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

In the Matter of the Accusation Against:
JAYLENE M. BINSTOCK
2327 Alice Street
Napa, California 94558
Pharmacy Technician License No.
TCH73691

Case No. 4342
DEFAULT DECISION AND ORDER
[Gov. Code, §11520]

Respondent.

FINDINGS OF FACT

1. On or about October 25, 2012, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4342 against Jaylene M. Binstock (Respondent) before the Board of Pharmacy. (Accusation attached as exhibit A.)

2. On or about January 22, 2007, the Board of Pharmacy (Board) issued Pharmacy Technician License No. TCH73691 to Respondent. The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought in Accusation No. 4342 and expired on June 30, 2012, unless renewed. This lapse in licensure, however, pursuant to Business and Professions Code section 118, subdivision (b) does not deprive the Board of its authority to institute or continue this disciplinary proceeding

1 3. On or about November 8, 2012, Respondent was served by First Class Mail copies of
2 the Accusation No. 4342, Statement to Respondent, Notice of Defense, Request for Discovery,
3 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:

7 Jaylene Binstock
8 2327 Alice Street
9 Napa, California 94558

10 4. Pursuant to Business and Professions Code section 136 and/or 4100, and/or title 16,
11 California Code of Regulations, section 1704, Respondent's address of record, and any changes
12 thereto, are required to be reported and maintained with the Board of Pharmacy (Board).

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

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

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

21 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
22 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 4342.

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

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

28 9. Pursuant to its authority under Government Code section 11520, the Board finds
Respondent is in default. The Board will take action without further hearing and, based on the
relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
taking official notice of all the investigatory reports, exhibits and statements contained therein on

1 file at the Board's offices regarding the allegations contained in Accusation No. 4342, finds that
2 the charges and allegations in Accusation No. 4342, are separately and severally, found to be true
3 and correct by clear and convincing evidence.

4 10. Taking official notice of its own internal records, pursuant to Business and
5 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
6 and Enforcement is \$2,352.50 as of January 15, 2013.

7 DETERMINATION OF ISSUES

8 1. Based on the foregoing findings of fact, Respondent Jaylene M. Binstock has
9 subjected her Pharmacy Technician License No. TCH73691 to discipline.

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

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

14 a. Respondent's License is subject to revocation pursuant to Business and
15 Professions Code section 4301, subdivision (l), for conviction of a substantially related crime,
16 because on or about October 13, 2011, in *People v. Jaylene Marie Binstock*, Case No CR158224
17 in Napa County Superior Court, Respondent was convicted of violating Health and Safety Code
18 section 11350, subdivision (a) (possession of controlled substance) and Penal Code section
19 484/488 (petty theft).

20 The circumstances of the conviction are that on or about July 7, 2011, Respondent was
21 arrested by an American Canyon Police Officer for being under the influence of a controlled
22 substance. Respondent was in possession of Vicodin (62 tablets), Diazepam (13 tablets),
23 Alprazolam (16 tablets), without a valid prescription, twelve used hypodermic needles, and three
24 packaged hypodermic needles. Respondent informed the officer that she had taken unprescribed
25 Valium, Xanax, Celexa, and Norco, and that she injected herself with Valium earlier that day.

26 Respondent was employed as a pharmacy technician at Veterans Home of California –
27 Pharmacy Service, in Yountville, California from June 12, 2007 until Respondent voluntarily
28 resigned from her position on July 21, 2011. An investigation and inventory of controlled

1 substances was conducted after Respondent's July 7, 2011 arrest. The Veterans Home of
2 California – Pharmacy Service reported to the Drug Enforcement Administration that the
3 following drugs were missing: Lyrica 75 mg capsule (90 capsules), Hydrocodone/APAP 5-500
4 tablet (106 tablets), Hydrocodone/APAP 10-325 tablet (584 tablets), Chlordiazepoxide 25 mg
5 capsule (94 capsules), Diazepam 10 mg tablet (43 tablets), Clonazepam .5 mg tablet (100 tablets),
6 Alprazolam .5 mg tablet (136 tablets), Phenobarbital 15 mg tablet (78 tablets).

7 b. Respondent's License is subject to revocation pursuant to Business and
8 Professions Code section 4301, subdivisions (j) and (o), for unprofessional conduct – violation of
9 state statutes regulating controlled substances and dangerous drugs, because Respondent engaged
10 in unprofessional conduct, as described above.

11 c. Respondent's License is subject to revocation pursuant to Business and
12 Professions Code section 4301, subdivision (f) for unprofessional conduct – dishonesty, because
13 Respondent engaged in unprofessional conduct, as described above.

14 d. Respondent's License is subject to revocation pursuant to Business and
15 Professions Code section 4301, subdivision (h) for unprofessional conduct – use of dangerous
16 drug, because Respondent engaged in unprofessional conduct, as described above.

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ORDER

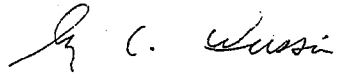
IT IS SO ORDERED that Pharmacy Technician License No. TCH73691, heretofore issued to Respondent Jaylene M. Binstock, is revoked.

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 October 14, 2013.

It is so ORDERED ON September 12, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____
STANLEY C. WEISSER
Board President

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 KIM M. SETTLES
Deputy Attorney General
4 State Bar No. 116945
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 622-2138
Facsimile: (510) 622-2270
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. 4342

12 **JAYLENE M. BINSTOCK**
13 **2327 Alice Street**
Napa, California 94558

A C C U S A T I O N

14 **Pharmacy Technician License No.**
15 **TCH73691**

16 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.

21 2. On or about January 22, 2007, the Board of Pharmacy issued Pharmacy Technician
22 License Number TCH73691 to Jaylene M. Binstock (Respondent). The Pharmacy Technician
23 License was in full force and effect at all times relevant to the charges brought in this Accusation.
24 The Pharmacy Technician License expired on June 30, 2012.

25 **JURISDICTION**

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

1 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
2 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
3 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
4 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
5 of this provision. The board may take action when the time for appeal has elapsed, or the
6 judgment of conviction has been affirmed on appeal or when an order granting probation is made
7 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
8 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
9 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
10 indictment.

11

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

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

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

23 7. Section 4060 of the Code 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
26 doctor. . ."

27 8. Section 4022 of the Code states:

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1 "Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in
2 humans or animals, and includes the following:

3

4 "(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
5 prescription or furnished pursuant to Section 4006."

6 **COST RECOVERY**

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

11 **DRUGS**

12 10. "**Valium**" (generic name "Diazepam") is a muscle relaxant used to relieve anxiety. It
13 is a Schedule IV controlled substance, as designated by Health and Safety Code section 11057,
14 subdivision (d)(9), and a dangerous drug pursuant to Business and Professions Code section
15 4022.

16 11. "**Xanax**" (generic name "Alprazolam") is used to relieve anxiety. It is a Schedule IV
17 controlled substance, as designated by Health and Safety Code section 11057, subdivision (d)(1),
18 and a dangerous drug pursuant to Business and Professions Code section 4022.

19 12. "**Celexa**" (generic name "Citalopram") is used to relieve depression. It is a
20 dangerous drug pursuant to Business and Professions Code section 4022.

21 13. "**Vicodin**" (generic name "Hydrocodone/Acetaminophen") is used to relieve
22 moderate to severe pain. It is a Schedule III controlled substance, as designated by Health and
23 Safety Code section 11056, subdivision (e)(4), and a dangerous drug pursuant to Business and
24 Professions Code section 4022.

25 14. "**Norco**" (generic name "Hydrocodone/Acetaminophen") is used to relieve moderate
26 to severe pain. It is a Schedule III controlled substance, as designated by Health and Safety Code
27 section 11056, subdivision (e)(4), and a dangerous drug pursuant to Business and Professions
28 Code section 4022.

1 15. “**Lortab**” (generic name “Hydrocodone/Acetaminophen”) is used to relieve moderate
2 to severe pain. It is a Schedule III controlled substance, as designated by Health and Safety Code
3 section 11056, subdivision (e)(4), and a dangerous drug pursuant to Business and Professions
4 Code section 4022.

5 16. “**Lorcet**” (generic name “Hydrocodone/Acetaminophen”) is used to relieve moderate
6 to severe pain. It is a Schedule III controlled substance, as designated by Health and Safety Code
7 section 11056, subdivision (e)(4), and a dangerous drug pursuant to Business and Professions
8 Code section 4022.

9 17. “**Methadone**” is used to relieve addiction and moderate to severe pain that has not
10 been relieve by non-narcotic pain relievers. It is a Schedule II controlled substance, as designated
11 by Health and Safety Code section 11055, subdivision (c)(14), and a dangerous drug pursuant to
12 Business and Professions Code section 4022.

13 18. “**Oxycodone HCL**” is used to relieve moderate to severe pain. It is a Schedule II
14 controlled substance, as designated by Health and Safety Code section 11055, subdivision
15 (b)(1)(M), and a dangerous drug pursuant to Business and Professions Code section 4022.

16 19. “**Lyrica**” (generic name “Pregabalin”) is used to releave neuropathic pain. It is a
17 Schedule V controlled substance, as designated by Code of Federal Regulations section 1308.15,
18 subdivision (e)(1), and a dangerous drug pursuant to Business and Professions Code section 4022.

19 20. “**Librium**” (generic name “Chlordiazepoxide”) is used to relieve anxiety. It is a
20 Schedule IV controlled substance, as designated by Health and Safety Code section 11057,
21 subdivision (d)(5), and a dangerous drug pursuant to Business and Professions Code section
22 4022.

23 21. “**Klonopin**” (generic name “Clonazepam”) is used to relieve anxiety. It is a Schedule
24 IV controlled substance, as designated by Health and Safety Code section 11057, subdivision
25 (d)(7), and a dangerous drug pursuant to Business and Professions Code section 4022.

26 22. “**Phenobarbital**” is an anti-convulsant. It is used to relieve anxiety. It is a Schedule
27 IV controlled substance, as designated by Health and Safety Code section 11057, subdivision
28 (d)(26), and a dangerous drug pursuant to Business and Professions Code section 4022.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct - Conviction of Substantially Related Crime)**

3 23. Respondent is subject to disciplinary action under Code section 4301, subdivision (l),
4 in that she was convicted of a crime substantially related to the qualifications, functions, and
5 duties of a pharmacy technician, as defined in title 16, California Code of Regulations, section
6 1770. The circumstances are set forth in paragraph 24, below.

7 24. On or about October 13, 2011, in *People v. Jaylene Marie Binstock*, Napa County
8 Superior Court case number CR158224, Respondent pled guilty to violating Health and Safety
9 Code section 11350, subdivision (a) (possession of controlled substance) and Penal Code section
10 484/488 (petty theft). Imposition of sentence was suspended and Respondent was placed on two
11 years probation under terms which included, but were not limited to completion of an 18-month
12 Drug Treatment Program, two days in jail, 40 hours work program, and payment of fines and
13 fees.

14 The circumstances of the conviction are that on or about July 7, 2011, Respondent was
15 arrested by an American Canyon Police Officer for being under the influence of a controlled
16 substance. Respondent was in possession of Vicodin (62 tablets), Diazepam (13 tablets),
17 Alprazolam (16 tablets), without a valid prescription, and twelve used hypodermic needles, and
18 three packaged hypodermic needles. Binstock informed the officer that she has taken
19 unprescribed Valium, Xanax, Celexa, and Norco, and that she injected herself with Valium earlier
20 that day.

21 Respondent was employed as a pharmacy technician at Veterans Home of California –
22 Pharmacy Service, in Yountville, California, from June 12, 2007 until Respondent voluntarily
23 resigned from her position on July 21, 2011. An investigation and inventory of controlled
24 substances was conducted after Respondent’s July 7, 2011 arrest. The Veterans Home of
25 California – Pharmacy Service completed the inventory on July 12, 2011, and reported to the
26 Drug Enforcement Administration that the following drugs were missing:

<u>Drug</u>	<u>Quantity</u>
Lyrica 75 mg capsule	90

1	Hydrocodone/APAP 5-500 tablet	106
2	Hydrocodone/APAP 10-325 tablet	584
3	Chlordiazepoxide 25 mg capsule	94
4	Diazepam 10 mg tablet	43
5	Clonazepam .5 mg tablet	100
6	Alprazolam .5 mg tablet	136
7	Phenobarbital 15 mg tablet	78

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Unprofessional Conduct - Violation of State Statutes**

10 **Regulating Controlled Substances and Dangerous Drugs)**

11 25. Respondent is subject to disciplinary action under Code section 4301, subdivisions (j)
 12 and (o), in that she engaged in unprofessional conduct by violating a statute of this state
 13 regulating controlled substances and dangerous drugs, namely Code section 4060. The
 14 circumstances are set forth in paragraph 24, above.

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(Unprofessional Conduct - Dishonesty)**

17 26. Respondent is subject to disciplinary action under Code section 4301, subdivision (f)
 18 in that she engaged in unprofessional conduct by committing an act of dishonesty, namely petty
 19 theft. The circumstances are set forth in paragraph 24, above.

20 **FOURTH CAUSE FOR DISCIPLINE**

21 **(Unprofessional Conduct - Use of Dangerous Drug)**

22 27. Respondent is subject to disciplinary action under Code section 4301, subdivision (h)
 23 in that she engaged in unprofessional conduct by administering to herself and/or using controlled
 24 substances and/or dangerous drugs, in a manner dangerous to herself and/or to the public.

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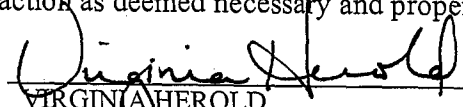
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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this Accusation, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Pharmacy Technician License Number TCH73691, issued to Jaylene M. Binstock;
2. Ordering Jaylene M. Binstock 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: 10/25/12


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

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