

1
2
3
4
5
6 **BEFORE THE**
7 **BOARD OF PHARMACY**
8 **DEPARTMENT OF CONSUMER AFFAIRS**
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 4033

11 **WINDY SUE IRBY**
12 **2005 Sugar Pine Drive**
13 **Oakdale, CA 95361**
14 **Pharmacy Technician Registration No. TCH**
15 **21312**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

Respondent.

16
17 FINDINGS OF FACT

18 1. On or about November 1, 2011, Complainant Virginia Herold, in her official capacity
19 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed
20 Accusation No. 4033 (Accusation) against Windy Sue Irby (Respondent) before the Board of
21 Pharmacy. (Accusation attached as Exhibit A.)

22 2. On or about January 31, 1997, the Board of Pharmacy (Board) issued Pharmacy
23 Technician Registration No. TCH 21312 (License) to Respondent. The License was in full force
24 and effect at all times relevant to the charges brought in the Accusation and will expire on April
25 30, 2012, unless renewed.

26 3. On or about November 22, 2011, Respondent was served by Certified and First Class
27 Mail copies of the Accusation, Statement to Respondent, Notice of Defense, Request for
28 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at

1 Respondent's address of record which, pursuant to Business and Professions Code section 4100,
2 is required to be reported and maintained with the Board, which was and is:

3 2005 Sugar Pine Drive
4 Oakdale, CA 95361.

5 4. Service of the Accusation was effective as a matter of law under the provisions of
6 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
7 124.

8 5. On or about November 25, 2011, the aforementioned documents were received by the
9 Respondent as evidence by the Return Receipt provided by the U.S. Postal Service.

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

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

16 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
17 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 4033.

18 8. Government Code section 11520 states, in pertinent part:

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

23 9. Pursuant to its authority under Government Code section 11520, the Board finds
24 Respondent is in default. The Board will take action without further hearing and, based on the
25 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
26 taking official notice of all the investigatory reports, exhibits and statements contained therein on
27 file at the Board's offices regarding the allegations contained in the Accusation, finds that the
28 charges and allegations in the Accusation, are separately and severally, found to be true and
correct by clear and convincing evidence.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER

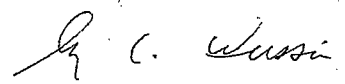
IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 21312, heretofore issued to Respondent Windy Sue Irby, is revoked.

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 July 30, 2012.

It is so ORDERED on June 29, 2012.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____
STANLEY C. WEISSER
Board President

10862869.DOC
DOJ Matter ID:SA2011100913

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 GEOFFREY S. ALLEN
Deputy Attorney General
4 State Bar No. 193338
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-5341
Facsimile: (916) 327-8643
7 E-mail: Geoffrey.Allen@doj.ca.gov
Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 4033

13 **WINDY SUE IRBY**
2005 Sugar Pine Dr.
14 Oakdale, California 95361
15 Pharmacy Technician Registration No. TCH 21312

ACCUSATION

16 Respondent.

17
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 January 31, 1997, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 21312 (License) to Wendy Sue Irby (Respondent). The License was
24 in full force and effect at all times relevant to the charges brought herein and will expire on April
25 30, 2012, unless renewed.

26 ///

27 ///

28 ///

JURISDICTION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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, in pertinent part:

(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.

....

(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:

....

(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.

....

(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.

1 (l) The conviction of a crime substantially related to the qualifications,
2 functions, and duties of a licensee under this chapter. The record of conviction
3 of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the
4 United States Code regulating controlled substances or of a violation of the
5 statutes of this state regulating controlled substances or dangerous drugs shall
6 be conclusive evidence of unprofessional conduct. In all other cases, the record
7 of conviction shall be conclusive evidence only of the fact that the conviction
8 occurred. The board may inquire into the circumstances surrounding the
9 commission of the crime, in order to fix the degree of discipline or, in the case
10 of a conviction not involving controlled substances or dangerous drugs, to
11 determine if the conviction is of an offense substantially related to the
12 qualifications, functions, and duties of a licensee under this chapter. A plea or
13 verdict of guilty or a conviction following a plea of nolo contendere is deemed
14 to be a conviction within the meaning of this provision. The board may take
15 action when the time for appeal has elapsed, or the judgment of conviction has
16 been affirmed on appeal or when an order granting probation is made
17 suspending the imposition of sentence, irrespective of a subsequent order under
18 Section 1203.4 of the Penal Code allowing the person to withdraw his or her
19 plea of guilty and to enter a plea of not guilty, or setting aside the verdict of
20 guilty, or dismissing the accusation, information, or indictment.

21

22 COST RECOVERY

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

27 DISCIPLINARY CONSIDERATIONS

28 7. On or about January 28, 2009, in the Superior Court of California, County of
Tuolumne, in the case entitled, *People of the State of California v. Windy Sue Irby* (Super. Ct.
Tuolumne County, 2009, Case No. CRM28821), Respondent was convicted of violating Vehicle
Code section 23152, subd. (a) [driving under the influence of a drug or alcohol], a misdemeanor.
On or about January 19, 2010, the Board issued Respondent a Code section 4301 violation letter.

FIRST CAUSE FOR DISCIPLINE (Conviction)

8. Respondent is subject to disciplinary action under Code section 4301, subd. (l) in that
Respondent was convicted of a crime substantially related to her License and her practice as a
pharmacy technician. The circumstances are as follows:

1 THIRD CAUSE FOR DISCIPLINE
2 (Multiple Convictions)

3 11. Respondent is subject to disciplinary action under Code section 4301, subd. (k) in that
4 Respondent was conviction of more than one misdemeanor involving the use, consumption, or
5 self-administration of any dangerous drug or alcoholic beverage. The circumstances are detailed
6 above in paragraphs 7 and 9.

7 FOURTH CAUSE FOR DISCIPLINE
8 (False Representation)

9 12. Respondent is subject to disciplinary action under Code section 4301, subd. (g) in that
10 Respondent knowingly made or signed a certificate or other document that falsely represented the
11 existence or nonexistence of a state of facts. The circumstances are that on or about April 27,
12 2010, when Respondent most recently renewed her License, Respondent signed a statement under
13 penalty of perjury that falsely represented to the Board that she had not been convicted of any
14 crime, but the true state of facts were that Respondent had indeed been convicted on a crime as
15 detailed above in paragraph 7.

16 PRAYER

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

19 1. Revoking or suspending Pharmacy Technician Registration Number TCH 21312,
20 issued to Windy Sue Irby.

21 2. Ordering Windy Sue Irby to pay the Board of Pharmacy the reasonable costs of the
22 investigation and enforcement of this case, pursuant to Business and Professions Code section
23 125.3;

24 ///

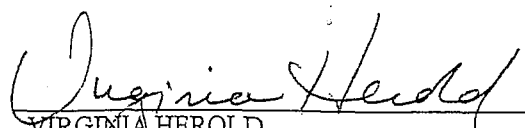
25 ///

26 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

DATED: 11/1/11



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

SA2011100913
10718084.docx

2011CA-00000001