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

In the Matter of the Accusation Against:

Case No. 3549

**JAN PERRY DAYAO**  
26 Belle Avenue  
San Francisco, CA 94132  
**Pharmacy Technician Registration No. TCH  
64006**

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

Respondent.

FINDINGS OF FACT

1. On or about June 3, 2010, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 3549 against Jan Perry Dayao (Respondent) before the Board of Pharmacy.

2. On or about July 20, 2005, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 64006 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 July 31, 2011, unless renewed.

3. On or about June 7, 2010, Joan Randolph, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation No. 3549, 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:

1 26 Belle Avenue  
2 San Francisco, CA 94132.

3 A copy of the Accusation is attached as exhibit A, and is incorporated herein by reference.

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

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

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

12 6. Respondent failed to file a Notice of Defense within 15 days after service upon him  
13 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.  
14 3549.

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

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

20 8. Pursuant to its authority under Government Code section 11520, the Board finds  
21 Respondent is in default. The Board will take action without further hearing and, based on the  
22 evidence on file herein, finds that the allegations in Accusation No. 3549 are true.

23 9. The total cost for investigation and enforcement in connection with the Accusation  
24 are \$5,209.50 as of July 8, 2010.

#### 25 DETERMINATION OF ISSUES

26 1. Based on the foregoing findings of fact, Respondent Jan Perry Dayao has subjected  
27 his Pharmacy Technician Registration No. TCH 64006 to discipline.

28 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:

1 a. Respondent is subject to disciplinary action under Business and Professions Code  
2 (“Code”) section 4301(f) in that Respondent committed moral turpitude, dishonesty, and/or  
3 deceit.

4 b. Respondent is subject to disciplinary action under section 4301(j) of the Code in that  
5 Respondent violated section 4059 of the Code by furnishing controlled substances and drugs  
6 without a prescription.

7 c. Respondent is subject to disciplinary action under section 4301(j) of the Code in that  
8 Respondent violated section 4060 of the Code by possessing controlled substances and dangerous  
9 drugs without a prescription.

10 d. Respondent is subject to disciplinary action under sections 4301(l) and 490 of the  
11 Code in that Respondent was convicted of a crime that is substantially related to the  
12 qualifications, functions, and duties of a pharmacy technician.

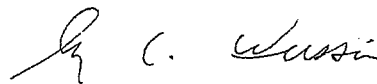
13 ORDER

14 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 64006, heretofore  
15 issued to Respondent Jan Perry Dayao, is revoked.

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

20 This Decision shall become effective on October 27, 2010.

21 It is so ORDERED September 27, 2010.



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STANLEY C. WEISSER, BOARD PRESIDENT  
24 FOR THE BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS

25 20305905.DOC  
DOJ docket number:SF2010400062

26 Attachment:

27 Exhibit A: Accusation No.3549  
28

Exhibit A  
Accusation No. 3549

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Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 JUSTIN R. SURBER  
Deputy Attorney General  
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455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
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6 Facsimile: (415) 703-5480  
*Attorneys for Complainant*

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

10 In the Matter of the Accusation Against:

Case No. 3549

11 **JAN PERRY DAYAO**  
12 26 Belle Avenue  
13 San Francisco, CA 94132

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

14 **Pharmacy Technician Registration No. TCH**  
**64006**

15 Respondent.

16  
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 July 30, 2005, the Board of Pharmacy issued Pharmacy Technician  
22 Registration Number TCH 64006 to Jan Perry Dayao (Respondent). The Pharmacy Technician  
23 Registration was in full force and effect at all times relevant to the charges brought herein and  
24 will expire on July 31, 2011, unless 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.

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4. Section 4300 of the Code states:

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

5. 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:

"(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.

"(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.

"(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

1 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
2 indictment.

3 6. Section 4059 of the Code states, in pertinent part, that a person may not furnish any  
4 dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,  
5 veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any  
6 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist,  
7 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

8 7. Section 4060 of the Code states:

9 "No person shall possess any controlled substance, except that furnished to a person upon  
10 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor  
11 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-  
12 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician  
13 assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a  
14 pharmacist pursuant to either Section 4052.1 or 4052.2. This section shall not apply to the  
15 possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist,  
16 physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-  
17 midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled  
18 with the name and address of the supplier or producer.

19 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a  
20 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and  
21 devices."

22 8. Code section 4021 states:

23 "'Controlled substance' means any substance listed in Chapter 2 (commencing with Section  
24 11053) of Division 10 of the Health and Safety Code."

25 9. Code section 4022 provides:

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

28





1 14. Diazepam is a schedule IV controlled substance pursuant to Health and Safety Code  
2 Section 11057(d)(9).

3 15. Alprazolam (AKA Xanax) is a Schedule IV controlled substance as designated by  
4 Health and Safety Code section 11057, subdivision (d)(1),

5 FACTUAL BACKGROUND

6 16. From about February 2009 until about May 2009, Respondent stole Alprazolam,  
7 Diazepam, and several different mixtures containing Hydrocodone, from his employer Rite Aid.  
8 Respondent sold the drugs to an unknown individual at a pool hall.

9 17. On or about August 13, 2009, in San Francisco County Superior Court Case No.  
10 2419031, Respondent was convicted of felony embezzlement in violation of Penal Code §508(f).  
11 The circumstances are described in Paragraph 16, above.

12 FIRST CAUSE FOR DISCIPLINE

13 (Moral Turpitude, Dishonesty, and/or Deceit)

14 18. Respondent is subject to disciplinary action under section 4301(f) of the Code in that  
15 Respondent committed moral turpitude, dishonesty, and/or deceit. The circumstances are  
16 described in Paragraph 16 above.

17 SECOND CAUSE FOR DISCIPLINE

18 (Violation of Drug Laws)

19 19. Respondent is subject to disciplinary action under section 4301(j) of the Code in that  
20 Respondent violated section 4059 of the Code by furnishing controlled substances and drugs  
21 without a prescription. The circumstances are described in Paragraph 16 above.

22 THIRD CAUSE FOR DISCIPLINE

23 (Violation of Drug Laws)

24 20. Respondent is subject to disciplinary action under section 4301(j) of the Code in that  
25 Respondent violated section 4060 of the Code by possessing controlled substances and dangerous  
26 drugs without a prescription. The circumstances are described in Paragraph 16 above.

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FOURTH CAUSE FOR DISCIPLINE

(Conviction)

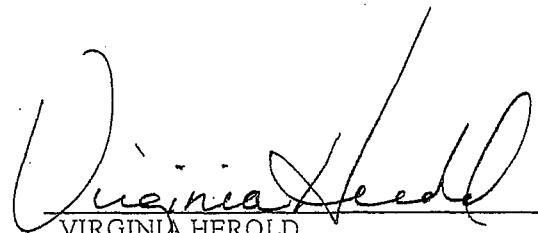
21. Respondent is subject to disciplinary action under sections 4301(l) and 490 of the Code in that Respondent was convicted of a crime that is substantially related to the qualifications, functions, and duties of a pharmacy technician. The circumstances are described in Paragraph 17 above.

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 64006, issued to Jan Perry Dayao.
2. Ordering Jan Perry Dayao 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: 6/3/10



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

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