

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:
LACEY ANN CUNNINGHAM
8709 Dinuba Ct.
Elk Grove, CA 95624
Pharmacy Technician Registration No. TCH
91885

Respondent.

Case No. 4580

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about September 9, 2013, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4580 against Lacey Ann Cunningham (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)
2. On or about July 23, 2009, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 91885 to Respondent. The Pharmacy Technician Registration will expire on March 31, 2015, unless renewed.
3. On or about October 8, 2013, Respondent was served by Certified and First Class Mail copies of the Accusation No. 4580, Statement to Respondent, 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. Respondent's address of
3 record was and is:

4 8709 Dinuba Ct.
5 Elk Grove, CA 95624.

6 4. Service of the Accusation was effective as a matter of law under the provisions of
7 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
8 124.

9 5. Government Code section 11506 states, in pertinent part:

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

15 6. Respondent failed to file a Notice of Defense within 15 days after service upon her of
16 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 4580.

17 7. California Government Code section 11520 states, in pertinent part:

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

22 8. Pursuant to its authority under Government Code section 11520, the Board finds
23 Respondent is in default. The Board will take action without further hearing and, based on the
24 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
25 taking official notice of all the investigatory reports, exhibits and statements contained therein on
26 file at the Board's offices regarding the allegations contained in Accusation No. 4580, finds that
27 the charges and allegations in Accusation No. 4580, are separately and severally, found to be true
28 and correct by clear and convincing evidence.

9. Taking official notice of its own internal records, pursuant to Business and
Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
and Enforcement is \$977.50 as of April 24, 2014.

1 DETERMINATION OF ISSUES

2 1. Based on the foregoing findings of fact, Respondent Lacey Ann Cunningham has
3 subjected her Pharmacy Technician Registration No. TCH 91885 to discipline.

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

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

8 a. Business & Professions Code section 4301(l) – Criminal Convictions

9 b. Business & Professions Code section 4301(f) – Dishonest Acts

10 c. Business & Professions Code section 4301(h) – Use of Controlled Substance in
11 Manner Dangerous or Injurious

12 ORDER

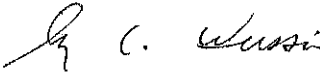
13 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 91885, heretofore
14 issued to Respondent Lacey Ann Cunningham, is revoked.

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

19 This Decision shall become effective on July 9, 2014.

20 It is so ORDERED June 9, 2014.

21 BOARD OF PHARMACY
22 DEPARTMENT OF CONSUMER AFFAIRS
23 STATE OF CALIFORNIA

24 By 

25 STAN C. WEISSER
26 Board President

26 11334620.DOCX
27 DOJ Matter ID:SA2013110840

28 Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 KAREN R. DENVIR
Deputy Attorney General
4 State Bar No. 197268
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-5333
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

10
11 In the Matter of the Accusation Against:

Case No. 4580

12 **LACEY ANN CUNNINGHAM**
8709 Dinuba Ct.
13 Elk Grove, CA 95624

ACCUSATION

14 **Pharmacy Technician Registration No. TCH**
91885

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.
- 21 2. On or about July 23, 2009, the Board of Pharmacy issued Pharmacy Technician
22 Registration Number TCH 91885 to Lacey Ann Cunningham (Respondent). The Pharmacy
23 Technician License was in full force and effect at all times relevant to the charges brought herein
24 and will expire on March 31, 2015, unless 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
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

4. Section 4300 of the Code states, in pertinent part:

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

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

(1) Suspending judgment.

(2) Placing him or her upon probation.

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

(4) Revoking his or her license.

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

5. Section 4301 of the Code states, in pertinent part:

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:

....

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

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

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

....

(i) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense

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

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

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

7. Section 4300.1 of the Code states:

14 The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation
15 of law or by order or decision of the board or a court of law, the placement of a license on a
16 retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of
17 jurisdiction to commence or proceed with any investigation of, or action or disciplinary
18 proceeding against, the licensee or to render a decision suspending or revoking the license.

19 COST RECOVERY

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

24 DRUGS

25 9. Cannabis, also called marijuana, is a Schedule I controlled substance as designated by
26 Health and Safety Code section 11054, subdivision (d)(13).

27 ///

28 ///

1 FIRST CAUSE FOR DISCIPLINE

2 (Criminal Convictions)

3 10. Respondent is subject to disciplinary action under section 4301, subdivision (l) in that
4 she was convicted of a crime substantially related to the qualifications, functions, and duties of a
5 licensee, as follows:

6 a. On or about October 23, 2012, in the case of *People v. Lacey Ann Cunningham*
7 (Sacramento Superior Court Case No. 12T04627), Respondent pled nolo contendere to a
8 misdemeanor violation of Vehicle Code section 23152(a) (driving under the influence of drugs
9 and alcohol). The circumstances are that on or about June 27, 2012, Elk Grove Police Officer
10 Montgomery observed Respondent in her vehicle stopped at a stop sign, and making no attempt
11 to proceed through the intersection. When Officer Montgomery shined a light at Respondent to
12 get her attention, Respondent looked at him with a glazed look in her eyes and still did not
13 proceed. Officer Montgomery observed Respondent had objective signs of being under the
14 influence of a drug, and a drug recognition evaluation indicated that Respondent was under the
15 influence of cannabis.

16 b. On or about October 23, 2012, in the case of *People v. Lacey Ann Cunningham*
17 (Sacramento Superior Court Case No. 12F05146), Respondent pled nolo contendere to a
18 misdemeanor violation of Penal Code section 496(a) (receiving stolen property). The
19 circumstances are as follows: On or about July 25, 2012, Rancho Cordova Police Officer
20 Barawed initiated a traffic stop of Respondent's car. Respondent was in the car along with two
21 male subjects, one of whom was driving the car. Officer Barawed conducted a body search of the
22 driver and found a key ring with a shaved key, a small screwdriver, and two driver's licenses and
23 credit cards that did not have the drivers name on them. Respondent consented to a search of her
24 vehicle and Officer Barawed found several power tools in plastic wrap in her trunk. Officer
25 Barawed also found a small bag in the trunk containing a driver's license and top page of a
26 checkbook, and found that the address listed on both the license and the check had recently been
27 burglarized. Respondent stated that all of the items in the car belonged to her, except for the
28

1 power tools. Further search of the vehicle found sixty keys, miscellaneous mail and other
2 documents that did not have any of the vehicle's occupants' names on them.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Dishonest Acts)**

5 11. Respondent is subject to disciplinary action under section 4301, subdivision (f), in
6 that she committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption, as set
7 forth above in paragraph 10, subdivision(b), and incorporated herein by reference.

8 **THIRD CAUSE FOR DISCIPLINE**

9 **(Use of Controlled Substance in a Manner Dangerous or Injurious)**

10 12. Respondent is subject to disciplinary action under section 4301, subdivision (h), in
11 that she used a controlled substance, cannabis, to the extent or in a manner as to be dangerous or
12 injurious to oneself, or to any other person or to the public as set forth above in paragraph 10,
13 subdivision (a), and incorporated herein by reference.

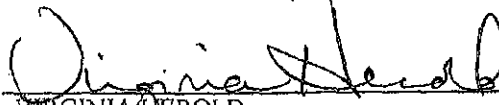
14 **PRAAYER**

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

- 17 1. Revoking or suspending Pharmacy Technician Registration Number TCH 91885,
18 issued to Lacey Ann Cunningham.
- 19 2. Ordering Lacey Ann Cunningham to pay the Board of Pharmacy the reasonable costs
20 of the investigation and enforcement of this case, pursuant to Business and Professions Code
21 section 125.3;
- 22 3. Taking such other and further action as deemed necessary and proper.

23 DATED: _____

24 9/19/13

25 

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

SA2013110840
11117340.doc