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

In the Matter of the Accusation Against: **KAREN ANNE ALLEN** 20757 Archwood St. Winnetka, CA 91306 Pharmacy Technician License No. TCH 28779 Respondent.	Case No. 3831 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about February 7, 2011, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 3831 against Karen Anne Allen (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about March 23, 1999, the Board of Pharmacy (Board) issued Pharmacy Technician License No. TCH 28779 to Respondent. The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought in Accusation No. 3831 and will expire on April 30, 2012, unless renewed.

3. On or about March 2, 2011, Respondent was served by Certified and First Class Mail copies of the Accusation No. 3831, 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 4100, is required to be reported and maintained with the Board, which was and is: 20757 Archwood St., Winnetka, CA 91306.

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. 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.

6. 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. 3831.

7. 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.

8. 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. 3831, finds that the charges and allegations in Accusation No. 3831, are separately and severally, found to be true and correct by clear and convincing evidence.

9. 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 $4,817.50 as of August 10, 2011.

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DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Karen Anne Allen has subjected her Pharmacy Technician License No. TCH 28779 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 License based upon the following violations alleged in the Accusation which are supported by the evidence contained in the Default Decision Evidence Packet in this case.:

a. Business and Professions Code sections 490, 4300 and 4301, subdivision (l), and California Code of Regulations, title 16, section 1770, convictions of substantially related crimes.

b. Business and Professions Code sections 4300 and 4301, subdivision (k), convictions involving dangerous drugs.

c. Business and Professions Code sections 4300, 4301, subdivision (j), and 4060illegal possession of controlled substances.

d. Business and Professions Code sections 4300 and 4301, subdivision (h), dangerous use of controlled substances.

e. Business and Professions Code sections 4300 and 4301, subdivision (j), and Health and Safety Code sections 11170, 11173, subdivision (a), 11350, subdivision (a), and 11377, subdivision (a), violating drug statutes.

f. Business and Professions Code sections 4300 and 4301, subdivision (g), false statement on application for licensure.

g. Business and Professions Code sections 4300 and 4301, subdivision (f), acts involving moral turpitude, dishonesty, fraud, deceit, or corruption.

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ORDER

IT IS SO ORDERED that Pharmacy Technician License No. TCH 28779, heretofore issued to Respondent Karen Anne Allen, 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 December 2, 2011.

It is so ORDERED November 2, 2011.

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

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DOJ Matter ID:LA2010600972

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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

In the Matter of the Accusation Against: **KAREN ANNE ALLEN** 20757 Archwood St. Winnetka, CA 91306 Pharmacy Technician License No. TCH 28779 Respondent.	Case No. 3831 **ACCUSATION**

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 (Board).

2. On or about March 23, 1999, the Board issued Pharmacy Technician License No. TCH 28779 to Karen Anne Allen (Respondent). The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2012, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

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

5. Section 490 provides, in pertinent 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..

6. Section 492 states:

"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."

7. Section 4060 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."

8. Section 4300, subdivision (a), states that "[e]very license issued may be suspended or revoked."

9. Section 4301 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.

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

"(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.

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"(k) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances.

"(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United 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 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. . . ."

REGULATORY PROVISION

10. California Code of Regulations, title 16, 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."

DRUG STATUTES

11. Health and Safety Code section 11170 states that "[n]o person shall prescribe, administer, or furnish a controlled substance for himself."

12. Health and Safety Code section 11173, subdivision (a), states that "[n]o person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact."

13. Health and Safety Code section 11350, subdivision (a), states:

"Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in the state prison."

14. Health and Safety Code section 11377, subdivision (a), states:

"Except as authorized by law and as otherwise provided in subdivision (b) or Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses any controlled substance which is (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in a county jail for a period of not more than one year or in the state prison."

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COST RECOVERY

15. Section 125.3 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.

CONTROLLED SUBSTANCES / DANGEROUS DRUGS

16. **Ativan**, a brand name for Lorazepam, a **benzodiazepine derivative**, is a Schedule IV controlled substance as designated by Health and Safety Code section 11057, subdivision (d)(16), and is categorized as a dangerous drug pursuant to section 4022.

17. Hydrocodone is in Schedule II of the Controlled Substances Act. Lortab, **Norco** and **Vicodin**, brand/trade names of preparations containing hydrocodone in combination with other non-narcotic medicinal ingredients, are in Schedule III pursuant to Health and safety Code section 11056(e)(4), and are categorized as dangerous drugs pursuant to section 4022.

18. **Valium**, a trade name for the chemical substance diazepam, a **benzodiazepam derivative**, is a Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(9) and is categorized as a dangerous drug pursuant to section 4022.

19. **Xanax**, a brand name for alprazolam, a **benzodiazepine**, is a Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(1) and is categorized as a dangerous drug pursuant to section 4022.

FIRST CAUSE FOR DISCIPLINE

(Convictions of Substantially Related Crimes)

20. Respondent is subject to disciplinary action under section 490, 4300 and 4301, subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, on the grounds of unprofessional conduct, in that Respondent was convicted of crimes substantially related to the qualifications, functions or duties of a registered pharmacy technician which to a substantial degree evidence her present or potential unfitness to perform the functions authorized by her registration in a manner consistent with the public health, safety, or welfare, as follows:

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a. On or about August 18, 2009, after pleading nolo contendere, Respondent was convicted of one misdemeanor count of violating Vehicle Code section 23152(a) [driving under the influence of alcohol/drugs] in the criminal proceeding entitled *The People of the State of California v. Karen Anne Allen* (Super. Ct. Los Angeles County, 2009, No. SA 070585). The Court placed Respondent on 36 months of probation to run concurrent with Case No. 9MB00910, and ordered her to complete a three (3) month 1st Offender Alcohol/Drug Program. Further, on or about August 18, 2009, after pleading guilty, in Case No. 9MB00910, Respondent was placed on 18 months of deferred entry of judgment for a misdemeanor violation of Health and Safety Code section 11375(b)(2) [possession of controlled substance].

b. The circumstances underlying the conviction are that on or about February 7, 2009, while under the tested influence of benzodiazepine, Respondent drove her vehicle into a guard rail, causing the vehicle to have a front right flat tire, and she continued to drive the vehicle riding on the flat tire's rim until pulled over by Los Angeles Sheriff's Department officers. Respondent was in possession of 128 Vicodin, 61 Valium, 45 Xanax, and 5 Ativan, controlled substances and dangerous drugs, without valid prescriptions.

c. On or about August 18, 2009, after pleading nolo contendere, Respondent was convicted of one misdemeanor count of violating Vehicle Code section 23152(a) [driving while under the influence of alcohol/drugs] in the criminal proceeding entitled *The People of the State of California v. Karen Anne Allen* (Super. Ct., Los Angeles County, No. 9MB00910). The Court sentenced Respondent to four (4) days in jail, placed her on 60 months of probation, ordered her to complete an 18 months driving-under-the-influence program, ordered her to complete additional AA/NA meetings three (3) times per week, and ordered her to continue counseling at Kaiser.

d. The circumstances underlying the conviction are that on or about March 4, 2009, while under the tested influence of benzodiazepine, Respondent drove a vehicle and was in possession of 35 Valium, 98 Xanax, and 1 Vicodin, controlled substances and dangerous drugs, without valid prescriptions.

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SECOND CAUSE FOR DISCIPLINE

(Convictions Involving Dangerous Drugs)

21. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (k), in that on or about August 18, 2009, Respondent sustained misdemeanor convictions involving the use, consumption, or self-administration of dangerous drugs. Complainant refers to and by this reference incorporates the allegations set forth above in paragraph 20, subparagraphs a - d, inclusive, as though set forth fully.

THIRD CAUSE FOR DISCIPLINE

(Illegal Possession of Controlled Substances)

22. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (j), in conjunction with section 4060, on the grounds of unprofessional conduct, in that on or about February 7, 2009, and March 4, 2009, Respondent was in possession of controlled substances and dangerous drugs, without valid prescriptions. Complainant refers to and by this reference incorporates the allegations set forth above in paragraph 20, subparagraphs b and d, inclusive, as though set forth fully.

FOURTH CAUSE FOR DISCIPLINE

(Dangerous Use of Controlled Substances)

23. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (h), on the grounds of unprofessional conduct, in that Respondent administered to herself controlled substances, and / or used dangerous drugs to the extent or in a manner as to be dangerous or injurious to herself or others. Complainant refers to and by this reference incorporates the allegations set forth above in paragraphs 20 - 23, inclusive, as though set forth fully.

FIFTH CAUSE FOR DISCIPLINE

(Violating Drug Statutes)

24. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (j), on the grounds of unprofessional conduct, for violating provisions of the Health and Safety Code as follows:

a. Section 11170 for prescribing, administering and / or furnishing controlled substances her herself.

b. Section 11173, subdivision (a), for obtaining controlled substances by fraud, deceit or subterfuge.

c. Section 11350, subdivision (a), by possessing Vicodin, a narcotic and controlled substance.

d. Section 11377, subdivision (a), by possessing Valium, Ativan, and Xanax, controlled substances.

Complainant refers to and by this reference incorporates the allegations set forth above in paragraphs 20 - 23, inclusive, as though set forth fully.

SIXTH CAUSE FOR DISCIPLINE

(False Statement on Application for Licensure)

25. Respondent is subject to disciplinary action under section 4300 and 4301, subdivision (g), on the grounds of unprofessional conduct, in that Respondent knowingly made or signed her April 30, 2010, "Renewal Application" for licensure by falsely representing a state of facts when she answered "No" to the question: "Since you last renewed your license, have you had any license disciplined by a government agency or other disciplinary body; or, have you been convicted of any crime in any state, the U S A and its territories, military court of a foreign country?" Respondent sustained two (2) criminal convictions within the year prior to renewing her license, on or about August 18, 2009. Complainant refers to and by this reference incorporates the allegations set forth above in paragraph 20, subparagraphs a and c, inclusive, as though set forth fully.

SIXTH CAUSE FOR DISCIPLINE

(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)

26. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (f), on the grounds of unprofessional conduct, in that Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit and / or corruption. Complainant refers to

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and by this reference incorporates the allegations set forth above in paragraphs 20 - 25, inclusive, as though set forth fully.

PRAYER

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

1. Revoking or suspending Pharmacy Technician License No. TCH 28779, issued to Respondent;

2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and

3. Taking such other and further action as deemed necessary and proper.

DATED: 2/7/11

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

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