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

9 In the Matter of the Accusation Against:

10 **TANYA RENEE MENDEZ**
11 **3302 Descanso Avenue**
San Marcos, CA 92078

12 **Pharmacy Technician Registration No. TCH**
13 **80838**

14 Respondent.

Case No. 4115

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

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FINDINGS OF FACT

17 1. On or about September 1, 2011, Complainant Virginia Herold, in her official capacity
18 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed
19 Accusation No. 4115 against Tanya Renee Mendez (Respondent) before the Board of Pharmacy.
20 (Accusation attached as Exhibit A.)

21 2. On or about January 17, 2008, the Board of Pharmacy (Board) issued Pharmacy
22 Technician Registration No. TCH 80838 to Respondent. The Pharmacy Technician Registration
23 was in full force and effect at all times relevant to the charges brought in Accusation No. 4115
24 and expired on September 30, 2011 and has not been renewed. This lapse in licensure, however,
25 pursuant to Business and Professions Code section 118(b) and/or agency-specific statute does not
26 deprive the [Board] of its authority to institute or continue this disciplinary proceeding.

27 3. On or about September 16, 2011, Respondent was served by Certified and First Class
28 Mail copies of the Accusation No. 4115, Statement to Respondent, Notice of Defense, Request

1 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
2 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
3 section 4100, is required to be reported and maintained with the Board, which was and is: 3302
4 Descanso Avenue, San Marcos, CA 92078.

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 September 26, 2011, the aforementioned documents were returned by the
9 U.S. Postal Service marked "forward time exp," "return to sender," with a new address of "1670
10 E El Norte Pkwy, Spc 33, Escondido, CA 92027." The address on the documents was the same
11 as the address on file with the Board. Respondent failed to maintain an updated address with the
12 Board.

13 6. On or about September 29, 2011, Respondent was served by Certified and First Class
14 Mail copies of the Accusation No. 4115, Statement to Respondent, Notice of Defense, Request
15 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
16 11507.7) at 1670 E El Norte Pkwy, Spc 33, Escondido, CA 92027.

17 7. The aforementioned documents served at 1670 E El Norte Pkwy, Spc 33, Escondido,
18 CA 92027 were not returned by the U.S. Postal Service. On or about October 12, 2011, the
19 Domestic Return Receipt reflecting service of the documents by Certified Mail was returned and
20 signed by "Tanya Mendez" on October 1, 2011.

21 8. Government Code section 11506 states, in pertinent part:

22 (c) The respondent shall be entitled to a hearing on the merits if the respondent
23 files a notice of defense, and the notice shall be deemed a specific denial of all parts
24 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.

25 9. Respondent failed to file a Notice of Defense within 15 days after service upon her of
26 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 4115.

27 10. California Government Code section 11520 states, in pertinent part:

28 (a) If the respondent either fails to file a notice of defense or to appear at the

1 hearing, the agency may take action based upon the respondent's express admissions
2 or upon other evidence and affidavits may be used as evidence without any notice to
3 respondent.

4 11. Pursuant to its authority under Government Code section 11520, the Board finds
5 Respondent is in default. The Board will take action without further hearing and, based on the
6 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
7 taking official notice of all the investigatory reports, exhibits and statements contained therein on
8 file at the Board's offices regarding the allegations contained in Accusation No. 4115, finds that
9 the charges and allegations in Accusation No. 4115, are separately and severally, found to be true
10 and correct by clear and convincing evidence.

11 12. Taking official notice of its own internal records, pursuant to Business and
12 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
13 and Enforcement is \$1,165.00 as of September 14, 2011.

14 DETERMINATION OF ISSUES

15 1. Based on the foregoing findings of fact, Respondent Tanya Renee Mendez has
16 subjected her Pharmacy Technician Registration No. TCH 80838 to discipline.

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

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

21 a. Respondent is subject to discipline under Business and Professions Code
22 section 4301(h) for unprofessional conduct in that Respondent used dangerous drugs to the extent
23 or in a manner as to be dangerous or injurious to herself and/or to the extent that her use impaired
24 her ability to practice safely while employed at Tri-City Medical Center.

25 b. Respondent is subject to discipline under Business and Professions Code
26 section 4301(j) for unprofessional conduct in that Respondent used a controlled substance and
27 dangerous drugs, without a valid prescription, in violation of the California Uniform Controlled
28 Substances Act (Health and Safety Code sections 11000, et. seq.)

1 c. Respondent is subject to discipline under Business and Professions Code
2 section 4301(o) for unprofessional conduct in that Respondent violated the Pharmacy Act by
3 illegally possessing a controlled substance and dangerous drugs, in violation of Business and
4 Professions Code sections 4059 and 4060.

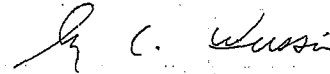
5 **ORDER**

6 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 80838, heretofore
7 issued to Respondent Tanya Renee Mendez, is revoked.

8 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
9 written motion requesting that the Decision be vacated and stating the grounds relied on within
10 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
11 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.
12 This decision shall become effective on April 12, 2012.

13 It is so ORDERED on March 13, 2012.

14 BOARD OF PHARMACY
15 DEPARTMENT OF CONSUMER AFFAIRS
16 STATE OF CALIFORNIA



17 By STANLEY C. WEISSER

18 Board President

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21
22 80560172.DOC
23 DOJ Matter ID:SD2011800839

24 Attachment:
25 Exhibit A: Accusation
26
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Exhibit A

Accusation

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Attorneys for Complainant

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

11 Case No. 4115

12 In the Matter of the Accusation Against:

13 **TANYA RENEE MENDEZ**
14 **3302 Descanso Avenue**
San Marcos, CA 92078

A C C U S A T I O N

15 **Pharmacy Technician Registration No. TCH**
16 **80838**

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 January 17, 2008, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 80838 to Tanya Renee Mendez (Respondent). The Pharmacy
25 Technician Registration was in full force and effect at all times relevant to the charges brought
26 herein and will expire on September 30, 2011, unless renewed.

1 pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv)
2 of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This
3 section shall not apply to the possession of any controlled substance by a
4 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
5 optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
6 practitioner, or physician assistant, when in stock in containers correctly labeled
7 with the name and address of the supplier or producer.

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

11 9. Section 4301 of the Code states:

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

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

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

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

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

1 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
2 and enforcement of the case.

3 DRUGS

4 11. Marijuana is a Schedule I controlled substance as designated by Health and Safety
5 Code section 11054, subdivision (d)(13), and is a dangerous drug pursuant to Business &
6 Professions Code section 4022.

7 12. Soma, sold generically as carisoprodol, is a dangerous drug pursuant to Business and
8 Professions Code section 4022.

9 FACTUAL ALLEGATIONS

10 13. Respondent was employed as a pharmacy courier at Tri-City Medical Center in
11 Oceanside, California, from July 26, 2005 through December 16, 2010. As a pharmacy courier,
12 Respondent was responsible for billing and transferring patients' medications between the
13 pharmacy and nursing stations. Respondent typically worked the evening shift beginning at 3:30
14 p.m. and ending at 12:00 a.m.

15 14. On or about December 13, 2010, a staff pharmacist at Tri-City Medical Center
16 observed that while Respondent was working the evening shift, she appeared to be under the
17 influence of drugs and/or alcohol. Specifically, Respondent was unable to walk straight, used
18 walls and other objects to support herself, and was falling asleep repeatedly in her seat near the
19 front door. The staff pharmacist reported Respondent's behavior to the Pharmacist-In-Charge
20 (PIC) the following morning on December 14, 2010.

21 15. On December 14, 2010, the PIC and a representative from the Human Services
22 Department interviewed Respondent when she arrived for her scheduled shift. Initially,
23 Respondent stated that she took Nyquil while at work and agreed to undergo a drug screening.
24 Respondent then admitted that she would test positive for marijuana because she smoked
25 marijuana every other day for the two months prior to that day. Respondent admitted that on
26 December 12, 2010, she smoked marijuana around 9:00 to 10:00 a.m., took two doses of Dayquil
27 during the day, reported to work at 3:30 p.m., took Nyquil at 11:00 p.m. while on duty, and
28 smoked marijuana after work around 1:00 a.m. Respondent admitted that on December 13, 2010,

1 she took two of her mother's Soma tablets around 10:00 a.m. and reported to work at 3:30 p.m.
2 Respondent admitted that on December 14, 2010, she smoked marijuana around 7:00 a.m., took a
3 Soma tablet around 10:00 a.m., and then reported to work at 3:30 p.m.

4 16. Respondent was given a drug screen on December 14, 2010. Respondent tested
5 positive for Cannabiods 363 ng/ml on December 14, 2010. On December 16, 2010, Respondent
6 resigned from her position in lieu of termination.

7 **FIRST CAUSE FOR DISCIPLINE**

8 (Unprofessional Conduct-Use of Dangerous Drug)

9 17. Respondent is subject to disciplinary action for unprofessional conduct under section
10 4301(h) of the Code in that Respondent used dangerous drugs to the extent or in a manner as to be
11 dangerous or injurious to herself and/or to the extent that her use impaired her ability to practice
12 safely as set forth in paragraphs 13-16 above, incorporated herein by reference.

13 **SECOND CAUSE FOR DISCIPLINE**

14 (Unprofessional Conduct-Violating Laws Regulating Controlled Substances & Dangerous Drugs)

15 18. Respondent is subject to disciplinary action for unprofessional conduct under section
16 4301(j) of the Code in that Respondent used a controlled substance and dangerous drugs, without
17 a valid prescription in violation of the California Uniform Controlled Substances Act (Health and
18 Safety Code Sections 11000, et. Seq.), as evidenced by her admissions set forth in paragraphs 13-
19 16 above, incorporated herein by reference.

20 **THIRD CAUSE FOR DISCIPLINE**

21 (Unprofessional Conduct-Violation of Chapter)

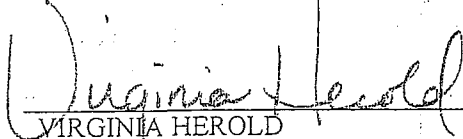
22 19. Respondent is subject to disciplinary action for unprofessional conduct under section
23 4301(o) of the Code, in that Respondent violated the Pharmacy Act by illegally possessing a
24 controlled substance and dangerous drugs, in violation of Code sections 4059 and 4060, as
25 evidenced by her admissions set forth in paragraphs 13-16 above, incorporated herein by
26 reference.

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 80838, issued to Tanya Renee Mendez;
2. Ordering Tanya Renee Mendez 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: 9/1/11


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

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