

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:

**ANDREW BAKER
5352 Passero Avenue
Riverside, CA 92505**

**Pharmacy Technician License No. TCH
67940**

Respondent.

Case No. 4066

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about June 22, 2011, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4066 against Andrew Baker (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about June 26, 2006, the Board of Pharmacy (Board) issued Pharmacy Technician License No. TCH 67940 to Respondent. The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought in Accusation No. 4066 and will expire on July 31, 2011, unless renewed.

3. On or about July 7, 2011, Respondent was served by Certified and First Class Mail copies of the Accusation No. 4066, Statement to Respondent, Blank Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and

1 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
2 section 4100, is required to be reported and maintained with the Board, which was and is:
3 5352 Passero Avenue, Riverside, CA 92505.

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

7 5. On or about July 13, 2011, the aforementioned documents were returned by the U.S.
8 Postal Service marked "Attempted Not Known." The address on the documents was the same as
9 the address on file with the Board. Respondent failed to maintain an updated address with the
10 Board and the Board has made attempts to serve the Respondent at the address on file.
11 Respondent has not made himself available for service and therefore, has not availed himself of
12 his right to file a notice of defense and appear at hearing.

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 him
18 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
19 4066.

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

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

24 9. Pursuant to its authority under Government Code section 11520, the Board finds
25 Respondent is in default. The Board will take action without further hearing and, based on the
26 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
27 taking official notice of all the investigatory reports, exhibits and statements contained therein on
28 file at the Board's offices regarding the allegations contained in Accusation No. 4066, finds that

1 the charges and allegations in Accusation No. 4066, 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 \$1,080.00 as of July 27, 2011.

6 **DETERMINATION OF ISSUES**

7 1. Based on the foregoing findings of fact, Respondent Andrew Baker has subjected his
8 Pharmacy Technician License No. TCH 67940 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 License based upon the following violations alleged in the Accusation which are supported by the
12 evidence contained in the Default Decision Evidence Packet in this case.:

13 a. Respondent is subject to disciplinary action for unprofessional conduct under
14 Business and Professions Code section 4301(j) of the Code in that Respondent possessed a
15 controlled substance, Lorazepam, without a valid prescription in violation of the California
16 Uniform Controlled Substances Act (Health and Safety Code sections 11000, et seq.).

17 b. Respondent is subject to disciplinary action for unprofessional conduct under
18 Business and Professions Code section 4301(o) in that Respondent violated the Pharmacy Act by
19 illegally possessing a controlled substance in violation of Business and Professions Code section
20 4060 and by violating Health and Safety Code section 11375.

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

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

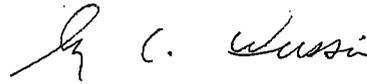
ORDER

IT IS SO ORDERED that Pharmacy Technician License No. TCH 67940, heretofore issued to Respondent Andrew Baker, 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 November 23, 2011.

It is so ORDERED October 24, 2011.



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

default decision_LIC.rtf
DOJ Matter ID:SD2011800569

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 NICOLE R. COOK
Deputy Attorney General
4 State Bar No. 263607
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2143
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 Case No. 4066

12 In the Matter of the Accusation Against:

A C C U S A T I O N

13 **ANDREW BAKER**
14 **5352 Passero Avenue**
Riverside, CA 92505

15 **Pharmacy Technician License No. TCH**
16 **67940**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

21 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
22 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

23 2. On or about June 6, 2006, the Board of Pharmacy issued Pharmacy Technician
24 License Number TCH 67940 to Andrew Baker (Respondent). The Pharmacy Technician License
25 was in full force and effect at all times relevant to the charges brought herein and will expire on
26 July 31, 2011, unless renewed.
27
28

1 **JURISDICTION**

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 unless otherwise indicated.

5 **JURISDICTION**

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

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

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

15 **STATUTORY PROVISIONS**

16 7. Section 4060 of the Code states:

17 No person shall possess any controlled substance, except that furnished to a
18 person upon the prescription of a physician, dentist, podiatrist, optometrist,
19 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
20 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
21 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant
22 pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a
23 pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv)
24 of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This
25 section shall not apply to the possession of any controlled substance by a
26 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
27 optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
28 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
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

8. Section 4301 of the Code states:

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:

....

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

....

(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.

....

9. Health and Safety Code section 11375(b)(2) states:

Every person who possesses any controlled substance specified in subdivision (c), unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be guilty of an infraction or a misdemeanor.

COST RECOVERY

10. Section 125.3 of the Code provides, 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.

DRUG

11. Lorazepam, sold under the brand name Ativan, is a Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(16), and is a dangerous drug pursuant to Business and Professions Code section 4022. Lorazepam is used in the treatment of anxiety disorders and for short-term (up to 4 months) relief of the symptoms of anxiety.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

FACTUAL ALLEGATIONS

12. On or about September 3, 2010, at approximately 11:14 p.m., officers from the Los Angeles Sheriff's Office initiated a traffic stop on Imperial Highway in Norwalk, of a vehicle with expired registration. Respondent was identified of the driver of the vehicle. Following a search of the vehicle, officers located in the driver's side door, a small plastic baggie with four tablets of Lorazepam inside. Respondent told the officers that the Lorazepam belonged to another individual, stating, "I think it belongs to my friend's grandma." Respondent was then arrested for possession of a controlled substance.

13. On or about September 8, 2010, a misdemeanor complaint was filed in the criminal proceeding entitled *People of the State of California v. Andrew Baker* in the Los Angeles Superior Court case number 0BF04322, alleging a violation of Health and Safety Code section 11375(b)(2), for unlawfully possessing a designated controlled substance. On October 6, 2010, Respondent pled guilty to violation of Health and Safety Code section 11375(b)(2). However, the Court granted Respondent deferred entry of judgment for a period of 18 months under Penal Code section 1000. The Court ordered Respondent to pay the diversion fee, not use or possess any narcotics or dangerous drugs (except by valid prescription), and to enroll and complete an approved controlled substance treatment program.

19
20
21
22
23
24

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Violating Laws Regulating Controlled Substances)

14. Respondent is subject to disciplinary action for unprofessional conduct under section 4301(j) of the Code in that Respondent possessed a controlled substance, Lorazepam, without a valid prescription in violation of the California Uniform Controlled Substances Act (Health and Safety Code Sections 11000, et. Seq.), as set forth in paragraphs 12-13 above, incorporated herein by reference.

25
26
27
28

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Violation of Chapter)

15. Respondent is subject to disciplinary action for unprofessional conduct under section 4301(o) of the Code, in that Respondent violated the Pharmacy Act by illegally possessing a

1 controlled substance in violation of Code section 4060, and by violating Health and Safety Code
2 section 11375, as set forth in paragraphs 12-13 above, incorporated herein by reference.

3 **PRAYER**

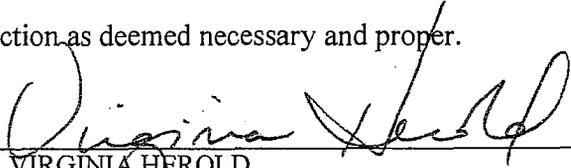
4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
5 and that following the hearing, the Board of Pharmacy issue a decision:

6 1. Revoking or suspending Pharmacy Technician License Number TCH 67940, issued
7 to Andrew Baker ;

8 2. Ordering Andrew Baker to pay the Board of Pharmacy the reasonable costs of the
9 investigation and enforcement of this case, pursuant to Business and Professions Code section
10 125.3;

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

12 DATED: 6/22/11

13 
14 VIRGINIA HEROLD
15 Executive Officer
16 Board of Pharmacy
17 Department of Consumer Affairs
18 State of California
19 Complainant

20 SD2011800569
21 80508721.doc