyer, also known as Tanya Elizabeth Gardner,  
4 (Respondent) is **REVOKED**.

5 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a  
6 written motion requesting that the Decision be vacated and stating the grounds relied on within  
7 seven (7) days after service of the Decision on Respondent. The agency in its discretion may  
8 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

9 This Decision shall become effective on April 8, 2010.

10 It is so ORDERED March 9, 2010.

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12 KENNETH H. SCHELL, BOARD PRESIDENT  
13 FOR THE BOARD OF PHARMACY  
14 DEPARTMENT OF CONSUMER AFFAIRS

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17 **Attachment:**

18 Exhibit A: Accusation No.3339  
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**Exhibit A**  
**Accusation No. 3339**

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 ARTHUR D. TAGGART  
Supervising Deputy Attorney General  
3 LESLIE A. BURGERMYER  
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8 **BEFORE THE**  
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13 **TANYA ELIZABETH GARDNER**  
14 3143 CEANOTHUS AVE.  
CHICO, CA 95973

**A C C U S A T I O N**

15 ORIGINAL PHARMACY TECHNICIAN  
REGISTRATION NUMBER TCH. 25254

16 Respondent.

17  
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 March 10, 1998, the Board of Pharmacy issued Original Pharmacy  
23 Technician Registration Number TCH 25254 to Tanya Elizabeth Dyer, a.k.a Tanya Elizabeth  
24 Gardner (Respondent). The Pharmacy Technician Registration was in full force and effect at all  
25 times relevant to the charges brought herein and will expire on November 30, 2009, unless  
26 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:

(a) Gross immorality.

(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.

(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.

(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.

(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.

(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



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

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

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

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

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

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

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

25 (1) Been convicted of a crime. A conviction within the meaning of this section  
26 means a plea or verdict of guilt or a conviction following a plea of nolo contendere.  
27 Any action that a board is permitted to take following the establishment of a  
28 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

1 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.

2 (b) Notwithstanding any other provision of law, a board may exercise any  
3 authority to discipline a licensee for conviction of a crime that is independent of the  
4 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.

5 (c) A conviction within the meaning of this section means a plea or verdict of  
6 guilty or a conviction following a plea of nolo contendere. Any action that a board is  
7 permitted to take following the establishment of a conviction may be taken when the  
8 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.

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

### 13 REGULATIONS

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

15 For the purpose of denial, suspension, or revocation of a personal license  
16 pursuant to Division 1.5 (commencing with Section 475) of the Business and  
17 Professions Code, a crime or act shall be considered substantially related to the  
18 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."

### 19 DRUGS

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

### 24 COST RECOVERY

25 13. Section 125.3 of the Code provides, 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.





1 4301, subdivision (a), in that she committed acts of gross immorality, as set forth more fully in  
2 paragraphs 15 and 16 above.

3 SIXTH CAUSE FOR DISCIPLINE

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

5 21. Respondent's Original Registered Pharmacy Technician license is subject to  
6 disciplinary action on the grounds of unprofessional conduct within the meaning of Code sections  
7 4301, subdivision (f), and 480, subdivision (a)(10), (12), and (3) in that she committed acts  
8 involving moral turpitude, dishonesty, fraud, deceit, or corruption, as set forth more fully in  
9 paragraphs 15 and 16 above.

10 SEVENTH CAUSE FOR DISCIPLINE

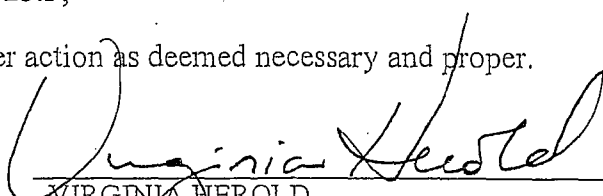
11 22. Respondent's Original Registered Pharmacy Technician license is subject to  
12 disciplinary action on the grounds of unprofessional conduct within the meaning of Code section  
13 4301, subdivision (p), in that she committed acts that would have warranted denial of a license  
14 pursuant to Code section 475, as set forth more fully in paragraphs 15 and 16 above.

15 **PRAYER**

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

- 18 1. Revoking or suspending Pharmacy Technician Registration Number TCH 25254,  
19 issued to Tanya Elizabeth Dyer, a.k.a. Tanya Elizabeth Gardner;
- 20 2. Ordering Tanya Elizabeth Dyer, a.k.a. Tanya Elizabeth Gardner to pay the Board of  
21 Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to  
22 Business and Professions Code section 125.3;
- 23 3. Taking such other and further action as deemed necessary and proper.

24 DATED: 9/17/09

25   
26 VIRGINIA HEROLD  
27 Executive Officer  
28 Board of Pharmacy  
Department of Consumer Affairs  
State of California  
Complainant

DECLARATION OF SERVICE BY CERTIFIED MAIL AND FIRST CLASS MAIL  
(Separate Mailings)

Board of Pharmacy Case Name: Tanya Elizabeth Dyer, a.k.a. Tanya Elizabeth Gardner

Case No.: 3339

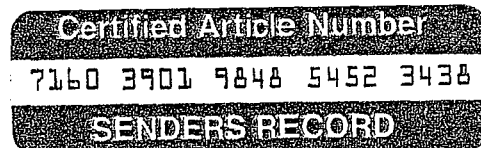
I declare:

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. 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 24, 2009, I served the attached **Reserved Statement to Respondent, Accusation, Request for Discovery, Notice of Defense (2), Government Codes** 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 **Reserved Statement to Respondent, Accusation, Request for Discovery, Notice of Defense (2), Government Codes** 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 at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

Tanya Elizabeth Dyer, a.k.a.  
Tanya Elizabeth Gardner  
3143 Ceanothus Ave.  
Chico, CA 95973

Certified Article Number:



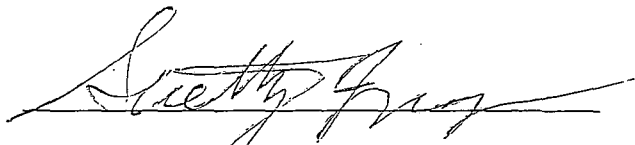
Courtesy Copy sent via U.S. Mail only:

Susan Cappello  
Enforcement Coordinator  
Board of Pharmacy  
1625 North Market Boulevard, Suite N-219  
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 24, 2009, at Sacramento, California.

\_\_\_\_\_  
Scotty Jorgenson

Declarant

  
\_\_\_\_\_  
Signature

7160 3901 9848 5452 3438

**TO:**

Tanya Elizabeth Dyer, a.k.a.  
Tanya Elizabeth Gardner  
3143 Ceanothus Ave.  
Chico, CA 95973

**SENDER:** Leslie A. Burgermyer

**REFERENCE:** SA2009309458

PS Form 3800, January 2005

RETURN RECEIPT SERVICE	Postage	
	Certified Fee	
	Return Receipt Fee	
	Restricted Delivery	
	Total Postage & Fees	

US Postal Service

**Receipt for  
Certified Mail**

No Insurance Coverage Provided  
Do Not Use for International Mail

POSTMARK OR DATE

7160 3901 9848 5452 3421

**TO:**  
Tanya Elizabeth Dyer, a.k.a.  
Tanya Elizabeth Gardner  
3143 Ceanothus Ave.  
Chico, CA 95973

**SENDER:** Leslie A. Burgermyer

**REFERENCE:** SA2009309458

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	Certified Fee	
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	Restricted Delivery	
	Total Postage & Fees	

US Postal Service

**Receipt for  
Certified Mail**

No Insurance Coverage Provided  
Do Not Use for International Mail

POSTMARK OR DATE



DECLARATION OF RESERVICE BY FIRST CLASS MAIL

Case Name: In the Matter of the Accusation Against: Tanya Elizabeth Dyer,  
a.k.a. Tanya Elizabeth Gardner

Board of Pharmacy Case No.: 3339

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 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550.

On October 29, 2009, I served the attached **STATEMENT TO RESPONDENT; ACCUSATION; REQUEST FOR DISCOVERY; NOTICE OF DEFENSE (2); GOVERNMENT CODES; and DECLARATION OF SERVICE BY CERTIFIED MAIL AND FIRST CLASS MAIL (dated September 24, 2009)** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Sacramento, California, addressed as follows:

Tanya Elizabeth Dyer, a.k.a.  
Tanya Elizabeth Gardner  
3143 Ceanothus Ave.  
Chico, CA 95973

Susan Cappello  
Enforcement Coordinator  
Board of Pharmacy  
1625 North Market Boulevard, Suite N-219  
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 October 29, 2009, at Sacramento, California.

L.Talani

Declarant



Signature