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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. 3556

NICOLE TUBBS
211 B Wonsan Drive
Oceanside, CA 92054

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

Pharmacy Technician Registration No. TCH
80903

Respondent.

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FINDINGS OF FACT

1. On or about July 2, 2010, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 3556 against Nicole Tubbs (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about January 17, 2008, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 80903 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 February 28, 2011, unless renewed.

3. On or about July 20, 2010, Respondent was served by Certified and First Class Mail copies of the Accusation No. 3556, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code sections 136

1 and 4100, as well as California Code of Regulations, title 16, section 1704, is required to be
2 reported and maintained with the Board, which was and is: 211 B Wonsan Drive,
3 Oceanside, CA 92054.

4 4. Service of the Accusation was effective as a matter of law under the provisions of
5 Government Code section 11505, subdivision (c) and/or Business & Professions Code
6 section 124.

7 5. On or about August 5, 2010, the aforementioned documents sent certified mail were
8 returned by the U.S. Postal Service marked "Attempted, Not Known."

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

10 (c) The respondent shall be entitled to a hearing on the merits if the respondent
11 files a notice of defense, and the notice shall be deemed a specific denial of all parts
12 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.

13 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
14 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 3556.

15 8. 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
or upon other evidence and affidavits may be used as evidence without any notice to
18 respondent.

19 9. Pursuant to its authority under Government Code section 11520, the Board finds
20 Respondent is in default. The Board will take action without further hearing and, based on the
21 relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,
22 as well as taking official notice of all the investigatory reports, exhibits and statements contained
23 therein on file at the Board's offices regarding the allegations contained in Accusation No. 3556,
24 finds that the charges and allegations in Accusation No. 3556 are separately and severally true
25 and correct by clear and convincing evidence.

26 10. Taking official notice of its own internal records, pursuant to Business and
27 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
28 and Enforcement of this matter is \$2,032.50 as of January 10, 2011.

DETERMINATION OF ISSUES

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2 1. Based on the foregoing findings of fact, Respondent Nicole Tubbs has subjected her
3 Original Pharmacy Technician Registration No. TCH 80903 to discipline.

4 2. The agency has jurisdiction to adjudicate this case by default.

5 3. The Board of Pharmacy is authorized to revoke Respondent's Original Pharmacy
6 Technician Registration based upon the following violations alleged in the Accusation which are
7 supported by the evidence contained in the Default Decision Investigatory Evidence Packet in this
8 case:

9 a. Unprofessional Conduct for Violating Law Regulating Controlled Substances (Bus. &
10 Prof. Code, § 4301, subd. (j)); and

11 b. Unprofessional Conduct for Knowingly Making and Signing a Document Falsely
12 Representing the Existence of Facts (Bus. & Prof. Code, § 4301, subd. (g)).

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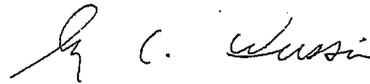
ORDER

IT IS SO ORDERED that Original Pharmacy Technician Registration No. TCH 80903, heretofore issued to Respondent Nicole Tubbs, 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 May 11, 2011.

It is so ORDERED April 11, 2011.



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

70383500.DOCX
SD2009805103
Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 EDMUND G. BROWN JR.
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2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 RON ESPINOZA
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Attorneys for Complainant

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

11 In the Matter of the Accusation Against:
12
13 NICOLE TUBBS
211 B Wonsan Drive
Oceanside, CA 92054
14
15 Pharmacy Technician Registration No. TCH
80903
16
17 Respondent.

Case No. 3556

ACCUSATION

18 Complainant alleges:

19 PARTIES

- 20
- 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 January 17, 2008, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 80903 to Nicole Tubbs (Respondent). The Pharmacy Technician
25 Registration was in full force and effect at all times relevant to the charges brought herein and
26 will expire on February 28, 2011, unless renewed.
- 27
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not limited to, any of the following:

....
(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.

9. Title 16, California Code of Regulations, section 1769, states:

....
(b) When considering the suspension or revocation of a facility or a personal license on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) Evidence, if any, of rehabilitation submitted by the licensee.

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

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

COST RECOVERY

11. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to direct a licensee 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.

1 DRUG

2 12. Oxycontin is a schedule II controlled substance as designated by Health and Safety
3 Code section 11055(b)(1)(N), and is a dangerous drug pursuant to Business and Professions Code
4 section 4022.

5 FIRST CAUSE FOR DISCIPLINE

6 (Unprofessional Conduct-Violating Law Regulating Controlled Substances)

7 13. Respondent is subject to disciplinary action under section 4301(j) in that on or about
8 June 17, 2009, Respondent uttered a forged prescription for a controlled substance, Oxycontin, in
9 violation of Health and Safety Code section 11368. The circumstances are as follows:

10 a. On or about June 17, 2009, Respondent presented a prescription in her name for
11 Oxycontin, 80 mg at the Walgreens Pharmacy located at 58133 Twentynine Palms Highway in
12 Yucca Valley and requested that it be filled. Since the prescription appeared suspicious and was
13 signed by a doctor located in Los Angeles, the pharmacy manager transmitted it via facsimile to
14 the office of the doctor identified on the prescription. The doctor immediately called the
15 pharmacy manager and told him that Respondent was not her patient, she had not prescribed this
16 drug to Respondent and that the signature on the prescription was not her signature. The doctor
17 also told the investigating officer that Respondent had been passing forged prescriptions at
18 several Walgreens. The pharmacy staff located another prescription that was possibly forged by
19 Respondent. The officer subsequently confirmed it was forged when he spoke with the doctor
20 listed on that prescription and that doctor confirmed that Respondent was not his patient and he
21 had never prescribed any medication to Respondent.

22 b. On or about November 4, 2009, in a criminal proceeding entitled *People of the*
23 *State of California v. Nicole Tubbs*, case number FMB900329, Respondent pled guilty to a charge
24 of violating Health and Safety Code section 11368, uttering a forged prescription, a felony and
25 was granted deferred entry of judgment. On November 25, 2009, Respondent filed proof of
26 enrollment in a drug diversion program. The Court ordered Respondent to file proof of
27 successful completion of a drug diversion program with no violations by January 7, 2011.

