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

In the Matter of the Accusation Against: **TAMMY JANE FACCIANI** **1461 N. Harvard Ave.** **Clovis, CA 93619-7607** **Pharmacy Technician Registration No. TCH 49496** Respondent.	Case No. 3680 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about July 30, 2010, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 3680 against Tammy Jane Facciani (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about June 20, 2003, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 49496 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 March 31, 2011, unless renewed.

3. On or about August 12, 2010, Respondent was served by Certified and First Class Mail copies of the Accusation No. 3680, 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 section 136 and/or agency specific statute or regulation, is required to be reported and maintained with the Board, which was and is:

1461 N.Harvard Avenue
Clovis, CA 93619

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

5. On or aboutSeptember 7,2010, the aforementioned documents sent via certified mail 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. 3680.

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 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the Board's offices regarding the allegations contained in Accusation No. 3680, finds that the charges and allegations in Accusation No. 3680, are separately and severally, found to be true and correct by clear and convincing evidence.

10. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement is $1,190.00 as of October 4, 2010.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Tammy Jane Facciani has subjected her Pharmacy Technician Registration No. TCH 49496 to discipline.

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

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

a. Respondent was employed as a pharmacy technician at Walgreens located at 8975 N. Chestnut, Fresno, California. Walgreens pharmacy filed a controlled substance loss report for the period of October 22, 2006, to August 21, 2008, in which it was reported that approximately 25, 419 tablets of various strengths of Hydrocodone /APAP were missing. On or about August 2, 2008, a video recording taken in Walgreens pharmacy area showed Respondent pour Hydrocodone/APAP pills from a stock bottle and ultimately place them in her pocket. On August 7, 2008, Respondent was interviewed by the loss prevention officers at Walgreens and she admitted that for a period of about a year she was stealing Hydrocodone tablets. She admitted stealing approximately 18,000 tablets of Hydrocodone and further admitted that she was self-administering 20 to 25 tablets a day. Respondent also admitted that she gave an unknown amount of Hydrocodone to her husband and to her friends.

1. Respondent is subject to disciplinary action under section 4301 (f) of the Code for acts involving moral turpitude, dishonesty, fraud, deceit, or corruption, in that from the period of August of 2007 to August of 2008, while she was employed at Walgreens located at 8975 N. Chestnut, Fresno, California, Respondent fraudulently appropriated 18,000 tablets of Hydrocodone-containing medications while on duty as a pharmacy technician, as set forth more specifically above in paragraph a.

2. Respondent is subject to disciplinary action under section 4301 (j) (0) and section 4060 in that while she was employed at Walgreens located at 8975 N. Chestnut, Fresno, California, Respondent fraudulently appropriated 18,000 tablets of Hydrocodone-containing medications and possessed said medication without a lawful prescription, as set forth more specifically above in paragraph a.

3. Respondent is subject to disciplinary action under section 4301 (h) in that from, August of 2007 to August of 2008, while she was employed at Walgreens located at 8975 N. Chestnut, Fresno, California, Respondent self-administered Hydrocodone-containing medications, as set forth more specifically above in paragraph a.

4. Respondent is subject to disciplinary action under section 4301 (h) in that from, August of 2007 to August of 2008, while she was employed at Walgreens located at 8975 N. Chestnut, Fresno, California, Respondent self-administered Hydrocodone-containing medications, as set forth more specifically above in paragraph a.

5. Respondent is subject to disciplinary action under section 4301 (o) in that from, August of 2007 to August of 2008, while she was employed at Walgreens located at 8975 N. Chestnut, Fresno, California, Respondent worked while under the influence of a controlled substance. Respondent was observed to have a change in appearance, in that she was breaking out and her finger nails were chewed all the way down to the quick.

ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 49496, heretofore issued to Respondent Tammy Jane Facciani, 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 January 19, 2011.

It is so ORDERED December 20, 2010.

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

10620747.DOC
DOJ Matter ID:SA2010100793

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

EDMUND G. BROWN JR.
Attorney General of California
ARTHUR D. TAGGART
Supervising Deputy Attorney General
ELENA L. ALMANZO
Deputy Attorney General
State Bar No. 131058
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 322-5524
Facsimile: (916) 327-8643
Attorneys for Complainant

BEFORE THE
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In the Matter of the Accusation Against: **TAMMY JANE FACCIANI** **1461 N. Harvard Ave.** **Clovis, CA 93619-7607** **Pharmacy Technician Registration No. TCH 49496** Respondent.	Case No. 3680 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 June 20, 2003, the Board of Pharmacy issued Pharmacy Technician Registration Number TCH 49496 to Tammy Jane Facciani (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2011, unless renewed.

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 unless otherwise indicated.

4. Section 4300 of the Code states:

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

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

"(1) Suspending judgment.

"(2) Placing him or her upon probation.

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

"(4) Revoking his or her license.

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

"(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy, including, but not limited to, the following:

"(1) Medical or psychiatric evaluation.

"(2) Continuing medical or psychiatric treatment.

"(3) Restriction of type or circumstances of practice.

"(4) Continuing participation in a board-approved rehabilitation program.

"(5) Abstention from the use of alcohol or drugs.

"(6) Random fluid testing for alcohol or drugs.

"(7) Compliance with laws and regulations governing the practice of pharmacy.

"(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary certificate of licensure for any violation of the terms and conditions of probation. Upon satisfactory completion of probation, the board shall convert the probationary certificate to a regular certificate, free of conditions.

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

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.

"(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.

"(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 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.

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 4060 of the Code states:

"No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

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

9. Vicodin and Norco are brand names for Hydrocodone/acetaminophen which is a Schedule III controlled substance as designated by Health and Safety Code section 11056 (e) (4) and is a dangerous drugs as defined by Business and Professions Code Section 4022.

10. Respondent was employed as a pharmacy technician at Walgreens located at 8975 N. Chestnut, Fresno, California. Walgreens pharmacy filed a controlled substance loss report for the period of October 22, 2006, to August 21, 2008, in which it was reported that approximately 25, 419 tablets of various strengths of Hydrocodone /APAP were missing. On or about August 2, 2008, a video recording taken in Walgreens pharmacy area showed Respondent pour Hydrocodone/APAP pills from a stock bottle and ultimately place them in her pocket. On August 7, 2008, Respondent was interviewed by the loss prevention officers at Walgreens and she admitted that for a period of about a year she was stealing Hydrocodone tablets. She admitted stealing approximately 18,000 tablets of Hydrocodone and further admitted that she was self-administering 20 to 25 tablets a day. Respondent also admitted that she gave an unknown amount of Hydrocodone to her husband and to her friends.

FIRST CAUSE FOR DISCIPLINE

(Theft of Controlled Substances)

11. Respondent is subject to disciplinary action under section 4301 (f) of the Code for acts involving moral turpitude, dishonesty, fraud, deceit, or corruption, in that from the period of August of 2007 to August of 2008, while she was employed at Walgreens located at 8975 N. Chestnut, Fresno, California, Respondent fraudulently appropriated 18,000 tablets of Hydrocodone-containing medications while on duty as a pharmacy technician, as set forth more specifically above in paragraph 10.

SECOND CAUSE FOR DISCIPLINE

(Unlawful Possession of a Controlled Substance)

12. Respondent is subject to disciplinary action under section 4301 (j) (0) and section 4060 in that while she was employed at Walgreens located at 8975 N. Chestnut, Fresno, California, Respondent fraudulently appropriated 18,000 tablets of Hydrocodone-containing medications and possessed said medication without a lawful prescription, as set forth more specifically above in paragraph 10.

THIRD CAUSE FOR DISCIPLINE

(Self-Administration of a Controlled Substance)

13. Respondent is subject to disciplinary action under section 4301 (h) in that from, August of 2007 to August of 2008, while she was employed at Walgreens located at 8975 N. Chestnut, Fresno, California, Respondent self-administered Hydrocodone-containing medications, as set forth more specifically above in paragraph 10.

FOURTH CAUSE FOR DISCIPLINE

(Working while Under Influence of a Controlled Substance)

14. Respondent is subject to disciplinary action under section 4301 (o) in that from, August of 2007 to August of 2008, while she was employed at Walgreens located at 8975 N. Chestnut, Fresno, California, Respondent worked while under the influence of a controlled substance. Respondent was observed to have a change in appearance, in that she was breaking out and her finger nails were chewed all the way down to the quick.

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 49496, issued to Tammy Jane Facciani.

2. Ordering Tammy Jane Facciani 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: 7/30/10

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

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