

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

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

In the Matter of the Accusation Against:

WANDA KAY COOPER
8221 Ilex Ave, #7
Fontana, CA 92335
**Pharmacy Technician Registration No. TCH
106015**

Respondent.

Case No. 4059

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about April 8, 2013, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4059 against Wanda Kay Cooper (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about August 16, 2010, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 106015 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 4059, but expired on June 30, 2012, and has been cancelled. This lapse in licensure, however, pursuant to Business and Professions Code section 118(b) does not deprive the Board of its authority to institute or continue this disciplinary proceeding.

1 3. On or about April 17, 2013, Respondent was served by Certified and First Class Mail
2 copies of the Accusation No. 4059, Statement to Respondent, Notice of Defense, Request for
3 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
4 Respondent's address of record which, pursuant to Business and Professions Code section 4100,
5 is required to be reported and maintained with the Board. Respondent's address of record was
6 and is: 7325 Buckeye Drive, Fontana, CA 92336.

7 4. Service of the Accusation was effective as a matter of law under the provisions of
8 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
9 124.

10 5. On or about April 29, 2013, the First Class Mail documents were returned by the U.S.
11 Postal Service marked "Unknown," and on May 13, 2013, the Certified Mail Documents were
12 returned "Unclaimed."

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

14 (c) The respondent shall be entitled to a hearing on the merits if the respondent
15 files a notice of defense, and the notice shall be deemed a specific denial of all parts
16 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.

17 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
18 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 4059.

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

20 (a) If the respondent either fails to file a notice of defense or to appear at the
21 hearing, the agency may take action based upon the respondent's express admissions
22 or upon other evidence and affidavits may be used as evidence without any notice to
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 Accusation No. 4059, finds that
28

1 the charges and allegations in Accusation No. 4059; are separately and severally, found to be true
2 and correct by clear and convincing evidence.

3 10. Taking official notice of its own internal records, pursuant to Business and
4 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
5 and Enforcement is \$1,637.50 as of November 25, 2013.

6 **DETERMINATION OF ISSUES**

7 1. Based on the foregoing findings of fact, Respondent Wanda Kay Cooper has
8 subjected her Pharmacy Technician Registration No. TCH 106015 to discipline.

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

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

13 a. Business and Professions Code sections 490, 4060, 4300, and 4301 (l), and California
14 Code of Regulations, title 16, section 1770 [unprofessional conduct – substantially related
15 conviction];

16 b. Business and Professions Code sections 4300 and 4301(k) [conviction involving
17 alcohol or drugs];

18 c. Business and Professions Code sections 4060, 4300 and 4301(j) [illegal possession of
19 controlled substances];

20 d. Business and Professions Code sections 4300 and 4301(h) [dangerous use of
21 controlled substances];

22 e. Business and Professions Code sections 4300 and 4301(f) [acts involving moral
23 turpitude, dishonesty, fraud, deceit or corruption] and

24 f. Business and Professions Code sections 4300 and 4301(j) [violating drug statutes].

25 **ORDER**

26 *IT IS SO ORDERED* that Pharmacy Technician Registration No. TCH 106015, heretofore
27 issued to Respondent Wanda Kay Cooper, is revoked.

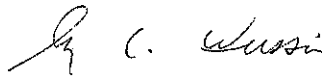
28 ///

1 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
2 written motion requesting that the Decision be vacated and stating the grounds relied on within
3 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
4 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

5 This Decision shall become effective on April 21, 2014.

6 It is so ORDERED ON March 21, 2014.

7 BOARD OF PHARMACY
8 DEPARTMENT OF CONSUMER AFFAIRS
9 STATE OF CALIFORNIA

10
11 By 
12 STAN C. WEISSER
13 Board President
14
15

16
17
18
19
20
21
22
23
24
25
26
27 Attachment:
28 Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 DESIREE TULLENERS
Deputy Attorney General
4 State Bar No. 157464
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2578
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 4059

12 **WANDA KAY COOPER**
7325 Buckeye Drive
13 Fontana, CA 92336
14 Pharmacy Technician Registration
15 No. TCH 106015

A C C U S A T I O N

Respondent.

17 Complainant alleges:

18 **PARTIES**

- 19 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board).
21 2. On or about August 16, 2010, the Board issued Pharmacy Technician Registration
22 No. TCH 106015 to Wanda Kay Cooper (Respondent). The Pharmacy Technician Registration
23 was in full force and effect at all times relevant to the charges brought herein, but expired on June
24 30, 2012, and has been cancelled.

25 **JURISDICTION**

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

28 ///

STATUTORY PROVISIONS

1
2 4. Section 118, subdivision (b), provides that the suspension, expiration, surrender, or
3 cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary
4 action during the period within which the license may be renewed, restored, reissued or
5 reinstated.

6 5. Section 490 states:

7 "(a) In addition to any other action that a board is permitted to take against a licensee, a
8 board may suspend or revoke a license on the ground that the licensee has been convicted of a
9 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
10 or profession for which the license was issued.

11 (b) Notwithstanding any other provision of law, a board may exercise any authority to
12 discipline a licensee for conviction of a crime that is independent of the authority granted under
13 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
14 of the business or profession for which the licensee's license was issued.

15 (c) A conviction within the meaning of this section means a plea or verdict of guilty or a
16 conviction following a plea of *nolo contendere*. Any action that a board is permitted to take
17 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
18 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
19 made suspending the imposition of sentence, irrespective of a subsequent order under the
20 provisions of Section 1203.4 of the Penal Code."

21 6. Section 492 states:

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

1 record pertaining to an arrest.

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

5 7. Section 4060 states:

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

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

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

22 9. Section 4301 states, in pertinent part:

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

26

27 (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
28 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and

1 whether the act is a felony or misdemeanor or not.

2

3 (h) The administering to oneself, of any controlled substance, or the use of any dangerous
4 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
5 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
6 to the extent that the use impairs the ability of the person to conduct with safety to the public the
7 practice authorized by the license.

8

9 (j) The violation of any of the statutes of this state, or any other state, or of the United
10 States regulating controlled substances and dangerous drugs.

11

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

1 REGULATORY PROVISIONS

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

3 "For the purpose of denial, suspension, or revocation of a personal or facility license
4 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
5 crime or act shall be considered substantially related to the qualifications, functions or duties of a
6 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
7 licensee or registrant to perform the functions authorized by his license or registration in a manner
8 consistent with the public health, safety, or welfare."

9 DRUG STATUTES

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

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

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

17 "Except as otherwise provided in this division, every person who possesses (1) any
18 controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of
19 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or
20 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section
21 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic
22 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian
23 licensed to practice in this state, shall be punished by imprisonment in the state prison."

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

25 "Except as authorized by law and as otherwise provided in subdivision (b) or Section
26 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the
27 Business and Professions Code, every person who possess any controlled substance which is (1)
28 classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision

1 (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified
2 in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of
3 subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055,
4 unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice
5 in this state, shall be punished by imprisonment in a county jail for a period of not more than one
6 year or in the state prison.”

7 COST RECOVERY

8 15. Section 125.3 states, in pertinent part, that the Board may request the administrative
9 law judge to direct a licentiate found to have committed a violation or violations of the licensing
10 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
11 case.

12 CONTROLLED SUBSTANCES/ DANGEROUS DRUGS

13 16. Acetaminophen, is a schedule III controlled substance as designated in Health and
14 Safety Code section 11056 (e)(2) and is categorized as a dangerous drug pursuant to section 4022
15 of the Code.

16 17. ~~Norco, is the brand name for the combination narcotic, hydrocodone and~~
17 acetaminophen, and is a Schedule III controlled substance pursuant to Health and Safety Code
18 section 11056(e) and is categorized as a dangerous drug pursuant to section 4022.

19 18. Vicodin, is the trade name for a combination drug containing hydrocodone bitartrate
20 (opioid analgesic) and acetaminophen, is a Schedule III controlled substance as defined in Health
21 and Safety Code section 11056(e)(7) and is categorized as a dangerous drug according to section
22 4022.

23 19. Xanax, is a brand name for alprazolam, is an anti-anxiety benzodiazepin and is a
24 Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(1)
25 and is categorized as a dangerous drug pursuant to section 4022(c).

26 FIRST CAUSE FOR DISCIPLINE

27 *(Convictions of Substantially-Related Crimes)*

28 20. Respondent is subject to disciplinary action under sections 490, 4300, and 4301,

1 subdivision (I), in conjunction with California Code of Regulations, title 16, section 1770, on the
2 grounds of unprofessional conduct, in that, Respondent was convicted of a crime substantially
3 related to the qualifications, functions or duties of a registered pharmacy technician which to a
4 substantial degree evidence her present or potential unfitness to perform the functions authorized
5 by her registration in a manner consistent with the public health, safety, or welfare, as follows:

6 a. On or about March, 22, 2011, after pleading *guilty*, Respondent was convicted of one
7 misdemeanor count of violating Business and Professions Code section 4060 [possession of a
8 controlled substance without a prescription], in the criminal proceeding entitled *The People of the*
9 *State of California v. Wanda Kay Wheeler aka Wanda Kay Lewis* (Super. Ct. Orange County,
10 2011, No. 11HF07775). The court sentenced Respondent to 6 days in jail. The circumstances
11 surrounding the conviction are that on or about March 19, 2011, an Orange County Department
12 Sheriff's Officer was dispatched to a Stater Bros Pharmacy in the city of Lake Forest, California,
13 regarding a narcotic violation involving an employee. A pharmacist reported to the officer that
14 for the past few months she had noticed the pharmacy has been missing various narcotics. On
15 March 19, 2011, the pharmacist observed Respondent pull a white plastic bottle out of her purse
16 and swallow two unknown pills. Respondent handed the bottle to the pharmacist and the
17 pharmacist opened the bottle and saw a "cocktail" of narcotics inside. After an inventory of the
18 pills found in the bottle which was labeled "APAP Acetaminophen 500mg 100 Caplets"
19 belonging to Respondent, the pills were identified as:

20 Forty-nine (49) 100 mg. Acetaminophen tablets [non-prescription],
21 Twenty-six (26) Hydrocodone (Vicodin) pills [Schedule III],
22 Seventeen (17) Hydrocodone (Norco) pills [Schedule III],
23 Nine (9) Clonazepam (Xanax) pills [Schedule IV],
24 Eight (8) Cyclobenzapryl (Flexaril) pills [not a schedule drug, prescription only],
25 Five (5) Dizaepam (Valium) pills [Schedule IV],
26 Four (4) Tylenol with Codeine pills [Schedule III], and
27 Three (3) Propoxyphine (Darvon) pills [Schedule IV].

28 Respondent admitted to the officer that she did not have any current or active prescriptions
for any of the pills in her possession. Respondent was arrested and subsequently convicted of
violating Business and Professions Code section 4060.

///

1 SECOND CAUSE FOR DISCIPLINE

2 *(Convictions Involving Alcohol and/or Drugs)*

3 21. Respondent is subject to disciplinary action under sections 4300 and 4301,
4 subdivision (k), in that, on or about March 19, 2011, Respondent sustained a misdemeanor
5 conviction involving the use, consumption, or self-administration of alcohol and/or dangerous
6 drugs. Complainant refers to, and by this reference incorporates, the allegations set forth above in
7 paragraph 20, subdivision (a), inclusive, as though fully set forth herein.

8 THIRD CAUSE FOR DISCIPLINE

9 *(Illegal Possession of Controlled Substances)*

10 22. Respondent is subject to disciplinary action under sections 4300 and 4301,
11 subdivision (j), in conjunction with section 4060, on the grounds of unprofessional conduct, in
12 that, on or about March 19, 2011, Respondent was in possession of a controlled substance without
13 a valid prescription. Complainant refers to, and by this reference incorporates, the allegations set
14 forth above in paragraph 20, subdivision (a), inclusive, as though fully set forth herein.

15 FOURTH CAUSE FOR DISCIPLINE

16 *(Dangerous Use of Controlled Substances)*

17 23. Respondent is subject to disciplinary action under sections 4300 and 4301,
18 subdivision (h), on the grounds of unprofessional conduct, in that, Respondent used a dangerous
19 drug to the extent or in a manner as to be dangerous or injurious to herself or others.
20 Complainant refers to, and by this reference incorporates, the allegations set forth above in
21 paragraph 20, subdivision (a), inclusive, as though fully set forth herein.

22 FIFTH CAUSE FOR DISCIPLINE

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

24 24. Respondent is subject to disciplinary action under sections 4300 and 4301,
25 subdivision (f), on the grounds of unprofessional conduct, in that, Respondent committed acts
26 involving moral turpitude, dishonesty, fraud, deceit and/or corruption. Complainant refers to, and
27 by this reference incorporates, the allegations set forth above in paragraph 20, subdivision (a),
28 inclusive, as though fully set forth herein.

1 SIXTH CAUSE FOR DISCIPLINE

2 (Violating Drug Statutes)

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

6 a. Section 11170, for prescribing, administering and/or furnishing a controlled substance
7 for herself.

8 b. Section 11377, subdivision (a), by possessing controlled substances without a valid
9 prescription.

10 Complainant refers to, and by this reference incorporates, the allegations set forth above in
11 paragraphs 20 through 24, inclusive, as though set forth fully.

12 PRAYER


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

15 1. Revoking or suspending Pharmacy Technician Registration No. TCH 106015, issued
16 to Wanda Kay Cooper;

17 2. Ordering Wanda Kay Cooper to pay the Board the reasonable costs of the
18 investigation and enforcement of this case, pursuant to section 125.3; and

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

20
21 DATED: 4/8/13



22 VIRGINIA HEROLD
23 Executive Officer
24 Board of Pharmacy
25 Department of Consumer Affairs
26 State of California
27 Complainant
28