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

In the Matter of the Accusation Against:
JESSICA MELLOR-DAVIS
109 E. 9th Street
National City, CA 91950
Pharmacy Technician Registration
No. TCH 66885

Respondent.

Case No. 4994
DEFAULT DECISION AND ORDER
[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about February 15, 2014, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4994 against Jessica Mellor-Davis (Respondent) before the Board of Pharmacy. (The Accusation is attached as Exhibit A.)
2. On or about January 10, 2006, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 66885 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 4994 and will expire on April 30, 2015, unless renewed. Section 4300.1 of the Code states that the expiration, cancellation, forfeiture, or suspension of a license shall not deprive the Board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.

1 3. On or about February 28, 2014, Respondent was served by Certified and First Class
2 Mail copies of the Accusation No. 4994, Statement to Respondent, Notice of Defense, Request
3 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
4 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
5 section 4100 and California Code of Regulations, title 16, section 1704, is required to be reported
6 and maintained with the Board. Respondent's address of record was and is:

7 109 E. 9th Street
8 National City, CA 91950

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. Government Code section 11506 states, in pertinent part:

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

18 6. Respondent failed to file a Notice of Defense within 15 days after service upon her of
19 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 4994.

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

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

25 8. Pursuant to its authority under Government Code section 11520, the Board finds
26 Respondent is in default. The Board will take action without further hearing and, based on the
27 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
28 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. 4994, finds that
the charges and allegations in Accusation No. 4994, are separately and severally, found to be true
and correct by clear and convincing evidence.

1 U.S.C. section 843, subdivision (a)(3), and the California Uniform Controlled Substances Act
2 (Health and Safety Code 11000, et seq.).

3 e. Respondent is subject to disciplinary action under section 4301, subdivision (o)
4 of the Code for unprofessional conduct in that on or between April 29, 2013 and June 9, 2013,
5 Respondent violated Business and Professions Code sections 4022, 4059, 4060, 4323, 4324, and
6 4325, and Board of Pharmacy Regulations (California Code of Regulations, Title 16, Section
7 1700, et seq.), when she obtained controlled substances using fraud and deceit.

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ORDER

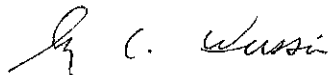
IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 66885, heretofore issued to Respondent Jessica Mellor-Davis, is revoked.

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 May 30, 2014.

It is so ORDERED on April 30, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By 

STAN C. WEISSER
Board President

DOJ Matter ID: SD2013706256

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
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2 LINDA K. SCHNEIDER
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3 State Bar No. 101336
AMANDA DODDS
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7 Facsimile: (619) 645-2061
Attorneys for Complainant

8
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. 4994

13 **JESSICA MELLOR-DAVIS**
109 E. 9th Street
14 **National City, CA 91950**

A C C U S A T I O N

15 **Pharmacy Technician Registration**
16 **No. TCH 66885**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about January 10, 2006, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 66885 to Jessica Mellor-Davis (Respondent). Respondent is also
25 known as Jessica Mendoza, and Jessica Shigeko Mellor. The Pharmacy Technician Registration
26 was in full force and effect at all times relevant to the charges brought herein and will expire on
27 April 30, 2015, unless renewed.

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1 discipline or to determine if the conviction is substantially related to the qualifications,
2 functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority," and
4 "registration."

5 9. Section 4022 of the Code states

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

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

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

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

16 10. Section 4059 of the Code states, in pertinent part, that a person may not furnish any
17 dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,
18 veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any
19 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist,
20 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

21 11. Section 4301 of the Code states:

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

26

27 (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit,
28 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.

. . . .

(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.

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

19

20 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
21 abetting the violation of or conspiring to violate any provision or term of this chapter or
22 of the applicable federal and state laws and regulations governing pharmacy, including
23 regulations established by the board or by any other state or federal regulatory agency.

24

25 12. Section 4323 of the Code states:

26 Every person who, in order to obtain any drug, falsely represents himself or herself
27 to be a physician or other person who can lawfully prescribe the drug, or falsely
28 represents that he or she is acting on behalf of a person who can lawfully prescribe the
drug, in a telephone or electronic communication with a pharmacist, shall be punished by
imprisonment in the county jail for not more than one year.

13. Section 4324 of the Code states:

(a) Every person who signs the name of another, or of a fictitious person, or
falsely makes, alters, forges, utters, publishes, passes, or attempts to pass, as genuine,
any prescription for any drugs is guilty of forgery and upon conviction thereof shall be
punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal
Code, or by imprisonment in a county jail for not more than one year.

(b) Every person who has in his or her possession any drugs secured by a forged
prescription shall be punished by imprisonment pursuant to subdivision (h) of Section
1170 of the Penal Code, or by imprisonment in the county jail for not more than one
year.

14. Section 4325, subdivision (a) of the Code states:

No person other than a physician, dentist, podiatrist, veterinarian, pharmacist, or
other person authorized by law to dispense, administer, or prescribe controlled
substances, or the person's agent acting under authorization by the person to print

1 prescription blanks, and acting in the regular practice of the person's profession, shall
2 knowingly and willfully manufacture, copy, reproduce, or possess, or cause to be
3 manufactured, copied, reproduced, or possessed, any prescription blank that purports to
4 bear the name, address, and federal registry or other identifying information of a
physician, dentist, podiatrist, veterinarian, or other person authorized by law to dispense,
administer, or prescribe controlled substances.

5 15. Health and Safety Code section 11368 states:

6 Every person who forges or alters a prescription or who issues or utters an altered
7 prescription, or who issues or utters a prescription bearing a forged or fictitious signature
8 for any narcotic drug, or who obtains any narcotic drug by any forged, fictitious, or
9 altered prescription, or who has in possession any narcotic drug secured by a forged,
fictitious, or altered prescription, shall be punished by imprisonment in the county jail
for not less than six months nor more than one year, or in the state prison.

10 16. United States Code, title 21, section 843 states, in pertinent part:

11 (a) It shall be unlawful for any person knowingly or intentionally –

12

13 (3) to acquire or obtain possession of a controlled substance by
14 misrepresentation, fraud, forgery, deception, or subterfuge;

15

16 **REGULATORY PROVISIONS**

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

18

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

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

22 (2) Total criminal record.

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

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

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

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

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

6 COSTS

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

13 DRUG

14 20. Hydrocodone/APAP, sold commercially as Vicodin, is a Schedule III controlled
15 substance as designated by Health and Safety Code Section 11056, subdivision (e)(4), and is a
16 dangerous drug pursuant to Business and Professions Code section 4022.

17 FIRST CAUSE FOR DISCIPLINE

18 (September 26, 2013 Criminal Conviction for Identity Theft)

19 21. Respondent has subjected her registration to discipline under sections 490 and 4301,
20 subdivision (l) of the Code in that she was convicted of a crime that is substantially related to the
21 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

22 a. On or about September 26, 2013, in a criminal proceeding entitled *People of*
23 *the State of California v. Jessica Shigeko Mellor*, in San Diego County Superior Court, case
24 number SCD249804, Respondent pled guilty to violating Health and Safety Code section 11368,
25 prescription forgery (Count 1); and Penal Code section 530.5, subdivision (a), identity theft
26 (Count 2), felonies. As a result of a plea agreement, the court dismissed eight additional counts
27 of prescription forgery (Health & Saf. Code, § 11368), eight counts of identity theft (Pen. Code, §
28 530.5(a)), and three counts of commercial burglary (Pen. Code, § 459).

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THIRD CAUSE FOR DISCIPLINE

(Knowingly Making/Signing Documents That Falsely Represent This Existence of a State of Facts)

23. Respondent has subjected her registration to discipline under section 4301, subdivisions (g) of the Code for unprofessional conduct in that Respondent created fraudulent prescription forms on her computer and signed the prescription forms using the identity of others in order to obtain controlled substances illegally, as described in paragraph 21, above.

FOURTH CAUSE FOR DISCIPLINE

(Violation of California Statutes Regulating Controlled Substances)

24. Respondent has subjected her registration to discipline under section 4301, subdivision (j) of the Code for unprofessional conduct in that on or between April 29, 2013 and June 9, 2013, Respondent knowingly violated Health and Safety Code section 11368, Title 21 U.S.C. section 843, subdivision (a)(3), and the California Uniform Controlled Substances Act (Health and Safety Code 11000, et seq.), as described in paragraph 21, above.

FIFTH CAUSE FOR DISCIPLINE

(Violating Federal & State Laws & Regulations Governing Pharmacy)

25. Respondent is subject to disciplinary action under section 4301, subdivision (o) of the Code for unprofessional conduct in that on or between April 29, 2013 and June 9, 2013, Respondent violated Business and Professions Code sections 4022, 4059, 4060, 4323, 4324, and 4325, and Board of Pharmacy Regulations (California Code of Regulations, Title 16, Section 1700, et seq.), when she obtained controlled substances using fraud and deceit, as described in paragraph 21, above.

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 66885, issued to Jessica Mellor-Davis;

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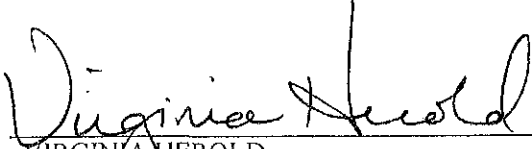
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2. Ordering Jessica Mellor-Davis to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED:

2/15/14



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

SD2013706256