

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

In the Matter of the Accusation Against:

Case No. 4954

TIA LASHA KELLY
8760 Jamacha Road, 2G
Spring Valley, CA 91977

Pharmacy Technician Registration No.
TCH 80650

Respondent.

DECISION AND ORDER

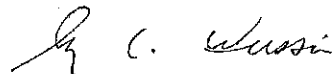
The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on October 20, 2014.

It is so ORDERED on October 15, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STAN C. WEISSER
Board President

1 KAMALA D. HARRIS
Attorney General of California
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9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 4954

13 **TIA LASHA KELLY**
14 **8760 Jamacha Road, 2G**
Spring Valley, CA 91977

OAH No. 2014030594

15 **Pharmacy Technician Registration No. TCH**
16 **80650**

STIPULATED SURRENDER OF
LICENSE AND ORDER

17 Respondent.

18
19 In the interest of a prompt and speedy settlement of this matter, consistent with the public
20 interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs,
21 the parties hereby agree to the following Stipulated Surrender and Disciplinary Order which will
22 be submitted to the Board for approval and adoption as the final disposition of the Accusation.

23 **PARTIES**

24 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
25 She brought this action solely in her official capacity and is represented in this matter by Kamala
26 D. Harris, Attorney General of the State of California, by Adrian R. Contreras, Deputy Attorney
27 General.

28 2. Tia Lasha Kelly (Respondent) is representing herself in this proceeding and has
chosen not to exercise her right to be represented by counsel.

3. On or about January 8, 2008, the Board of Pharmacy issued Pharmacy Technician Registration No. TCH 80650 to Tia Lasha Kelly (Respondent). The Pharmacy Technician Registration was cancelled on December 1, 2013, and has not been renewed.

JURISDICTION

4. Accusation No. 4954 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on February 10, 2014. Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation No. 4954 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Accusation No. 4954. Respondent also has carefully read, and understands the effects of this Stipulated Surrender of License and Order.

6. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 4954, agrees that cause exists for discipline and hereby surrenders her Pharmacy Technician Registration No. TCH 80650 for the Board's formal acceptance.

9. Respondent understands that by signing this stipulation she enables the Board to issue an order accepting the surrender of her Pharmacy Technician Registration without further process.

CONTINGENCY

10. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Surrender of License and Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

12. This Stipulated Surrender of License and Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that Pharmacy Technician Registration No. TCH 80650, issued to Respondent Tia Lasha Kelly, is surrendered and accepted by the Board of Pharmacy.

1 1. The surrender of Respondent's Pharmacy Technician Registration and the acceptance
2 of the surrendered license by the Board shall constitute the imposition of discipline against
3 Respondent. This stipulation constitutes a record of the discipline and shall become a part of
4 Respondent's license history with the Board of Pharmacy.

5 2. Respondent shall lose all rights and privileges as a Pharmacy Technician in California
6 as of the effective date of the Board's Decision and Order.

7 3. Respondent shall cause to be delivered to the Board her pocket license and, if one was
8 issued, her wall certificate on or before the effective date of the Decision and Order.

9 4. If Respondent ever applies for licensure or petitions for reinstatement in the State of
10 California, the Board shall treat it as a new application for licensure. Respondent may not apply
11 for any license, permit, or registration from the board for three years from the effective date of
12 this decision. Respondent stipulates that should she apply for any license from the board on or
13 after the effective date of this decision, all allegations set forth in the Accusation shall be deemed
14 to be true, correct, and admitted by respondent when the board determines whether to grant or
15 deny the application. Respondent shall satisfy all requirements applicable to that license as of the
16 date the application is submitted to the board, including, but not limited to certification by a
17 nationally recognized body prior to the issuance of a new license. Respondent is required to
18 report this surrender as disciplinary action.

19 5. Respondent shall pay the agency its costs of investigation and enforcement in the
20 amount of \$3,145.50 before issuance of a new or reinstated license.

21 6. If Respondent should ever apply or reapply for a new license or certification, or
22 petition for reinstatement of a license, by any other health care licensing agency in the State of
23 California, all of the charges and allegations contained in Accusation No. 4954 shall be deemed to
24 be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any
25 other proceeding seeking to deny or restrict licensure.

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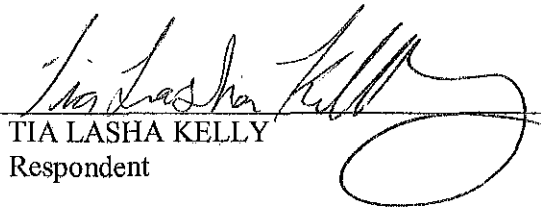
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ACCEPTANCE

I have carefully read the Stipulated Surrender of License and Order. I understand the stipulation and the effect it will have on my Pharmacy Technician Registration. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED:

8-21-14


TIA LASHA KELLY
Respondent

ENDORSEMENT


The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated:

9/24/14

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General


ADRIAN R. CONTRERAS
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 4954

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 ADRIAN R. CONTRERAS
Deputy Attorney General
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E-mail: Adrian.Contreras@doj.ca.gov
8 *Attorneys for Complainant*

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13 **TIA LASHA KELLY**
14 **8760 Jamacha Road, 2G**
Spring Valley, CA 91977

A C C U S A T I O N

15 **Pharmacy Technician Registration No. TCH**
16 **80650**

17 Respondent.

18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about January 8, 2008, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 80650 to Tia Lasha Kelly (Respondent). The Pharmacy Technician
24 Registration expired on August 31, 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 board, whose default
4 has been entered or whose case has been heard by the board and found guilty, by any of the
5 following methods:

6 "(1) Suspending judgment.

7 "(2) Placing him or her upon probation.

8 "(3) Suspending his or her right to practice for a period not exceeding one 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
11 discretion may deem proper.

12 ". . .

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

18 5. Section 4300.1 of the Code states:

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

24 **STATUTORY PROVISIONS**

25 6. Section 480 of the Code states:

26 "(a) A board may deny a license regulated by this code on the grounds that the applicant has
27 one of the following:

28 ". . .

1 "(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially
2 benefit himself or herself or another, or substantially injure another.

3 "[3](B) The board may deny a license pursuant to this subdivision only if the crime or act is
4 substantially related to the qualifications, functions, or duties of the business or profession for
5 which application is made.

6 ". . . ."

7 7. Section 482 of the Code states:

8 "Each board under the provisions of this code shall develop criteria to evaluate the
9 rehabilitation of a person when:

10 "(a) Considering the denial of a license by the board under Section 480; or

11 "(b) Considering suspension or revocation of a license under Section 490.

12 "Each board shall take into account all competent evidence of rehabilitation furnished by
13 the applicant or licensee."

14 8. Section 490 of the Code provides, in pertinent part, that a board may suspend or
15 revoke a license on the ground that the licensee has been convicted of a crime substantially related
16 to the qualifications, functions, or duties of the business or profession for which the license was
17 issued.

18 9. Section 493 of the Code states:

19 "Notwithstanding any other provision of law, in a proceeding conducted by a board within
20 the department pursuant to law to deny an application for a license or to suspend or revoke a
21 license or otherwise take disciplinary action against a person who holds a license, upon the
22 ground that the applicant or the licensee has been convicted of a crime substantially related to the
23 qualifications, functions, and duties of the licensee in question, the record of conviction of the
24 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
25 and the board may inquire into the circumstances surrounding the commission of the crime in
26 order to fix the degree of discipline or to determine if the conviction is substantially related to the
27 qualifications, functions, and duties of the licensee in question.

28 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'"

1 10. Section 4301 of the Code states:

2 "The board shall take action against any holder of a license who is guilty of unprofessional
3 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

4 Unprofessional conduct shall include, but is not limited to, any of the following:

5 "...

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

9 "...

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

12 "...

13 "(l) The conviction of a crime substantially related to the qualifications, functions, and
14 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
15 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
16 substances or of a violation of the statutes of this state regulating controlled substances or
17 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
18 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
19 The board may inquire into the circumstances surrounding the commission of the crime, in order
20 to fix the degree of discipline or, in the case of a conviction not involving controlled substances or
21 dangerous drugs, to determine if the conviction is of an offense substantially related to the
22 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
23 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
24 of this provision. The board may take action when the time for appeal has elapsed, or the
25 judgment of conviction has been affirmed on appeal or when an order granting probation is made
26 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
27 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
28

1 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
2 indictment.

3 "...

4 "(p) Actions or conduct that would have warranted denial of a license.

5 "... "

6 11. Section 4060 of the Code states:

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

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

21 **REGULATORY PROVISIONS**

22 12. California Code of Regulations, title 16, section 1769, states:

23 "...

24 "(b) When considering the suspension or revocation of a facility or a personal license on the
25 ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating
26 the rehabilitation of such person and his present eligibility for a license will consider the
27 following criteria:

28 "(1) Nature and severity of the act(s) or offense(s).

“(2) Total criminal record.

“(3) The time that has elapsed since commission of the act(s) or offense(s).

“(4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

“(5) Evidence, if any, of rehabilitation submitted by the licensee.

13. 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."

COSTS

14. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to direct a licensee 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.

DRUGS

15. Hydrocodone/APAP is marketed under numerous trade names, including Vicodin and Norco. Hydrocodone/APAP is a Schedule III controlled substance under Health and Safety Code section 11056, subdivision (e)(5) and a dangerous drug under Code section 4022.

16. Alprazolam is marketed under numerous trade names, including Xanax. It is used to relieve anxiety. It is a Schedule IV controlled substance under Health and Safety Code section 11057, subdivision (d)(1), and a dangerous drug under Code section 4022.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(December 20, 2011, Criminal Conviction for Grand Theft**

3 **Between October 25 and 31, 2011)**

4 17. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision
5 (l) of the Code in that she was convicted of a crime substantially related to the qualifications,
6 functions, and duties of a licensee. The circumstances are as follows:

7 18. On or about December 20, 2011, in a criminal proceeding entitled *People v. Kelly*, in
8 San Diego County Superior Court, case number CD237403, Respondent was convicted on her
9 plea of guilty of violating Penal Code section 487, subdivision (a), grand theft, a felony. As a
10 result of a plea agreement, one count of violating Health and Safety Code section 11351,
11 possession for sale of a controlled substance, a felony, and one count of violating Health and
12 Safety Code section 11375, subdivision (b)(1), possession for sale of a designated controlled
13 substance, a felony, were dismissed.

14 19. As a result of the conviction, Respondent was sentenced to three years summary
15 probation, and ordered to pay fines and fees.

16 20. The facts that led to the conviction are that in October 2011, Respondent worked as a
17 pharmacy technician at the CVS Pharmacy on El Cajon Boulevard in San Diego. During her
18 employment, she stole from CVS Pharmacy 2500 tablets of alprazolam and 8000 tablets of Norco
19 and gave them to a drug dealer.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Unprofessional Conduct-Act of Moral Turpitude or Dishonesty)**

22 21. Respondent is subject to disciplinary action under Code section 4301, subdivision (f)
23 in that Respondent committed grand theft, an act of moral turpitude or dishonesty. Complainant
24 re-alleges and incorporates by reference the allegations set forth above in paragraphs 17-20.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct-Violation of Laws Regulating Controlled Substances**
3 **and Dangerous Drugs)**

4 22. Respondent is subject to disciplinary action under Code sections 4301, subdivision (j)
5 in that Respondent violated laws regulating controlled substances and dangerous drugs.

6 Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs
7 17-20. The laws include the following:

- 8 a. **Code section 4059**: furnishing a controlled substance without a prescription.
9 b. **Code section 4060**: possession of a controlled substance without a prescription.
10 c. **Health and Safety Code section 11350, subd. (a)**: possession of a designated
11 controlled substance.
12 d. **Health and Safety Code section 11352, subd. (a)**: giving away a designated
13 controlled substance.
14 e. **Health and Safety Code section 11375, subd. (b)(1)**: possession for sale of a
15 designated controlled substance.

16 **FOURTH CAUSE FOR DISCIPLINE**

17 **(Unprofessional Conduct-Act Warranting Denial of Licensure)**

18 23. Respondent is subject to disciplinary action under section 4301, subdivision (p), in
19 that she committed an act that would have warranted denial of a license by stealing the controlled
20 substances alprazolam and Norco from her place of employment, an act enumerated in Code
21 section 480, subdivision (a)(2), which is cause for denial of a license to an applicant who
22 committed an act of dishonesty with the intent to substantially benefit herself or another.
23 Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs
24 17-20.

25 **PRAYER**

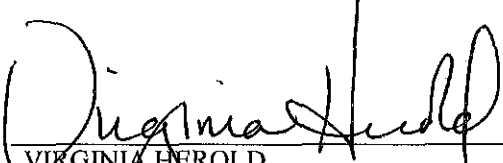
26 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
27 and that following the hearing, the Board of Pharmacy issue a decision:
28

1 1. Revoking or suspending Pharmacy Technician Registration Number TCH 80650,
2 issued to Tia Lasha Kelly;

3 2. Ordering Tia Lasha Kelly to pay the Board of Pharmacy the reasonable costs of the
4 investigation and enforcement of this case, pursuant to Business and Professions Code section
5 125.3; and

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

7
8 DATED: 2/3/14


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

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