

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

In the Matter of the Accusation Against:

JOANNEA JACKSON
P.O. Box 19275
San Diego, CA 92159

Pharmacy Technician No. TCH 54730

Respondent.

Case No. 3711

OAH No. 2010090671

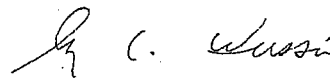
DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as its Decision in the above-entitled matter.

This decision shall become effective on July 27, 2011.

It is so ORDERED June 27, 2011.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

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

In the Matter of the First Amended Accusation
Against:

JOANNEA JACKSON
San Diego, CA 92159

Pharmacy Technician Registration No. TCH 54730

Respondent.

Case No. 3711

OAH No. 2010090671

PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on May 10, 2011, in San Diego, California.

Desiree I. Kellogg, Deputy Attorney General, Office of the Attorney General, Department of Justice, State of California, represented Complainant, Virginia Herold, Executive Officer, Board of Pharmacy, Department of Consumer Affairs, State of California.

No appearance was made by or on behalf of Respondent, Joannea Jackson, whose untimely request for a continuance was denied.

On May 10, 2011, the matter was submitted.

PRELIMINARY STATEMENT

Respondent altered or forged ten prescriptions for Tylenol with Codeine #4 from June 27, 2006, through December 7, 2006, knowingly submitting false and fraudulent claims to Medi-Cal to obtain payment for those fraudulent prescriptions, violated the Uniform Controlled Substances Act, was convicted of petty theft in October 2010, and engaged in unprofessional conduct. The Board of Pharmacy's reasonable costs of investigation and prosecution total \$16,285. Public protection requires the revocation of Respondent's pharmacy technician registration.

FACTUAL FINDINGS

Jurisdictional Matters

1. On August 13, 2010, Complainant, Virginia Herold, Executive Officer, Board of Pharmacy, Department of Consumer Affairs, State of California, signed the Accusation in Case No. 3711. The Accusation alleged that Respondent was employed as a pharmacy technician at a CVS Pharmacy; that between June 27, 2006, and December 7, 2006, Respondent altered or forged ten prescriptions for Tylenol with Codeine #4 ; that Respondent furnished to herself and possessed Tylenol with Codeine #4 without a valid prescription; that Respondent knowingly submitted false and fraudulent claims to Medi-Cal to obtain payment for those altered or fraudulent prescriptions; and that Respondent violated the Uniform Controlled Substances Act. The Accusation sought to revoke Respondent's pharmacy technician registration and sought an order directing Respondent to pay to the Board costs of investigation and enforcement.

The Accusation was served on Respondent, who timely filed a notice of defense. The matter was set for hearing. On September 23, 2010, Complainant served Respondent with a notice of hearing setting the disciplinary hearing in this matter for May 10, 2011, at the Office of Administrative Hearings, 1350 Front Street, Suite 3005, San Diego, CA 92101, to commence at 9:00 a.m.

On April 5, 2011, Complainant signed the First Amended Accusation in Case No. 3711. In addition to the previous allegations, the First Amended Accusation alleged that Respondent was convicted of petty theft on October 12, 2010, and that Respondent was guilty of unprofessional conduct related to the creation of false prescriptions, the submission of billings to Medi-Cal related to those false prescriptions, and the theft of clothing from Wal-Mart which resulted in her petty theft conviction.

Under Government Code section 11507, all new allegations in the First Amended Accusation were controverted by operation of law.

On May 10, 2011, Administrative Law Judge James Ahler (ALJ Ahler) opened the record in the administrative hearing. Respondent was not present at 9:00 a.m., when the hearing was scheduled to commence. No appearance was made by or on Respondent's behalf. Counsel for Complainant represented that she spoke with Respondent on Friday, May 6, 2011, and that Respondent requested a continuance. Counsel represented that she directed Respondent to make the request for a continuance to the Office of Administrative Hearings and that she provided Respondent with the telephone number for the San Diego Regional Office of the Office of Administrative Hearings. After reviewing the jurisdictional documents, ALJ Ahler granted Complainant's motion to proceed with an evidentiary hearing in Respondent's absence. Thereafter, Complainant gave an opening statement, offered documentary evidence (Exhibits 1-17), and called several witnesses to testify under oath.

During the examination of one witness, ALJ Ahler was advised that Respondent was on the telephone and was requesting a continuance. The hearing was interrupted to permit Respondent to make the motion for a continuance telephonically to Presiding Administrative Law Judge Alan Alvord (PALJ Alvord).

Following a telephonic conference between Respondent, Complainant's counsel, and PALJ Alvord, PALJ Alvord announced on the record that Respondent had not established good cause for the continuance and that Respondent's motion for a continuance was denied. PALJ Alvord directed that the evidentiary hearing continue in Respondent's absence.

Complainant gave a closing argument after the sworn testimony concluded. The record was closed and the matter was submitted.

Qualification for Registration as a Pharmacy Technician

2. To qualify for registration as a pharmacy technician under Business and Professions Code section 4202, an individual must establish that he or she is a high school graduate or possesses a general educational development certificate equivalent and (1) holds an associate's degree in pharmacy technology; or (2) has completed a course of training specified by the Board¹; or (3) has graduated from a school of pharmacy recognized by the Board; or (4) holds certification from the Pharmacy Technician Certification Board (PTCB). In addition, an applicant for registration must not have been convicted of any crime and must not have engaged in any misconduct substantially related to the qualifications, functions, or duties of a registered pharmacy technician. Passing a competency examination is not required to become registered as a pharmacy technician.

Pharmacy technicians are not independent practitioners, but work under the close supervision of registered pharmacists. Pharmacy technicians have access to controlled substances and to credit card and personal information of pharmacy customers as a consequence of their employment.

Respondent's Registration History

3. On February 18, 2004, the Board issued Original Pharmacy Technician Registration No. TCH 54730 to Respondent, authorizing her to act as a pharmacy technician in California. Respondent's pharmacy technician's registration is renewed through January 31, 2012. There is no history of any previous administrative discipline having been imposed against Respondent's pharmacy technician's registration.

¹ Title 16, California Code of Regulations, section 1793.6 provides that a course of training which meets the requirements of Business and Professions Code section 4202, subdivision (a)(2) includes: (a) a training program accredited by the American Society of Health-System Pharmacists; or (b) training provided by a branch of the federal armed services for which the applicant possesses a certificate of completion; or (c) any other training involving at least 240 hours of instruction in designated subject matters.

Respondent's Background, Training, and Experience

4. No evidence was provided regarding Respondent's background or training.

5. Sav-On Drugs/CVS Pharmacy (CVS) first employed Respondent on January 23, 2003. She worked as a pharmacy technician after gaining her registration. William K. Chung, a registered pharmacist, sometimes worked with Respondent at the CVS Pharmacy on Fletcher Parkway in El Cajon. Respondent remained employed by CVS until December 22, 2006, when CVS terminated her employment as a result of Respondent's diversion of drugs to herself.

The Events Occurring on December 7, 2006

6. Mr. Chung and Respondent were working at the Fletcher Parkway CVS Pharmacy the evening of December 7, 2006. Mr. Chung as Respondent's immediate supervisor. He observed that Respondent worked very slowly, made repetitive errors, and was unfocused. Respondent asked Mr. Chung to fill a prescription for Tylenol with Codeine #4² in which Respondent was identified as the patient. The paperwork Respondent provided indicated that a co-worker was responsible for taking the order processing the paperwork. Mr. Chung later found paperwork related to that prescription on the pharmacy's floor; the paperwork should have been filed. Mr. Chung then learned that the co-worker had not processed the paperwork related to the prescription. Mr. Chung knew something was wrong and reported the matter to the pharmacist in charge.

The Internal Investigation

7. Mr. Chung's concerns were reported to CVS regional headquarters. Sylvester Arcaro, a CVS District Manager, and Robert Wiltfang, a Regional Loss Prevention Manager, investigated those concerns and contacted the DEA. Documents were reviewed.

On December 21, 2006, Mr. Wiltfang interviewed Respondent. Mr. Arcaro was present during that interview. During the interview, Respondent (who was the patient identified to receive the medication) admitted that with regard to prescription number 466299 for Tylenol with Codeine #4, she altered the prescription to provide for two refills when the original prescription did not permit any refills. She admitted that she violated CVS policy in doing so, but claimed that she was awaiting her doctor's approval for the refills. During the interview, Respondent admitted that had also fraudulently added two refills to prescriptions written for her for Tylenol with Codeine #4, including prescription no. 454496, which was filled on October 17, 2006, October 27 2006, November 11, 2006, and November 23, 2006.

² Notice is taken that codeine in combination with aspirin or acetaminophen (paracetamol/Tylenol) in tablet form made for pain relief is listed as a Schedule III controlled substance in the United States.

8. CVS' internal investigation and the subsequent Drug Enforcement Administration investigation, as established by the sworn testimony, declarations provided under Government Code section 11514, and the court documents related to this matter, revealed the following.

On or about June 27, 2006, Respondent obtained prescription number 1883484 written by her dentist for Tylenol with Codeine #4, quantity 20, with no refills. Respondent altered the prescription to include 2 refills and a quantity of 30 without authorization from her dentist.

On July 21, 2006, Respondent altered prescription number 1883484 in the CVS Pharmacy computer by giving it a new number, 1888947, and had it filled. On August 22, 2006 and August 31, 2006, Respondent refilled prescription number 1888947. She submitted the prescription and refills for reimbursement to Medi-Cal on her own behalf. Respondent's dentist did not authorize, call in or write this prescription or refills.

On or about September 27, 2006, Respondent entered into the CVS Pharmacy computer system prescription number 1905330 for Tylenol with Codeine #4, quantity 30, with refills, and had it filled. She had prescription number 1905330 refilled on October 12, 2006. She submitted this prescription and the refill for reimbursement to Medi-Cal on her own behalf. Respondent's dentist did not authorize, call in or write this prescription or refill.

On October 17, 2006, Respondent entered into the CVS Pharmacy computer system prescription number 454496 for Tylenol with Codeine #4, quantity 30, with three refills, and had it filled. She refilled prescription number 454496 on October 27, 2006, November 14, 2006 and November 23, 2006. The prescription and refills were submitted to Medi-Cal by Respondent for reimbursement on her own behalf. Respondent's dentist did not authorize, call in or write the prescription or refills.

On December 7, 2006, Respondent wrote prescription number 466299, for Tylenol with Codeine #4, quantity 30, with one refill, on a call-in form used to document a call by the pharmacy to the physician following a call to the pharmacy by the patient requesting a refill. She attempted to fill it. Respondent's dentist did not authorize, call in or write this prescription. After Mr. Chung observed Respondent filling her own prescription, a CVS pharmacy supervisor researched Respondent's prescription records and discovered that there were no hard copies of Respondent's prescriptions entered into the computer system.

The January 7, 2008, Conviction

9. On November 14, 2007, a Felony Complaint was filed in the Superior Court of California, County of San Diego, East County Division, in Case No. CE275753 charging Respondent with presenting false insurance claims in violation of Penal Code section 550, subdivision (a) (count 1), the unlawful possession of a controlled substance in violation of Health and Safety Code section 11350 (count 2), obtaining a prescription by fraud, deceit, misrepresentation, subterfuge and concealment of a material fact in violation of Health and

Safety Code section 11173, subdivision (a) (counts 3 through 11), making a false statement to receive health care benefits to which she was not entitled in violation of Welfare and Institutions Code section 14014 (count 12), furnishing or dispensing a drug without a prescription (count 11), and petty theft (count 14).

On January 7, 2008, Respondent signed a change of plea form in which she admitted violating count three of the Felony Complaint, charging Respondent with obtaining a prescription by fraud, deceit, misrepresentation, subterfuge and concealment of a material fact in violation of Health and Safety Code section 11173, subdivision (a). In that change of plea form, Respondent admitted that she “knowingly possessed Acetamine/Codeine.” The remaining charges were dismissed. Respondent was represented by counsel. Thus, Respondent was convicted on January 7, 2008, of obtaining a prescription by fraud, deceit, misrepresentation, subterfuge and concealment of a material fact in violation of Health and Safety Code section 11173, subdivision (a).

The Superior Court suspended imposition of sentence and placed Respondent on formal probation for three years. Conditions of probation required Respondent to pay fines and fees of approximately \$520, which was stayed during Respondent’s completion of a drug treatment program; to complete 20 days of public service, which was stayed during Respondent’s completion of a drug treatment program; to provide 50 hours of volunteer services; to participate in and complete a drug treatment program; to follow the directions of the drug treatment program, the probation officer, and treatment team; to attend AA/NA meetings as directed; to totally abstain from drinking alcoholic beverages; to not use or possess any controlled substance or other illicit drugs; to seek and maintain full-time employment; and to obey all laws.

On February 15, 2009, the Superior Court found that Respondent completed the Penal Code section 1210 drug treatment program. The Superior Court ordered that payment of all fines and fees and payment of attorney’s fees be waived.

The facts and circumstances underlying this conviction are set forth in Factual Findings 6-8.

The October 12, 2010, Conviction

10. On October 8, 2010, a Misdemeanor Complaint was filed in the Superior Court of California, County of San Diego, East County Division, in Case No. C305217 charging Respondent with petty theft (count 1) in violation of Penal Code section 484.

On October 12, 2010, Respondent signed a change of plea form in which she admitted to petty theft in violation of Penal Code section 484. In that change of plea form, Respondent admitted that she “took & carried away personal property of another with intent to permanently deprive.” Respondent was represented by counsel. Thus, Respondent was convicted on October 12, 2010, of petty theft in violation of Penal Code section 484.

The Superior Court suspended imposition of sentence and placed Respondent on summary probation for three years. Conditions of probation required Respondent to serve one day in custody, to pay fines and fees of approximately \$680, to keep 100 yards away from the Wal-Mart store at the Grossmont Center in La Mesa, and to obey all laws.

The facts and circumstances surrounding this petty theft conviction were established by a La Mesa Police Department incident report dated October 4, 2010. That report stated that on Sunday, October 3, 2010, Respondent was at the Wal-Mart department store in La Mesa when a security guard observed Respondent conceal several articles of clothing in a bag that she already had in her shopping cart, pay for some merchandise at a register (but not the merchandise contained in the shopping bag), and leave the department store. The security guard stopped Respondent, made a citizen's arrest, and escorted Respondent back to the security office in the department store. The value of the items concealed in the shopping bag was \$133.31. The police officer's report and the security guard's report supplement and explain the petty theft to which Respondent admitted.

Other Matters

11. California Code of Regulations, title 16, section 1769(b)(2), lists a number of factors, including prior unlawful acts, to be considered in imposing discipline. In this regard, it was established that in April 4, 1994, in the matter entitled *People of the State of California v. Joannea Brigitta Jackson*, filed in the Municipal Court of California, County of San Diego, bearing case number CDF 100446, Respondent was convicted on her plea of guilty for violating Welfare & Institutions Code section 10980, subdivision (c)(2), welfare fraud, a felony. In her change of plea form, Respondent admitted that she "willingly received public assistance in amount over \$400 to which I was not entitled due to misrepresentation of earnings to the Dept. of Social Services." Following her conviction, the court suspended imposition of sentence and placed Respondent on five years probation. Conditions of probation required Respondent to complete community service and make restitution. The conviction was reduced to a misdemeanor. This conviction was disclosed on Respondent's application for licensure.

12. No evidence was introduced in explanation, mitigation, or rehabilitation.

Disciplinary Guidelines

13. The Board enacted comprehensive guidelines to be followed in disciplinary actions.³ The Board recognizes that individual cases may necessitate a departure from its guidelines; in such cases, mitigating circumstances should be detailed.

With regard to a pharmacy technician, the guidelines state:

³ California Code of Regulations, title 16, section 1760.

The board files cases against pharmacy technicians where the violation(s) involve significant misconduct on the part of the licensee. The board believes that revocation is the appropriate penalty when grounds for discipline are found to exist. Grounds for discipline include, but are not limited to the following violation(s) of law(s) involving:

- Possession of dangerous drugs and/or controlled substances
- Use of dangerous drugs and/or controlled substances
- Possession for sale of dangerous drugs and/or controlled substances
- Personal misuse of drugs or alcohol

If a revocation is not imposed, the Board recommends a minimum of a Category II level of discipline be imposed. This measure of discipline includes a suspension and a period of probation. In addition, a disciplined pharmacy technician must obtain certification from the Pharmacy Technician Certification Board (PTCB) before resuming work as a pharmacy technician on a probationary basis. The Board believes that certification before resuming work is always warranted in cases where a pharmacy technician's registration is disciplined but not revoked.

In determining whether the minimum, maximum, or an intermediate penalty should be imposed, factors such as the following should be considered: (1) actual or potential harm to the public; (2) actual or potential harm to any consumer; (3) prior record, including level of compliance with any disciplinary orders; (4) prior warnings of record, including citations and fines; (5) number and/or variety of current violations; (6) nature and severity of the acts, offenses, or crimes under consideration; (7) mitigating evidence; (8) rehabilitation evidence; (9) compliance with terms of any criminal sentence; (10) overall criminal record; (11) if applicable, evidence of proceedings for a case being set aside and dismissed pursuant to section 1203.4 of the Penal Code; (12) time passed since the acts or offenses; (13) whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct; and (14) any financial benefit from the misconduct.

No single or combination of the above factors is required to justify the minimum and maximum penalty as opposed to an intermediate one.

14. Joan Coyne, who has been licensed as a pharmacist in California since 1982, testified. Ms. Coyne worked as a pharmacist in a hospital for several years, owned her own pharmacy for ten years, and then became employed by the Board of Pharmacy. She is currently a Supervising Inspector. As a part of her duties, Ms. Coyne is responsible for supervising persons who are on probation to the Board of Pharmacy. Ms. Coyne is familiar with the duties and responsibilities of a registered pharmacy technician, who has virtually unfettered access to controlled substances and to customers' credit cards and personal information when working at a pharmacy.

Ms. Coyne believed that Respondent's registration should be revoked and that Respondent should not be placed on probation. Ms. Coyne believed that Respondent had a substance abuse problem that involved her diversion of controlled substances, used her position as a registered pharmacy technician to accomplish that diversion, billed MediCal for the drugs to which she was not lawfully entitled, and has a long criminal history that involves theft-related offenses and convictions. Ms. Coyne did not believe that Respondent would be successful if placed on probation.

The Appropriate Measure of Discipline

15. Respondent has a history of substance abuse. She has a criminal history that includes welfare fraud and theft. She remains on probation for her most recent offense. The purpose of this disciplinary proceeding is to protect the public. The imposition of an outright revocation is the only measure of discipline that can be imposed at this time that will protect the public.

Costs of Investigation and Enforcement

16. A certification of costs/declaration was signed by the deputy attorney general who prosecuted the action. The certification established that the Attorney General's Office billed approximately 73.75 hours of attorney services at the rate of \$170 per hour for attorney services and \$120 per hour for the services of legal assistants. The total costs of enforcement were \$12,452.50. The hourly rate was reasonable. The deputy attorney general who presented the case was well very prepared. A Certification of Costs was introduced that established that a Board of Pharmacy inspector spent 37 hours in the investigation of this matter. The inspector's services were billed at the rate of \$102 per hour. The hourly rate was reasonable.

Total enforcement and investigation costs of \$16,285 are reasonable under the circumstances. No evidence established any basis to reduce the costs under *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32.

LEGAL CONCLUSIONS

Standard of Proof

1. Business and Professions Code section 4038 defines a “pharmacy technician” as “an individual who assists a pharmacist in a pharmacy in the performance of his or her pharmacy related duties as specified in section 4115.”

Business and Professions Code section 4115 sets forth various tasks a pharmacy technician may perform. For example, subdivision (a) provides “a pharmacy technician may perform packaging, manipulative, repetitive, or other nondiscretionary tasks, only while assisting, and while under the direct supervision and control of, a pharmacist.” The duties a pharmacy technician may perform are further subject to regulation.⁴ Business and Professions Code section 4115, subdivision (e) provides:

No person shall act as a pharmacy technician without first being registered with the board as a pharmacy technician as set forth in Section 4202.

The pharmacy technician license may be issued upon a showing of a relatively minimal showing of formal education, training, and experience.

2. A nonprofessional license typically is issued without the need to demonstrate any specific education or skill and upon the mere showing of good character. In contrast, an applicant for a professional license must ordinarily satisfy extensive educational and training requirements, and then pass a rigorous state-administered competency examination. The sharp distinction between professional licenses and nonprofessional licenses supports a distinction in the standards of proof needed to revoke these two different types of licenses. (*Mann v. Department of Motor Vehicles* (1999) 76 Cal.App.4th 312, 319.)

An administrative disciplinary action seeking to suspend or revoke a professional license requires proof by “clear and convincing evidence.” (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) An administrative disciplinary action

⁴ California Code of Regulations, title 16, section 1793.2 provides:

“‘Nondiscretionary tasks’ as used in Business and Professions Code section 4115, include:

- (a) Removing the drug or drugs from stock;
- (b) counting, pouring, or mixing pharmaceuticals;
- (c) placing the product into a container;
- (d) affixing the label or labels to the container;
- (e) packaging and repackaging.”

seeking to suspend or revoke an occupational requires proof by a preponderance of the evidence.

3. The standard of proof required to suspend or revoke the registration issued to a pharmacy technician is a preponderance of the evidence (see Factual Finding 2). Thus, the preponderance of the evidence standard applies. (*Mann v. Department of Motor Vehicles* (1999) 76 Cal.App.4th 312, 320-321.)

Statutory Authority

4. Business and Professions Code section 490 provides, in part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

5. Business and Professions Code section 492 provides:

Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division.

6. Business and Professions Code section 493 provides in part:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department . . . to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that . . . the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the

record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

7. Business and Professions Code section 810 provides in part:

(a) It shall constitute unprofessional conduct and grounds for disciplinary action, including suspension or revocation of a license or certificate, for a health care professional to do any of the following in connection with his or her professional activities:

(1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss under a contract of insurance.

(2) Knowingly prepare, make, or subscribe any writing, with intent to present or use the same, or to allow it to be presented or used in support of any false or fraudulent claim.

(b) It shall constitute cause for revocation or suspension of a license or certificate for a health care professional to engage in any conduct prohibited under Section 1871.4 of the Insurance Code or Section 549 or 550 of the Penal Code.

....

8. Business and Professions Code section 4060 provides in part:

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 . . . or furnished pursuant to a drug order issued by a certified nurse-midwife . . . , a nurse practitioner . . . a physician assistant . . . a naturopathic doctor . . . or a pharmacist . . . 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. . . .

9. Business and Professions Code section 4059 provides in 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 Business and Professions Code section 3640.7.

10. Business and Professions Code section 4060 provides:

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.

11. Business and Professions Code section 4301 provides in part:

The board shall take action against any holder of a license who is guilty of unprofessional conduct . . .

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 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.

...

(l) The conviction of a crime substantially related to the qualifications, functions and duties of a licensee under this chapter...[t]he 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 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

...
(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. . . .

Substantial Relationship

12. A professional license may be suspended or revoked only if the conduct upon which the discipline is based relates to the practice of the particular profession and thereby demonstrates a present unfitness to practice such profession. There must be a logical connection between the licensees' conduct to their present fitness or competence to practice the profession or to the qualifications, functions, or duties of the profession in question. Despite the omission of an explicit requirement that there be a "substantial relationship" in a disciplinary statute, courts have concluded that the Legislature intend such a requirement. (*Clare v. California State Board of Accountancy* (1992) 10 Cal.App.4th 294, 301-303.)

13. The substantial relationship between holding a pharmacy technician registration and the unlawful use of controlled substances or dangerous drugs and theft-related offenses is obvious – persons who illegally use such substances should not be permitted to hold employment that provides virtually unlimited access to controlled substances because of the risk of diversion and abuse, and the harm inevitably be caused to the public as a consequence thereof, and because dishonest persons should not have access to a customer's credit card and other personal information. This substantial relationship is amply demonstrated in the Board's guidelines.

Regulatory Authority

14. Title 16, California Code of Regulations, section 1769, provides in part:

(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.

15. California Code of Regulations, title 16, section 1770 provides:

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.

Cause Exists to Impose Administrative Discipline

16. Cause exists to impose discipline against Respondent's registration under Business and Professions Code section 4031, subdivision (j), in that Respondent altered, forged, and diverted drugs for her own purposes in violation of the statutes of this state regulating controlled substances.

17. Cause exists to impose discipline against Respondent's registration under Business and Professions Code sections 4059 and 4060 in that respondent unlawfully furnished Tylenol with Codeine #4 to herself and unlawfully possessed Tylenol with Codeine #4 from July 21, 2006, through December 8, 2006.

18. Cause exists to impose discipline against Respondent's registration under Business and Professions Code section 810 in that Respondent submitted false and fraudulent billings to Medi-Cal.

19. Cause exists to impose discipline against Respondent's registration under Business and Professions Code section 4301, subdivision (g), in that Respondent knowingly made documents that were submitted to Medi-Cal that falsely represented that she had lawfully be prescribed Tylenol with Codeine #4.

20. Cause exists to impose discipline against Respondent's registration under Business and Professions Code sections 490 and 4301, subdivision (l), in that Respondent was convicted on October 12, 2010, of petty theft, an offense that was committed on October 3, 2010, and an offense that has a substantial relationship to the qualifications, functions, and duties of a registered pharmacy technician.

21. Cause exists to impose discipline against Respondent's registration under Business and Professions Code section 4301, subdivision (f), in that Respondent committed dishonest acts including the altering of prescriptions, the creation of false prescriptions, the submission of false billings to Medi-Cal for reimbursement, and petty theft, all of which are substantially related to the qualifications, functions, and duties of a registered pharmacy technician.

The Appropriate Measure of Discipline

22. The Board's disciplinary guidelines were applied in this matter. The character, extent, seriousness, and recent nature of the misconduct established in this disciplinary matter, and the lack of evidence in explanation, mitigation, or rehabilitation mandate an outright revocation.

Recovery of Costs of Investigation and Enforcement

23. Business and Professions Code section 125.3 provides in part:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding . . . the board may request the administrative law judge to direct a licentiate found to have committed a violation . . . of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case . . .

...

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a)

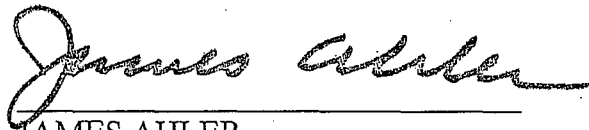
24. Under all the circumstances, causes exists under Business and Professions Code section 125.3 to direct Respondent to pay \$16,285 to the Board of Pharmacy for its costs of investigation and enforcement.

ORDERS

Pharmacy technician registration number TCH 54730 issued to Respondent, Joanea Jackson, is revoked.

Respondent, Joanea Jackson, is directed to pay to the Board of Pharmacy \$16,285.

DATED: May 12, 2011

A handwritten signature in cursive script, reading "James Ahler", written in black ink. The signature is positioned above a horizontal line.

JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings

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

11 In the Matter of the Accusation Against:

Case No. 3711

12 **JOANNEA JACKSON**
13 **P.O. Box 19275**
14 **San Diego, CA 92159**

A C C U S A T I O N

15 **Pharmacy Technician Registration No. TCH**
16 **54730**

17 Respondent.

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 February 18, 2004, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 54730 to Joannea Jackson (Respondent). The Pharmacy Technician
24 Registration was in full force and effect at all times relevant to the charges brought herein and
25 will expire on January 31, 2012, unless renewed.
26
27
28

JURISDICTION

1
2 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
3 Consumer Affairs, under the authority of the following laws. All section references are to the
4 Business and Professions Code (Code) unless otherwise indicated.

5 4. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
6 surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
7 disciplinary action during the period within which the license may be renewed, restored, reissued
8 or reinstated.

9 5. Section 4300, subdivision (a) of the Code states in pertinent part, "every license
10 issued may be suspended or revoked."

STATUTORY AND REGULATORY PROVISIONS

11
12 6. Section 482 of the Code states:

13 Each board under the provisions of this code shall develop criteria to
14 evaluate the rehabilitation of a person when:

15 (a) Considering the denial of a license by the board under Section 480; or

16 (b) Considering suspension or revocation of a license under Section 490.

17 Each board shall take into account all competent evidence of rehabilitation
18 furnished by the applicant or licensee.

19 7. Section 492 of the Code states:

20 Notwithstanding any other provision of law, successful completion of any
21 diversion program under the Penal Code, or successful completion of an alcohol and
22 drug problem assessment program under Article 5 (commencing with section
23 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any
24 agency established under Division 2 ([Healing Arts] commencing with Section 500)
25 of this code, or any initiative act referred to in that division, from taking disciplinary
26 action against a licensee or from denying a license for professional misconduct,
27 notwithstanding that evidence of that misconduct may be recorded in a record
28 pertaining to an arrest.

This section shall not be construed to apply to any drug diversion program
operated by any agency established under Division 2 (commencing with Section 500)
of this code, or any initiative act referred to in that division.

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8. Section 810 of the Code states:

(a) It shall constitute unprofessional conduct and grounds for disciplinary action, including suspension or revocation of a license or certificate, for a health care professional to do any of the following in connection with his or her professional activities:

(1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss under a contract of insurance.

(2) Knowingly prepare, make, or subscribe any writing, with intent to present or use the same, or to allow it to be presented or used in support of any false or fraudulent claim.

(b) It shall constitute cause for revocation or suspension of a license or certificate for a health care professional to engage in any conduct prohibited under Section 1871.4 of the Insurance Code or Section 549 or 550 of the Penal Code.

....

9. Section 4059 of the Code provides in 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. A person may not furnish any dangerous device, 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 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.

1 11. Section 4301 of the Code states:

2 The board shall take action against any holder of a license who is guilty of
3 unprofessional conduct or whose license has been procured by fraud or
4 misrepresentation or issued by mistake. Unprofessional conduct shall include, but
is not limited to, any of the following:

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

7

8 (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

10 (o) Violating or attempting to violate, directly or indirectly, or assisting in
11 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
12 pharmacy, including regulations established by the board or by any other state or
federal regulatory agency.

13

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

15

16 (b) When considering the suspension or revocation of a facility or a personal
17 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:

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

19 (2) Total criminal record.

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

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

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

24 13. California Code of Regulations, title 16, section 1770, states:

25 For the purpose of denial, suspension, or revocation of a personal or facility
26 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
27 the qualifications, functions or duties of a licensee or registrant if to a substantial
28 degree it evidences present or potential unfitness of a licensee or registrant to

1 perform the functions authorized by his license or registration in a manner
2 consistent with the public health, safety, or welfare.

3 COST RECOVERY

4 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request
5 the administrative law judge to direct a licensee found to have committed a violation or
6 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
7 and enforcement of the case.

8 DRUG

9 15. Tylenol with Codeine #4, a brand name for acetaminophen with codeine, is a
10 Schedule III controlled substance as designated by Health and Safety Code Section 11056(e)(2)
11 and is a dangerous drug pursuant to Business and Professions Code section 4022.

12 FACTUAL ALLEGATIONS

13 16. Respondent was employed as a pharmacy technician at a CVS Pharmacy located at
14 2760 Fletcher Parkway in El Cajon, California from at least June 26, 2006 through December 21,
15 2006. On or about December 8, 2006, a pharmacist observed Respondent filling her own
16 prescription for a controlled substance, Tylenol with Codeine #4, and an internal investigation
17 ensued. The internal investigation and subsequent Drug Enforcement Administration
18 investigation revealed the following.

19 17. On or about June 27, 2006, Respondent obtained prescription number 1883484
20 written by her dentist for Tylenol with Codeine #4, quantity 20 with no refills. Respondent
21 altered the prescription to include 2 refills and a quantity of 30 without authorization from her
22 dentist.

23 18. On July 21, 2006, Respondent altered prescription number 1883484 in the CVS
24 Pharmacy computer by giving it a new number, 1888947, and had it filled. On August 22, 2006
25 and August 31, 2006, Respondent refilled prescription number 1888947. She submitted the
26 prescription and refills for reimbursement to Medi-Cal on her own behalf. Respondent's dentist
27 did not authorize, call in or write this prescription or refills.
28

1 19. On or about September 27, 2006, Respondent entered into the CVS Pharmacy
2 computer system, prescription number 1905330 for Tylenol with Codeine #4, quantity 30, with
3 refills, and had it filled. She had prescription number 1905330 refilled on October 12, 2006. She
4 submitted this prescription and the refill for reimbursement to Medi-Cal on her own behalf.
5 Respondent's dentist did not authorize, call in or write this prescription or refill.

6 20. On October 17, 2006, Respondent entered into the CVS Pharmacy computer system,
7 prescription number 454496 for Tylenol with Codeine #4, quantity 30, with 3 refills, and had it
8 filled. She refilled prescription number 454496 on October 27, 2006, November 14, 2006 and
9 November 23, 2006. The prescription and refills were submitted to Medi-Cal by Respondent for
10 reimbursement on her own behalf. Respondent's dentist did not authorize, call in or write the
11 prescription or refills.

12 21. On December 7, 2006, Respondent wrote prescription number 466299, for Tylenol
13 with Codeine #4, quantity 30, with 1 refill, on a call-in form used to document a call by the
14 pharmacy to the physician following a call to the pharmacy by the patient requesting a refill. She
15 attempted to fill it. Respondent's dentist did not authorize, call in or write this prescription. After
16 a pharmacist observed Respondent filling her own prescription, the pharmacy supervisor
17 researched Respondent's prescription records and discovered that there were no hard copies of
18 Respondent's prescriptions entered into the computer system.

19 22. Respondent admitted in writing to altering a prescription without doctor's approval
20 for two refills in her December 21, 2006 Statement ("Q. How many refills did you add to your
21 prescription without the doctors approval. A. 2 additional refills"). She also admitted orally to a
22 CVS Loss Prevention Manager that she had created and added two refills to prescription number
23 454496 and created and added one refill to prescription number 466299.

24 23. On or about February 7, 2008, in a criminal proceeding entitled *People of the State of*
25 *California v. Joannea Brigitta Jackson*, case no. SCE275753, Respondent pled guilty to violating
26 Health and Safety Code section 11173(a), obtaining controlled substances by fraud, a felony.
27 Pursuant to Penal Code Section 1210.1, Respondent's sentence was suspended and her fines and
28 other requirements were stayed until her completion of a Penal Code 1210 drug program. On

1 February 19, 2009, the Court granted Respondent's Petition under Penal Code section 1210.1(d)
2 on the grounds that Respondent had successfully completed the Penal Code 1210 program, set
3 aside Respondent's plea of guilty and dismissed the case.

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Unprofessional Conduct-Violating Laws Regulating Controlled Substances)**

6 24. Respondent is subject to disciplinary action under section 4301(j) of the Code in that
7 on or about July 21, 2006 through December 8, 2006, Respondent violated the California
8 Uniform Controlled Substances Act (Health and Safety Code sections 11000, et seq.) as is more
9 fully described in paragraphs 16-23, above.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Unprofessional Conduct-Violation of the Chapter)**

12 25. Respondent is subject to disciplinary action under 4301(o) of the Code for violation
13 of the Pharmacy Act in that on or about July 21, 2006 through December 8, 2006, Respondent
14 furnished to herself and possessed a controlled substance, Tylenol with Codeine #4, without a
15 prescription, in violation of Code sections 4059 and 4060 as is more fully described in paragraphs
16 16-23, above.

17 **THIRD CAUSE FOR DISCIPLINE**

18 **(Unprofessional Conduct- Medi-Cal Fraud)**

19 26. Respondent is subject to disciplinary action under section 810 of the Code in that
20 Respondent submitted false and fraudulent claims to the California Medi-Cal Program for
21 reimbursement as is more fully described in paragraphs 16-23, above.

22 **FOURTH CAUSE FOR DISCIPLINE**

23 **(Unprofessional Conduct-Knowingly Making False Documents)**

24 27. Respondent is subject to disciplinary action under section 4301(g) of the Code in that
25 on or about July 21, 2006 through December 8, 2006, Respondent knowingly made documents
26 that falsely represent the existence of facts, namely, prescriptions for a controlled substance and
27 submitted those prescriptions to the California Medi-Cal Program for reimbursement as is more
28 fully described in paragraphs 16-23, above.

PRAYER

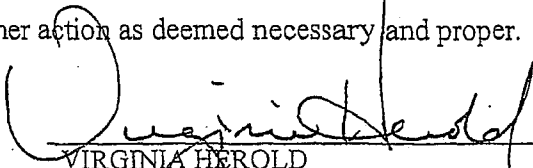
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Pharmacy Technician Registration Number TCH 54730, issued to Joannea Jackson;

2. Ordering Joannea Jackson 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: 8/13/10



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

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