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

In the Matter of the Accusation Against:
**LINDSEY NICOLE CARLSON
8889 Caminito Plaza Centro 7213
San Diego, CA 92122**
**Pharmacy Technician License No. TCH
94160**

Respondent.

Case No. 4410

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about July 12, 2013, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4410 against Lindsey Nicole Carlson (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about November 16, 2009, the Board of Pharmacy (Board) issued Pharmacy Technician License No. TCH 94160 to Respondent. The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought in Accusation No. 4410. The Pharmacy Technician License expired on April 30, 2013 and was cancelled on August 4, 2013 pursuant to Business and Professions Code 4402(e). The cancellation or expiration of a license

1 does not deprive the Board of its authority to institute or continue this disciplinary proceeding
2 pursuant to Business and Professions Code section 4300.1.

3 3. On or about August 6, 2013, Respondent was served by Certified and First Class Mail
4 copies of the Accusation No. 4410, Statement to Respondent, Notice of Defense, Request for
5 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
6 Respondent's address of record which, pursuant to Business and Professions Code section 4100,
7 is required to be reported and maintained with the Board. Respondent's address of record was
8 8889 Caminito Plaza Centro 7213, San Diego, CA 92122.

9 4. On or about September 12, 2013, the aforementioned documents were returned by the
10 U.S. Postal Service as "Undeliverable as Addressed." The address on the documents was the
11 same as the address on file with the Board.

12 5. On or about August 23, 2013, Respondent was served by Certified and First Class
13 Mail copies of the Accusation No. 4410, Statement to Respondent, Notice of Defense, Request
14 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
15 11507.7) at Respondent's alternate address which was 9908 Kika Court 812, San Diego, CA
16 92129.

17 6. Service of the Accusation was effective as a matter of law under the provisions of
18 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
19 124.

20 7. On or about September 23, 2013, the aforementioned documents were returned by the
21 U.S. Postal Service marked "Unclaimed" and "Attempted-Not Known." The address on the
22 documents was the same as the address on file with the Board. Respondent failed to maintain an
23 updated address with the Board and the Board has made attempts to serve the Respondent at the
24 address on file. Respondent has not made herself available for service and therefore, has not
25 availed herself of her right to file a notice of defense and appear at hearing.

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

27 (c) The respondent shall be entitled to a hearing on the merits if the respondent
28 files a notice of defense, and the notice shall be deemed a specific denial of all parts
of the accusation not expressly admitted. Failure to file a notice of defense shall

1 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
2 may nevertheless grant a hearing.

3 9. Respondent failed to file a Notice of Defense within 15 days after service upon her of
4 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 4410.

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

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

10 11. Pursuant to its authority under Government Code section 11520, the Board finds
11 Respondent is in default. The Board will take action without further hearing and, based on the
12 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
13 taking official notice of all the investigatory reports, exhibits and statements contained therein on
14 file at the Board's offices regarding the allegations contained in Accusation No. 4410, finds that
15 the charges and allegations in Accusation No. 4410, are separately and severally, found to be true
16 and correct by clear and convincing evidence.

17 12. Taking official notice of its own internal records, pursuant to Business and
18 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
19 and Enforcement is \$5,874.50 as of September 27, 2013.

20 = DETERMINATION OF ISSUES =

21 1. Based on the foregoing findings of fact, Respondent Lindsey Nicole Carlson has
22 subjected her Pharmacy Technician License No. TCH 94160 to discipline.

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

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

27 a. violation of Code section 4301, subdivision (h) for unprofessional conduct by
28 administering to herself, a controlled substance, to the extent or in a manner that is dangerous or
injurious to herself or to the extent that the use impairs Respondent's ability to practice as a
pharmacy technician safely;

1 b. violation of Code section 4301, subdivision (j), in conjunction with Code section
2 4060 and Health and Safety Code section 11170, for unprofessional conduct by violating statutes
3 regulating controlled substances in this state or of the United States;

4 c. violation of Code section 4301, subdivision (f), for unprofessional conduct by
5 committing acts involving moral turpitude, dishonesty, fraud or deceit in that Respondent
6 administered to herself, a controlled substance, without a prescription;

7 d. violation of Code section 4301, subdivision (o), in conjunction with Code section
8 4327, for unprofessional conduct by violating or attempting to violate any provision of the
9 applicable federal and state laws and regulations governing pharmacy, by selling and/or
10 dispensing drugs while under the influence of a controlled substance; and,

11 e. violation of Code section 4301, subdivision (o) in conjunction with title 16, California
12 Code of Regulations, section 1704, for unprofessional conduct by violating or attempting to
13 violate any provision of the applicable federal and state laws and regulations governing
14 pharmacy, including regulations established by the Board, in that Respondent failed to advise the
15 Board of a change in her address of record.

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ORDER

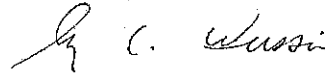
IT IS SO ORDERED that Pharmacy Technician License No. TCH 94160, heretofore issued to Respondent Lindsey Nicole Carlson, is revoked.

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 January 17, 2014.

It is so ORDERED ON December 18, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STAN C. WEISSER
Board President

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Attachment: Exhibit A: Accusation

Exhibit A

Accusation No. 4410

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Attorneys for Complainant

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

11 In the Matter of the Accusation Against:
12 **LINDSEY NICOLE CARLSON**
8889 Caminito Plaza Centro 7213
13 **San Diego, CA 92122**
14 **Pharmacy Technician License No. TCH**
94160
15
16 Respondent.

Case No. 4410

A C C U S A T I O N

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 November 16, 2009, the Board of Pharmacy issued Pharmacy Technician
22 License Number TCH 94160 to Lindsey Nicole Carlson (Respondent). The Pharmacy Technician
23 License was in full force and effect at all times relevant to the charges brought herein. Pharmacy
24 Technician License Number TCH 94160 expired on April 30, 2013 and has not been renewed.

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 4. Section 4300 of the Code states:

2 (a) Every license issued may be suspended or revoked.

3 (b) The board shall discipline the holder of any license issued by the
4 board, whose default has been entered or whose case has been heard by the
board and found guilty, by any of the following methods:

5 (1) Suspending judgment.

6 (2) Placing him or her upon probation.

7 (3) Suspending his or her right to practice for a period not exceeding one
8 year.

9 (4) Revoking his or her license.

10 (5) Taking any other action in relation to disciplining him or her as the
board in its discretion may deem proper.

11 (e) The proceedings under this article shall be conducted in accordance
12 with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the
Government Code, and the board shall have all the powers granted therein. The
13 action shall be final, except that the propriety of the action is subject to review
by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure.

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

18 **STATUTORY AND REGULATORY PROVISIONS**

19 6. Section 4022 of the Code states

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

22 (a) Any drug that bears the legend: "Caution: federal law prohibits
dispensing without prescription," "Rx only," or words of similar import.

23 (b) Any device that bears the statement: "Caution: federal law restricts
24 this device to sale by or on the order of a _____," "Rx only," or words of
similar import, the blank to be filled in with the designation of the practitioner
25 licensed to use or order use of the device.

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

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1 7. Section 4060 of the Code states:

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

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

19 8. Section 4301 of the Code states:

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

24 ...
25 (f) The commission of any act involving moral turpitude, dishonesty,
26 fraud, deceit, or corruption, whether the act is committed in the course of
27 relations as a licensee or otherwise, and whether the act is a felony or
28 misdemeanor or not.

29 ...
30 (h) The administering to oneself, of any controlled substance, or the use
31 of any dangerous drug or of alcoholic beverages to the extent or in a manner as
32 to be dangerous or injurious to oneself, to a person holding a license under this
33 chapter, or to any other person or to the public, or to the extent that the use
34 impairs the ability of the person to conduct with safety to the public the practice
35 authorized by the license.

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

38 (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

1 pharmacy, including regulations established by the board or by any other state
or federal regulatory agency....

2 9. Code section 4327 states:

3 Any person who, while on duty, sells, dispenses or compounds any drug
4 while under the influence of any dangerous drug or alcoholic beverages shall be
guilty of a misdemeanor.

5 10. Health and Safety Code section 11170 states, "No person shall prescribe, administer,
6 or furnish a controlled substance for himself."

7 11. Title 16, California Code of Regulations, section 1704, states:

8 Each person holding a certificate, license, permit, registration or
9 exemption to practice or engage in any activity in the State of California under
10 any and all laws administered by the Board shall file a proper and current
11 residence address with the Board at its office in Sacramento and shall within 30
days notify the Board at its said office of any and all changes of residence
address, giving both the old and new address.

12 12. Title 16, California Code of Regulations, section 1770, states:

13 For the purpose of denial, suspension, or revocation of a personal or
14 facility license pursuant to Division 1.5 (commencing with Section 475) of the
15 Business and Professions Code, a crime or act shall be considered substantially
16 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
17 registrant to perform the functions authorized by his license or registration in a
manner consistent with the public health, safety, or welfare.

18 COST RECOVERY

19 13. Section 1253 of the Code states, in pertinent part, that the Board may request the
20 administrative law judge to direct a licentiate found to have committed a violation or violations of
21 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
enforcement of the case.

22 DRUGS

23 14. Valium, the brand name for diazepam, is a Schedule IV controlled substance as
24 designated by Health and Safety Code section 11057(d), and is a dangerous drug pursuant to
25 Business and Professions Code section 4022. Diazepam is used to treat anxiety.

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FACTS

1
2 15. Respondent was employed at UCSD Edith and William Perlman Ambulatory Care
3 Pharmacy (hereinafter "Pharmacy") since May 4, 2010 as a pharmacy technician.

4 16. In or about June, 2011, L.S., the Acting Interim Pharmacist-In-Charge of the
5 Pharmacy observed changes in Respondent's behavior at work. L.S. noticed that Respondent was
6 having a hard time staying awake and that her eyes appeared heavy and glossed over and that she
7 performed her duties as a technician more slowly. On or about June 23, 2011, L.S. discussed
8 these changes with Respondent, who attributed them to hectic pre-wedding planning and lack of
9 rest. L.S. gave Respondent a verbal warning about her behavior and performance at work.

10 17. On or about July 1, 2011, L.S. observed Respondent helping a patient at the drop-off
11 window of the Pharmacy and overhead the patient ask Respondent if she was okay. When L.S.
12 looked at Respondent, Respondent appeared to be slipping in and out of consciousness; her eyes
13 were shut; her speech slurred; and her body swayed. L.S. removed Respondent from her duties at
14 the window and sent her home.

15 18. Respondent's behavior at work did not improve. L.S. noticed that Respondent was
16 constantly taking breaks and was having a hard time staying focused. L.S. found that Respondent
17 was frequently in the break room and was often missing from her assigned position. Respondent
18 slept during her lunch break, which often exceeded one hour. She was often late to work and, on
19 September 2, 2011, Respondent failed to appear for work without having first advised her
20 manager. L.S. observed Respondent's speech to often be slurred and delayed, her eyes droopy,
21 her body swaying and her handwriting sloppy.

22 19. On or about October 22, 2011, J.B., the Supervising Pharmacist at the Pharmacy, had
23 a meeting with Respondent because he too had observed her looking tired and fatigued on more
24 than one occasion. Respondent explained that she was an insomniac and that she fell asleep on
25 her lunch break and was having a tough time waking up from that nap.

26 20. On October 28, 2011, Respondent was assigned to the mail department where her
27 responsibilities included processing and filling prescriptions that had been mailed or faxed to the
28 Pharmacy. Respondent was not able to complete her assignment despite having once been a

1 stellar pharmacy technician. Two other technicians were pulled from their regular duties to assist
2 Respondent.

3 21. Two pharmacy technicians reported that a 5 mg bag of zolpidem (Ambien) had been
4 missing since October 28, 2011 but later mysteriously re-appeared on November 3, 2011 in the
5 back of the controlled substance drawer. One of the technicians observed Respondent lingering
6 by the controlled substance drawer on October 28, 2011 even though there was no need for
7 Respondent to remove any drugs from the controlled substance drawer because the other
8 technician had pulled all of the controlled substances that were needed to fill prescriptions.

9 22. On October 28, 2011, J.B. observed that Respondent had slurred speech, appeared
10 disoriented and stumbled around. J.B. reported this behavior to his supervisor. Respondent was
11 sent to UCSD Center for Occupational Medicine and Environmental Health ("COEM") to be
12 evaluated for fitness for duty and for performance of a drug screen. Respondent submitted to a
13 drug screen on October 28, 2011.

14 23. November 2, 2011, Respondent was working as the pharmacy clerk or cashier. A
15 radiology technician came to the Pharmacy window to pick up a prescription and later advised
16 L.S. that Respondent was "obviously wasted."

17 24. On November 7, 2011, the Pharmacy was notified Respondent's drug screen was
18 positive and Respondent was placed on investigatory leave. She was later terminated for abusing
19 drugs and for reporting to work impaired.

20 25. Respondent's drug screen was positive for the following benzodiazepines:
21 nordiazepam, oxazepam and temazepam, which are all metabolites of diazepam. Nordiazepam,
22 oxazepam and temazepam may also be taken as individual drugs. However, according to the
23 California State Board of Pharmacy Controlled Substance Utilization Review and Evaluation
24 System (hereinafter "CURES") Report, the only benzodiazepine dispensed to Respondent by
25 prescription between 2009 and 2011 was clonazepam.

26 26. According to Respondent's CURES Report, the last time Respondent filled a
27 prescription for clonazepam was on September 28, 2010 for a 30-day supply of clonazepam,
28 which was about one year before the drug screen on October 28, 2011.

1 27. The metabolites of clonazepam were not found in the drug screen. The presence of
2 all three metabolites of benzodiazepine in Respondent's drug screen indicates diazepam use.
3 Diazepam was not listed in Respondent's CURES Report.

4 28. On March 13, 2012, the Board investigator received a letter sent to Respondent at her
5 address of record that was returned with the notation: "FORWARD TIME EXP RTN TO
6 SEND."

7 **FIRST CAUSE FOR DISCIPLINE**

8 **(Unprofessional Conduct – Use Of Controlled Substance In Manner Dangerous to Self or
9 Impairs Ability to Practice as Pharmacy Technician Safely)**

10 29. Respondent is subject to disciplinary action under Code section 4301, subdivision (h)
11 for unprofessional conduct by administering to herself, a controlled substance, to the extent or in
12 a manner that is dangerous or injurious to herself or to the extent that the use impairs
13 Respondent's ability to practice as a pharmacy technician safely in that during the period June
14 through October, 2011, Respondent was observed to be under the influence of a controlled
15 substance, later identified as benzodiazepine, while working as a pharmacy technician, as more
16 fully set forth in paragraphs 15-27 above and incorporated by this reference as though set forth in
17 full herein.

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(Unprofessional Conduct – Violation of Laws Regulating Controlled Substances)**

20 30. Respondent is subject to disciplinary action under Code section 4301, subdivision (j),
21 in conjunction with Code section 4060 and Health and Safety Code section 11170, for
22 unprofessional conduct by violating statutes regulating controlled substances in this state or of the
23 United States in that Respondent administered a controlled substance to herself, to wit,
24 benzodiazepine, without a prescription, as more fully set forth in paragraphs 15-27 above and
25 incorporated by this reference as though set forth in full herein.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct – Commission of Any Act Involving Moral Turpitude,**
3 **Dishonesty, Fraud or Deceit)**

4 31. Respondent is subject to disciplinary action under Code section 4301, subdivision (f),
5 for unprofessional conduct by committing acts involving moral turpitude, dishonesty, fraud or
6 deceit in that Respondent administered to herself, a controlled substance, without a prescription;
7 appeared for work as a pharmacy technician while under the influence and while her ability to
8 practice as a pharmacy technician was impaired; and, lied about the cause of her behavior when
9 confronted, as more fully set forth in paragraphs 15-27 above and incorporated by this reference
10 as though set forth in full herein.

11 **FOURTH CAUSE FOR DISCIPLINE**

12 **(Unprofessional Conduct – Dispensing Drugs While**
13 **Under the Influence of Controlled Substance)**

14 32. Respondent is subject to disciplinary action under Code section 4301, subdivision (o),
15 in conjunction with Code section 4327, for unprofessional conduct by violating or attempting to
16 violate any provision of the applicable federal and state laws and regulations governing
17 pharmacy, by selling and/or dispensing drugs while under the influence of a controlled substance,
18 as more fully set forth in paragraphs 15-27 above and incorporated by this reference as though set
19 forth in full herein.

20 **FIFTH CAUSE FOR DISCIPLINE**

21 **(Failure to Advise Board of Change in Address of Record)**

22 33. Respondent is subject to disciplinary action under Code section 4301, subdivision (o)
23 in conjunction with title 16, California Code of Regulations, section 1704, for unprofessional
24 conduct by violating or attempting to violate any provision of the applicable federal and state
25 laws and regulations governing pharmacy, including regulations established by the Board, in that
26 Respondent failed to advise the Board of a change in her address of record, as more fully set forth
27 in paragraph 28 above and incorporated by this reference as though set forth in full herein.

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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:

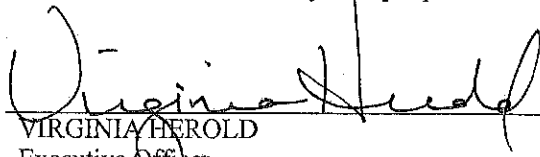
1. Revoking or suspending Pharmacy Technician License Number TCH 94160, issued to Lindsey Nicole Carlson;

2. Ordering Lindsey Nicole Carlson 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; and,

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

DATED:

7/22/13



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

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