

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:

Case No. 4986

**DIANNA WICKLIFFE
P.O. Box 584
Somerset, CA 95684**

DEFAULT DECISION AND ORDER

**Pharmacy Technician Registration No.
TCH 38215**

[Gov. Code, §11520]

Respondent.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FINDINGS OF FACT

1. On or about March 27, 2014, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4986 against Dianna Wickliffe (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about February 6, 2002, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 38215 to Respondent. The Pharmacy Technician Registration expired on September 30, 2013, and has not been renewed.

3. On or about April 4, 2014, Respondent was served by Certified and First Class Mail copies of the Accusation No. 4986, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code section 4100, is required to be reported and maintained with the Board. Respondent's address of record was and is: P.O. Box 584, Somerset, California 95684.

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

///

1 4. Government Code section 11506 states, in pertinent part:

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

7 5. Respondent failed to file a Notice of Defense within 15 days after service upon her of
8 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 4986.

9 6. California Government Code section 11520 states, in pertinent part:

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

14 7. Pursuant to its authority under Government Code section 11520, the Board finds
15 Respondent is in default. The Board will take action without further hearing and, based on the
16 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
17 taking official notice of all the investigatory reports, exhibits and statements contained therein on
18 file at the Board's offices regarding the allegations contained in Accusation No. 4986, finds that
19 the charges and allegations in Accusation No. 4986, are separately and severally, found to be true
20 and correct by clear and convincing evidence.

21 8. Taking official notice of its own internal records, pursuant to Business and
22 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
23 and Enforcement is \$1,232.50 as of May 2, 2014.

24 **DETERMINATION OF ISSUES**

25 1. Based on the foregoing findings of fact, Respondent Dianna Wickliffe has subjected
26 her Pharmacy Technician Registration No. TCH 38215 to discipline.

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

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

///

1 a. Section 4301, subdivisions (l) and (k), substantially related criminal conviction in that
2 on or about December 16, 2013, Respondent was convicted of forging and issuing a prescription
3 for a controlled substance, a felony.

4 b. Section 4301, subdivision (f), dishonest, fraudulent, and deceitful acts, in that
5 Respondent forged a prescription for the controlled substance Hydrocodone.

6 c. Section 4301, subdivision (j), in that Respondent violated laws governing controlled
7 substances as follows:

8 i. California Code of Regulations section 4060 by unlawfully possessing a
9 controlled substance without a valid prescription.

10 ii. Health and Safety Code section 11368, by forging or altering a prescription for
11 controlled substances.

12 d. Section 4301, subdivision (o), violation of laws governing pharmacy.

13 **ORDER**

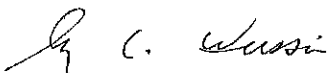
14 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 38215, heretofore
15 issued to Respondent Dianna Wickliffe, is revoked.

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

20 This Decision shall become effective on June 27, 2014.

21 It is so ORDERED May 28, 2014

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

25 By 
26 STAN C. WEISSER
27 Board President

28 11339275.DOC
DOJ Matter ID:SA2013114077

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 KRISTINA T. JANSEN
Deputy Attorney General
4 State Bar No. 258229
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-5403
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

11
12 In the Matter of the Accusation Against:

Case No. 4986

13 **DIANNA WICKLIFFE**
14 **P.O. Box 584**
Somerset, CA 95684

ACCUSATION

15 **Pharmacy Technician Registration No. TCH**
16 **38215**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about February 6, 2002, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 38215 to Dianna Wickliffe (Respondent). The Pharmacy Technician
25 Registration expired on September 30, 2013, and has not been renewed.

26 ///

27 ///

28 ///

1 JURISDICTION

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

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

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

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

10 "(1) Suspending judgment.

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

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

13 "(4) Revoking his or her license.

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

16 5. Section 4300.1 of the Code states:

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

22 6. Section 4301 of the Code states in pertinent part:

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

26 "...

27 ///

28 ///

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

4 "...

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

7 "(k) The conviction of more than one misdemeanor or any felony involving the use,
8 consumption, or self-administration of any dangerous drug or alcoholic beverage, or any
9 combination of those substances.

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

27 "...

28 ///

1 Respondent pled guilty to violating Health and Safety Code section 11368, forging and issuing a
2 prescription for a controlled substance, a felony. The circumstances are as follows:

3 12. On or about August 21, 2013, Respondent was arrested for forging or altering a
4 prescription for Hydrocodone. Respondent was in possession of Hydrocodone obtained by the
5 forged prescriptions at the time of her arrest. Respondent was employed at the BelAir Pharmacy
6 in Cameron Park during all of the circumstances described herein. According to Respondent, she
7 would wait and observe until another pharmacy technician left their computer account logged in
8 and walked away to perform other duties, then she would use their account to fill a prescription
9 for herself. Respondent admitted to doing so 10-12 times, and stated the Hydrocodone was for
10 her own consumption.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Dishonest, Fraudulent, or Deceitful Acts)**

13 13. Respondent is subject to disciplinary action for unprofessional conduct pursuant to
14 section 4301, subdivision (f), in that she committed dishonest, fraudulent, or deceitful acts in
15 forging or altering a prescription for Hydrocodone as described in paragraph 12, above.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Violation of Laws Governing controlled Substances)**

18 14. Respondent is subject to disciplinary action for unprofessional conduct pursuant to
19 section 4301, subdivision (j), for violating the laws governing controlled substances as follows:

20 a. Respondent violated section 4060 of the Code, by unlawfully possessing a
21 controlled substance without a valid prescription, as described in paragraph 12, above.

22 b. Respondent violated Health and Safety Code section 11368 by forging or
23 altering a prescription for Hydrocodone as described in paragraph 12, above.

24 **FOURTH CAUSE FOR DISCIPLINE**

25 **(Violation of Laws Governing Pharmacy)**

26 15. Respondent is subject to disciplinary action for unprofessional conduct pursuant to
27 section 4301, subdivision (o), for violating the laws governing pharmacy as set forth in paragraphs
28 11-14, above.

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

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:

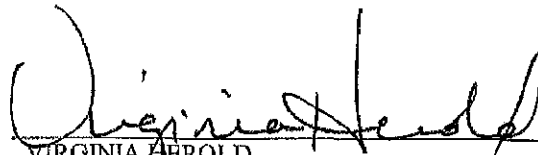
1. Revoking or suspending Pharmacy Technician Registration Number TCH 38215, issued to Dianna Wickliffe;

2. Ordering Dianna Wickliffe to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED:

3/27/14



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