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

In the Matter of the Accusation Against:

Case No. 4914

RITA LYNN BARNES
13639 3rd Street #1
Yucaipa, CA 92399
Pharmacy Technician Registration No. TCH
74729

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

Respondent.

FINDINGS OF FACT

1. On or about May 28, 2014, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4914 against Rita Lynn Barnes (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about May 17, 2007, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 74729 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 4914 and will expire on October 31, 2014, unless renewed.

1 3. On or about May 28, 2014, Respondent was served by Certified and First Class Mail
2 copies of the Accusation No. 4914, Statement to Respondent, Notice of Defense, Request for
3 Discovery, 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 13639 3rd Street #1
8 Yucaipa, CA 92399.

9 4. Service of the Accusation was effective as a matter of law under the provisions of
10 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
11 124.

12 5. On or about May 30, 2014, the aforementioned documents were delivered (certified
13 mail) by the U.S. Postal Service.

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

15 (c) The respondent shall be entitled to a hearing on the merits if the respondent
16 files a notice of defense, and the notice shall be deemed a specific denial of all parts
17 of the accusation not expressly admitted. Failure to file a notice of defense shall
18 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
19 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. 4914.

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
26 respondent.

27 9. Pursuant to its authority under Government Code section 11520, the Board finds
28 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
file at the Board's offices regarding the allegations contained in Accusation No. 4914, finds that

1 the charges and allegations in Accusation No. 4914, are separately and severally, found to be true
2 and correct by clear and convincing evidence.

3 10. Taking official notice of its own internal records, pursuant to Business and
4 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
5 and Enforcement is \$2947.50 as of September 24, 2014.

6 **DETERMINATION OF ISSUES**

7 1. Based on the foregoing findings of fact, Respondent Rita Lynn Barnes has subjected
8 her Pharmacy Technician Registration No. TCH 74729 to discipline.

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

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

13 a. sections 4301, subdivision (l) and 490 of the Business and Professions Code, in
14 conjunction with California Code of Regulations, title 16, section 1770, in that, Respondent was
15 convicted of a crime substantially related to the qualifications, functions or duties of a pharmacy
16 technician;

17 b. section 4301, subdivision (f), of the Business and Professions Code, in that while
18 employed as a pharmacy technician for CVS Pharmacy, Respondent committed acts involving
19 dishonesty, fraud, or deceit with the intent to substantially benefit herself, or substantially injure
20 another;

21 c. section 4301, subdivision (j) and (o) of the Business and Professions Code, for
22 violating section 4060 of the Business and Professions Code, in that Respondent illegally
23 obtained or possessed controlled substances while working as a pharmacy technician at CVS
24 Pharmacy;

25 d. section 4301, subdivision (h), of the Business and Professions Code, on the grounds
26 of unprofessional conduct, in that Respondent, by her own admission, took Xanax and
27 Methocarbamol from the pharmacy for her own use;
28

1 e. section 4301, subdivision (j) of the Business and Professions Code, in conjunction
2 with Health and Safety Code section 11170, in that Respondent furnished controlled
3 substances/dangerous drugs to herself while working as a pharmacy technician at CVS Pharmacy;

4 f. section 4301, (o), of the Business and Professions Code, in that Respondent
5 committed acts of unprofessional conduct and/ or violated provisions of the licensing chapter;

6 g. section 4301, (h), of the Business and Professions Code, in that Respondent
7 administered to herself controlled substances which impaired her ability to conduct with safety to
8 the public the practice authorized by her license;

9 h. section 11170 of the Health and safety Code, in that Respondent administered or
10 furnished controlled substances to herself.

11 **ORDER**

12 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 74729, heretofore
13 issued to Respondent Rita Lynn Barnes, is revoked.

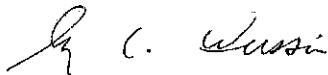
14 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
15 written motion requesting that the Decision be vacated and stating the grounds relied on within
16 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
17 vacate the Decision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

18 This decision shall become effective on February 6, 2015.

19 It is so ORDERED on January 7, 2015.

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

23
24 By _____


25 STAN C. WEISSER
26 Board President

27 51604745.DOC
28 DOJ Matter ID:LA2013510182
Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 MORGAN MALEK
Deputy Attorney General
4 State Bar No. 223382
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2643
6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

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. 4914

12 **RITA LYNN BARNES**
13 13639 3rd Street #1
Yucaipa, CA 92399

A C C U S A T I O N

14 Pharmacy Technician Registration
15 No. TCH 74729

16 Respondent.

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21 Complainant alleges:

22 **PARTIES**

23 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
24 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

25 2. On or about May 17, 2007, the Board of Pharmacy (Board) issued Pharmacy
26 Technician Registration No. TCH 74729 to Rita Lynn Barnes (Respondent). The Pharmacy
27 Technician Registration was in full force and effect at all times relevant to the charges brought
28 herein and will expire on October 31, 2014, unless renewed.

1 JURISDICTION

2 3. This Accusation is brought before the Board under the authority of the following
3 laws. All section references are to the Business and Professions Code unless otherwise indicated.

4 STATUTORY PROVISIONS

5 4. Section 490 states, in pertinent part:

6 "(a) In addition to any other action that a board is permitted to take against a licensee, a
7 board may suspend or revoke a license on the ground that the licensee has been convicted of a
8 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
9 or profession for which the license was issued.

10 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
11 discipline a licensee for conviction of a crime that is independent of the authority granted under
12 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
13 of the business or profession for which the licensee's license was issued.

14 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
15 conviction following a plea of nolo contendere. Any action that a board is permitted to take
16 following the establishment of a conviction may be taken when the time for appeal has elapsed,
17 or the judgment of conviction has been affirmed on appeal, or when an order granting probation
18 is made suspending the imposition of sentence, irrespective of a subsequent order under the
19 provisions of Section 1203.4 of the Penal Code."

20 5. Section 4060 states:

21 "No person shall possess any controlled substance, except that furnished to a person upon
22 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic
23 doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
24 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
25 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
26 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
27 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
28 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,

1 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
2 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
3 labeled with the name and address of the supplier or producer.

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

7 6. Section 4300 provides in pertinent part, that every license issued by the Boards is
8 subject to discipline, including suspension or revocation.

9 7. Section 4300.1 states:

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

15 8. 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.

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

....
"(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."

9. Health and Safety Code section 11170 states, in pertinent part:

"No person shall prescribe, administer, or furnish a controlled substance for himself."

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3 **REGULATORY PROVISIONS**

4 10. California Code of Regulations, title 16, section 1770 states, in pertinent part:

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

11 **COST RECOVERY**

12 11. Section 125.3 provides, in pertinent part, that the Board may request the
13 administrative law judge to direct a licentiate found to have committed a violation or violations of
14 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
15 enforcement of the case, with failure of the licentiate to comply subjecting the license to not
16 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs
17 may be included in a stipulated settlement.

18 12. **CONTROLLED SUBSTANCES/DANGEROUS DRUGS**

19 a. "Methocarbamol," is a medication that relaxes muscles, and used along with rest and
20 physical therapy to decrease muscle pain and spasms associated with strains, sprains or other
21 muscle injuries

22 b. "Xanax," a brand name for alprazolam, is an anti-anxiety benzodiazepine and is
23 Schedule IV controlled substance as designated by Health and Safety Code section 11057,
24 subdivision (d)(1) and is categorized as a dangerous drug pursuant to section 4022.

25 **FIRST CAUSE FOR DISCIPLINE**

26 **(Conviction of a Substantially Related Crime)**

27 13. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and
28 490, in conjunction with California Code of Regulations, title 16, section 1770, in that,

1 Respondent was convicted of a crime substantially related to the qualifications, functions or
2 duties of a pharmacy technician, as follows:

3 a. On or about February 1, 2013, after pleading guilty. Respondent was convicted of one
4 felony count of violating Penal Code section 487, subdivision (a) [grand theft by embezzlement]
5 in the criminal proceeding entitled *The People of the State of California v. Rita Barnes* (Super.
6 Ct. San Bernardino County, 2012, No. FSB1205565.) The Court sentenced Respondent to serve
7 120 days in San Bernardino County Jail and placed her on 36 months formal probation, with
8 terms and conditions.

9 b. The circumstances surrounding the conviction are that on or about November 21,
10 2012, Respondent was employed as a pharmacy technician at CVS Pharmacy, in Yucaipa, CA.
11 Due to a discrepancy in pharmacy's inventory, loss prevention personnel were asked to conduct
12 an investigation. During an interview with CVS Loss Prevention, Respondent admitted in a
13 written statement to activating CVS gift cards for her personal use in the amount of \$1,800, and
14 diverting Xanax, Methocarbamol and Vicodin over the course of 6-8 months for self
15 consumption. Respondent admitted in diverting 1 bottle of Xanax and 30 to 40 pills of
16 Methocarbamol in the morning of her arrest. She admitted that she had no physician
17 prescriptions and no permission to take Xanax and Methocarbamol. Respondent stated that she
18 removed Xanax and Methocarbamol from CVS Pharmacy by hiding them in her bra. When
19 asked the most amount of pills she took in one day Respondent replied taking 1 bottle of 1mg and
20 2 mg Xanax and 60 pills of 500 mg Methocarbamol. When asked how many pills she took in one
21 week on average, Respondent admitted taking 3 to 4 bottles of Xanax and 1 and ½ bottles of
22 Methocarbamol and 30 pills of Vicodin 5/500. Respondent admitted that she caused CVS to
23 suffer a financial loss in the amount of \$3,986.96 by taking said medications without permission.

24 When asked how she obtained the gift cards, Respondent stated "[J]ust like I would for a
25 customer using the code." Respondent activated the gift cards for \$25 to \$35 for her personal use
26 for approximately one year. During the interview CVS determined that Respondent stole
27 approximately 5,040 Xanax pills and 4800 Methocarbamol pills. Further, during the interview
28

1 Respondent admitted in having two bottles of medications in her car, which she had taken prior to
2 being contacted by CVS Loss and Prevention Agent.

3 c. When interviewed by San Bernardino Sheriff's Department, Respondent admitted to
4 stealing the number of pills and gift cards alleged by CVS. When asked by San Bernardino
5 Sheriff's Department if the number of approximately 5000 Xanax pills was correct, since it
6 seemed like a very large amount, Respondent replied affirmatively. Respondent further admitted
7 in taking some pills on November 21, 2012, in the morning of her arrest, by concealing them
8 inside her bra and subsequently concealing them in her vehicle parked outside the CVS store.
9 Respondent gave permission to the San Bernardino Sheriff's Deputy to retrieve the medications
10 from the center console of her vehicle. The deputy recovered an unopened bottle of Xanax and
11 another prescription bottle labeled for an unknown customer for Methocarbamol from the center
12 console of Respondent's vehicle. The San Bernardino Sheriff's Deputy asked the Respondent
13 whether she was selling any of the medication pills referenced above. Respondent replied in
14 negative. The San Bernardino Sheriff's Deputy confronted the Respondent with the fact that
15 5000 pills over 180 days or 200 days time period meant that she was consuming between 25 and
16 29 pills daily which seemed to be a large intake of medication pills would have led to overdose
17 and/or organ failure. Respondent replied that she did not take the pills in those quantities every
18 day, but that she did take large amounts. Respondent was subsequently arrested, charged and
19 booked into the Central Detention Center.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Acts Involving Dishonesty, Fraud, or Deceit)**

22 14. Respondent is subject to disciplinary action under section 4301, subdivision (f), in
23 that while employed as a pharmacy technician for CVS Pharmacy, Respondent committed acts
24 involving dishonesty, fraud, or deceit with the intent to substantially benefit herself, or
25 substantially injure another. Complainant refers to, and by this reference incorporates, the
26 allegations set forth above in paragraph 13, subparagraph (b), as though set forth fully.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Illegally Obtained or Possessed Controlled Substances/Dangerous Drugs)**

3 15. Respondent is subject to disciplinary action under section 4301, subdivision (j) and
4 (o), for violating section 4060, in that Respondent illegally obtained or possessed controlled
5 substances while working as a pharmacy technician at CVS Pharmacy. Complainant refers to,
6 and by this reference incorporates, the allegations set forth above in paragraph 13, subparagraph
7 (b), as though set forth fully.

8 **FOURTH CAUSE FOR DISCIPLINE**

9 **(Use of Controlled Substances/Dangerous Drugs)**

10 16. Respondent is subject to disciplinary action under section 4301, subdivision (h), on
11 the grounds of unprofessional conduct, in that Respondent, by her own admission, took Xanax
12 and Methocarbamol from the pharmacy for her own use. Complainant refers to, and by this
13 reference incorporates, the allegations set forth above in paragraph 13, subparagraph (b), as
14 though set forth in fully.

15 **FIFTH CAUSE FOR DISCIPLINE**

16 **(Furnished Controlled Substances/Dangerous Drugs)**

17 17. Respondent is subject to disciplinary action under section 4301, subdivision (j) in
18 conjunction with Health and Safety Code section 11170, in that Respondent furnished controlled
19 substances/dangerous drugs to herself while working as a pharmacy technician at CVS Pharmacy.
20 Complainant refers to, and by this reference incorporates, the allegations set forth above in
21 paragraph 13, subparagraph (b), as though set forth fully.

22 **SIXTH CAUSE FOR DISCIPLINE**

23 **(Unprofessional Conduct/ Violation of Licensing Chapter)**

24 18. Respondent is subject to disciplinary action under section 4301, (o), in that
25 Respondent committed acts of unprofessional conduct and/ or violated provisions of the licensing
26 chapter. Complainant refers to, and by this reference incorporates, the allegations set forth above
27 in paragraphs 13-17, inclusive, as though set forth fully.

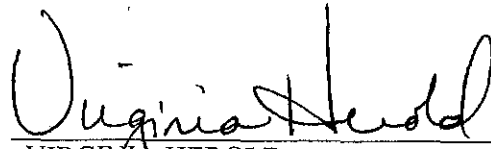
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1 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
2 enforcement of this case, pursuant to section 125.3; and

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

4
5 DATED: _____

5/8/14



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

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