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

In the Matter of the Accusation Against:

JESSICA MAE SWINK
1764 N. Sycamore Ave., Apt. 106
Hollywood, CA 90028

Pharmacy Technician Registration
No. TCH 98767

Respondent.

Case No. 4270
DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about September 6, 2013, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4270 against Jessica Mae Swink (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)
2. On or about March 15, 2010, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 98767 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein, but expired on February 29, 2012, and is delinquent.
3. On or about January 14, 2014, Respondent was served by Certified and First Class Mail copies of the Accusation No. 4270, 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. Respondent's address of
4 record was and is:

5 1764 N. Sycamore Ave., Apt. 106
6 Hollywood, CA 90028.

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 January 21, 2014, the aforementioned documents were returned by the
11 U.S. Postal Service marked "not deliverable as addressed, unable to forward." The address on the
12 documents was the same as the address on file with the Board. Respondent failed to maintain an
13 updated address with the Board and the Board has made attempts to serve the Respondent at the
14 address on file. Respondent has not made herself available for service and therefore, has not
15 availed herself of her right to file a notice of defense and appear at hearing.

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

17 (c) The respondent shall be entitled to a hearing on the merits if the respondent
18 files a notice of defense, and the notice shall be deemed a specific denial of all parts
19 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.

20 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
21 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 4270.

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

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

26 9. Pursuant to its authority under Government Code section 11520, the Board finds
27 Respondent is in default. The Board will take action without further hearing and, based on the
28 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as

1 taking official notice of all the investigatory reports, exhibits and statements contained therein on
2 file at the Board's offices regarding the allegations contained in Accusation No. 4270, finds that
3 the charges and allegations in Accusation No. 4270, are separately and severally, found to be true
4 and correct by clear and convincing evidence.

5 10. Taking official notice of its own internal records, pursuant to Business and
6 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
7 and Enforcement is \$5,770.00 as of March 17, 2014.

8 **DETERMINATION OF ISSUES**

9 1. Based on the foregoing findings of fact, Respondent Jessica Mae Swink has subjected
10 her Pharmacy Technician Registration No. TCH 98767 to discipline.

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

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

15 A. Respondent is subject to disciplinary action under section 4301, subdivision (j), on
16 the grounds of unprofessional conduct, for violating sections 4059, subdivision (a), and 4060, and
17 Health and Safety Code section 11057, subdivision (d)(1), in that, on or about April 15, 25, and
18 27, 2011, she possessed and/or furnished to herself thirty-six (36) tablets of Alprazolam, a
19 controlled substance and dangerous drug, without a valid prescription. The conduct is described
20 with additional specificity in Accusation No. 4270, hereby incorporated by reference.

21 B. Respondent is subject to disciplinary action under section 4301, subdivision (f), in
22 conjunction with California Code of Regulations, title 16, section 1770, on the grounds of
23 unprofessional conduct, in that, on or about April 15, 25, and 27, 2011, Respondent committed
24 acts involving moral turpitude, dishonesty, fraud or deceit, when she stole thirty-six (36) tablets
25 of Alprazolam from Kaiser Permanente Pharmacy. The conduct is described with additional
26 specificity in Accusation No. 4270, hereby incorporated by reference.

27 C. Respondent is subject to disciplinary action under section 4301, subdivision (h), and
28 4059, subdivision (a), in conjunction with Health and Safety Code section 11170, on the grounds

1 of unprofessional conduct, in that, on or about April 15, 25, and 27, 2011, Respondent furnished
2 controlled substances to herself without a valid prescription, when she stole thirty-six (36) tablets
3 of Alprazolam from Kaiser Permanente Pharmacy. The conduct is described with additional
4 specificity in Accusation No. 4270, hereby incorporated by reference.

5 D. Respondent is subject to disciplinary action under section 4100, subdivision (a), in
6 conjunction with California Code of Regulations, title 16, section 1704, on the grounds that
7 during the course of the Board's investigation of Respondent for the acts herein alleged, it was
8 discovered that she no longer resides at her address of record. The conduct is described with
9 additional specificity in Accusation No. 4270, hereby incorporated by reference.

10 E. Respondent is subject to disciplinary action under section 4301, subdivision (o), in
11 that, Respondent committed acts of unprofessional conduct violating pharmacy law. The conduct
12 is described with additional specificity in Accusation No. 4270, hereby incorporated by reference.

13 **ORDER**

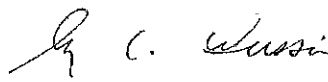
14 *IT IS SO ORDERED* that Pharmacy Technician Registration No. TCH 98767, heretofore
15 issued to Respondent Jessica Mae Swink, is revoked.

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

20 This Decision shall become effective on June 26, 2014.

21 It is so ORDERED May 27, 2014.

22
23 BOARD OF PHARMACY
24 DEPARTMENT OF CONSUMER AFFAIRS
25 STATE OF CALIFORNIA

26 By 
27 STAN C. WEISSNER
28 Board President

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 TULLENS
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
Attorneys for Complainant
7

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

12 In the Matter of the Accusation Against:

Case No. 4270

13 **JESSICA MAE SWINK**
1764 N. Sycamore Avenue, Apt. 106
Hollywood, CA 90028

ACCUSATION

14 Pharmacy Technician Registration No. TCH 98767

15 Respondent.

16
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 March 15, 2010, the Board issued Pharmacy Technician Registration No.
22 TCH 98767 to Jessica Mae Swink (Respondent). The Pharmacy Technician Registration was in
23 full force and effect at all times relevant to the charges brought herein, but expired on February
24 29, 2012, and is delinquent.

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 ///

1 **STATUTORY PROVISIONS**

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 492 states:

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

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

18 6. Section 4059, subdivision (a), states:

19 "A person may not furnish any dangerous drug, except upon the prescription of a physician,
20 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A
21 person may not furnish any dangerous device, except upon the prescription of a physician, dentist,
22 podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7."

23 7. Section 4060 states:

24 "No person shall possess any controlled substance, except that furnished to a person upon
25 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
26 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
27 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
28 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,

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

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

10 8. Section 4100, subdivision (a), states that "[w]ithin 30 days after changing his or her
11 address of record with the board. . . according to law, . . . a technician. . . shall notify the executive
12 officer of the board of the change of address..."

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

15 10. Section 4301 states, in pertinent part:

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

19

20 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
21 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
22 whether the act is a felony or misdemeanor or not.

23

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

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"(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. . . ."

REGULATORY PROVISIONS

11. 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."

COST RECOVERY

12. Section 125.3 provides 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

13. Alprazolam is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057(d)(1) and Code of Federal Regulations, section 1308.14, subdivision (c)(1), and a dangerous drug pursuant to Business and Professions Code section 4022

KAISER PERMANENTE PHARMACY

14. On or about April 15, 25, and 27, 2011, while Respondent was employed as a pharmacy technician at Kaiser Permanente Pharmacy, 444 W. Glenoaks Boulevard, Glendale California 91202, Respondent stole at least thirty-six (36) tablets of Alprazolam, and possessed

1 the tablets without authorization as required by law. Respondent's theft was established by her
2 own admission and video taped surveillance at the pharmacy.

3 **FIRST CAUSE FOR DISCIPLINE**

4 *(Unlawful Possession of Controlled Substances)*

5 15. Respondent is subject to disciplinary action under section 4301, subdivision (j), on
6 the grounds of unprofessional conduct, for violating sections 4059, subdivision (a), and 4060 and
7 Health and Safety Code section 11057, subdivision (d)(1), in that, on or about April 15, 25, and
8 27, 2011, she possessed and/or furnished to herself thirty-six (36) tablets of Alprazolam, a
9 controlled substance and dangerous drug, without a valid prescription. Complainant refers to and
10 by this reference incorporates the allegations set forth above in paragraph 14, as though set forth
11 fully.

12 **SECOND CAUSE FOR DISCIPLINE**

13 *(Act Involving Moral Turpitude, Dishonesty, Fraud or Deceit)*

14 16. Respondent is subject to disciplinary action under section 4301, subdivision (f), in
15 conjunction with California Code of Regulations, title 16, section 1770, on the grounds of
16 unprofessional conduct, in that, on or about April 15, 25, and 27, 2011, Respondent committed
17 acts involving moral turpitude, dishonesty, fraud or deceit when she stole thirty-six (36) tablets of
18 Alprazolam from Kaiser Permanente Pharmacy. These acts are substantially related to the
19 qualifications, functions or duties of the licensee since to a substantial degree they evidence
20 present or potential unfitness of the licensee to perform the functions authorized by her license in
21 a manner consistent with the public health, safety, or welfare Complainant refers to and by this
22 reference incorporates the allegations set forth above in paragraph 14, as though set forth fully.

23 **THIRD CAUSE FOR DISCIPLINE**

24 *(Unlawful Furnishing of a Controlled Substance)*

25 17. Respondent is subject to disciplinary action under sections 4301, subdivision (h), and
26 4059, subdivision (a), in conjunction with Health and Safety Code section 11170, on the grounds
27 of unprofessional conduct, in that, on or about April 15, 25, and 27, 2011, Respondent furnished
28 controlled substances to herself without a valid prescription when she stole thirty-six (36) tablets

1 of Alprazolam from Kaiser Permanente Pharmacy. Complainant refers to and by this reference
2 incorporates the allegations set forth above in paragraph 14, as though set forth fully.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 *(Failure to Notify Board of Change of Address)*

5 18. Respondent is subject to disciplinary action under section 4100, subdivision (a), in
6 conjunction with California Code of Regulations, title 16, section 1704, on the grounds that
7 during the course of the Board's investigation of Respondent for the acts herein alleged, it was
8 discovered that she no longer resides at her address of record. Respondent failed to provide a
9 change of address to the Board in violation of Pharmacy Law.

10 **FIFTH CAUSE FOR DISCIPLINE**

11 *(Unprofessional Conduct / Violating Pharmacy Law)*

12 19. Respondent is subject to disciplinary action under section 4301, subdivision (o), in
13 that Respondent committed acts of unprofessional conduct violating pharmacy law. Complainant
14 refers to and by this reference incorporates the allegations set forth above in paragraph 14 -18,
15 inclusive, as though set forth fully.

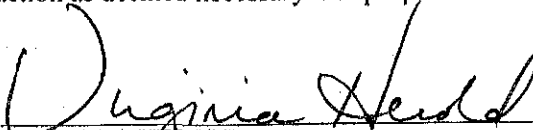
16 **PRAYER**

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

- 19 1. Revoking or suspending Pharmacy Technician Registration No. TCH 98767, issued
20 to Respondent;
- 21 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
22 enforcement of this case, pursuant to section 125.3; and
- 23 3. Taking such other and further action as deemed necessary and proper.

24
25 DATED: _____

9/6/13

26 

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