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

In the Matter of the Accusation Against:  
  
**AYESHA NIEMA DIXON**  
**907 Barrett Ave.**  
**Richmond, CA 94801**  
  
**Pharmacy Technician Registration No. TCH 53272**  
  
Respondent.

Case No. 5516  
**DEFAULT DECISION AND  
ORDER (TCH 53272 ONLY)**  
  
[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about October 14, 2016, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, filed Accusation No. 5516 against Safeway Pharmacy #2940 and Ayesha Niema Dixon (Respondent Dixon) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about December 26, 2003, the Board issued Pharmacy Technician Registration No. TCH 53272 to Respondent Dixon. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 5516 and will expire on March 31, 2019, unless renewed.

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1           3.     On or about November 3, 2016, Respondent Dixon was served by Certified and First  
2 Class Mail copies of the Accusation No. 5516, Statement to Respondent, Notice of Defense,  
3 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,  
4 and 11507.7) at Respondent's address of record which, pursuant to Business and Professions  
5 Code section 4100, is required to be reported and maintained with the Board. Respondent  
6 Dixon's address of record was and is: 907 Barrett Ave., Richmond, CA 94801.

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

9           5.     The U.S. Postal Service did not return the aforementioned documents as  
10 undeliverable or otherwise indicate they were not received.

11          6.     Government Code section 11506(c) states, in pertinent part:

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

17          7.     The Board takes official notice of its records and the fact that Respondent Dixon  
18 failed to file a Notice of Defense within 15 days after service upon her of the Accusation, and  
19 therefore waived her right to a hearing on the merits of Accusation No. 5516.

20          8.     California Government Code section 11520(a) states, in pertinent part:

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

25          9.     Pursuant to its authority under Government Code section 11520, the Board finds  
26 Respondent Dixon is in default. The Board will take action without further hearing and, based on  
27 the relevant evidence contained in the Default Decision Investigatory Evidence Packet in this  
28 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. 5516, finds that the charges and allegations in Accusation No. 5516 as to Respondent Dixon  
alone are found to be true and correct by clear and convincing evidence.

1 DETERMINATION OF ISSUES

2 1. Based on the foregoing findings of fact, Respondent Ayesha Niema Dixon has  
3 subjected her Pharmacy Technician Registration No. TCH 53272 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) Furnishing Dangerous Drugs Without Prescription pursuant to Business and Professions  
9 Code sections 4301(j) and/or (o), and/or 4059(a);
- 10 b) Possession of Controlled Substances pursuant to Business and Professions Code  
11 sections 4060 and/or 4301(j) and/or (o), and/or Health and Safety Code section 11350;
- 12 c) Dishonesty pursuant to Business and Professions Code sections 4301(f), (j) and/or (o);
- 13 d) Unprofessional Conduct pursuant to Business and Professions Code section 4301.

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ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 53272, heretofore issued to Respondent Ayesha Niema Dixon, is revoked.

Pursuant to Government Code section 11520(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 at 5:00 p.m. on December 6, 2017.

It is so ORDERED on November 6, 2017.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By \_\_\_\_\_

Amy Gutierrez, Pharm.D.  
Board President

41821854.DOC  
DOJ Matter ID:SF2015402085

Attachment:  
Exhibit A: Accusation

# Exhibit A

Accusation

1 KAMALA D. HARRIS  
Attorney General of California  
2 JOSHUA A. ROOM  
Supervising Deputy Attorney General  
3 ROSALDA PEREZ  
Deputy Attorney General  
4 State Bar No. 284646  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
Telephone: (415) 703-1618  
6 Facsimile: (415) 703-5480  
*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. 5516

12 **SAFEWAY PHARMACY #2940**  
13 **11450 San Pablo Avenue**  
**El Cerrito, CA 94530**

**A C C U S A T I O N**

14 **Pharmacy License No. PHY 52250**  
15 **Pharmacy License No. PHY 46760 (Cancelled 1/30/15)**

16 **and**

17 **AYESHA NIEMA DIXON**  
18 **907 Barrett Ave.**  
19 **Richmond, CA 94801**

20 **Pharmacy Technician Registration No. TCH 53272**

21 Respondents.

22  
23 Complainant alleges:

24 **PARTIES**

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

27 2. On or about April 9, 2004, the Board issued Pharmacy License Number PHY 46760  
28 to Safeway Pharmacy (Respondent Pharmacy). The Pharmacy License was in full force and effect

1 at all times relevant to the charges brought herein and was cancelled on January 30, 2015, and has  
2 not been renewed.

3 3. On or about January 30, 2015, the Board issued Pharmacy License Number PHY  
4 52250 to Respondent Pharmacy. The Pharmacy License Number was in full force and effect at all  
5 times relevant to the charges brought herein and will expire on January 1, 2017, unless renewed.

6 4. On or about December 26, 2003, the Board issued Pharmacy Technician Registration  
7 Number TCH 53272 to Ayesha Niema Dixon (Respondent Technician). The Pharmacy Technician  
8 Registration was in full force and effect at all times relevant to the charges brought herein and will  
9 expire on March 31, 2017, unless renewed.

#### 10 JURISDICTION

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

13 6. Business and Professions Code (Code) section 4300 provides that every license issued  
14 by the Board may be suspended or revoked.

15 7. Code section 4300.1 states:

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

#### 21 STATUTORY AND REGULATORY PROVISIONS

22 8. Code section 4059 states:

23 "(a) A person may not furnish any dangerous drug, except upon the prescription of a  
24 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section  
25 3640.7. A person may not furnish any dangerous device, except upon the prescription of a  
26 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section  
27 3640.7.

28 "..."

1 9. Code section 4060 states:

2 "A person shall not possess any controlled substance, except that furnished to a person upon  
3 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor  
4 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-  
5 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician  
6 assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a  
7 pharmacist pursuant to Section 4052.1, 4052.2, or 4052.6. This section does not apply to the  
8 possession of any controlled substance by a manufacturer, wholesaler, third-party logistics  
9 provider, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian,  
10 naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, if in stock  
11 in containers correctly labeled with the name and address of the supplier or producer.

12 "This section does not authorize a certified nurse-midwife, a nurse practitioner, a physician  
13 assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices."

14 10. Code section 4081 states:

15 "(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs or  
16 dangerous devices shall be at all times during business hours open to inspection by authorized  
17 officers of the law, and shall be preserved for at least three years from the date of making. A  
18 current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary  
19 food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital,  
20 institution, or establishment holding a currently valid and unrevoked certificate, license, permit,  
21 registration, or exemption under Division 2 (commencing with Section 1200) of the Health and  
22 Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and  
23 Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

24 "..."

25 11. Code section 4301 states:

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

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



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"...

"(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.

"...

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

"...

"(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.

"..."

12. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess any controlled substance listed in Schedule II (Health and Safety Code section 11055), subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

13. California Code of Regulations, title 16, section 1714, provides, in pertinent part:

"..."

"(b) Each pharmacy licensed by the board shall maintain its facilities, space, fixtures, and equipment so that drugs are safely and properly prepared, maintained, secured and distributed. The pharmacy shall be of sufficient size and unobstructed area to accommodate the safe practice of pharmacy.

"..."

CONTROLLED SUBSTANCES/DANGEROUS DRUGS

14. Code section 4021 states:

"Controlled substance" means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code."

///

1 15. Code section 4022 states:

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

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

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

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

11 16. Soma is a brand name for carisprodol, a dangerous drug as designated by Code section  
12 4022. Since January 11, 2012, carisprodol has been a Schedule IV controlled substance at the  
13 federal level (21 C.F.R. § 1308.14(c)(6)). It is a depressant drug.

14 17. Norco, Vicodin, Vicodin ES, Lortab, and Lorcet are among the brand names for  
15 compounds of varying dosages of acetaminophen (aka APAP) and hydrocodone, a Schedule III  
16 controlled substance as designated by Health and Safety Code section 11056(e)(4) and dangerous  
17 drug as designated by Business and Professions Code section 4022. The varying compounds are  
18 also known generically as hydrocodone with APAP. These are all narcotic drugs. Products like  
19 these that combine hydrocodone with non-controlled substances are also called hydrocodone  
20 combination products. Effective October 6, 2014, hydrocodone combination productions were  
21 switched at the federal level from Schedule III (21 C.F.R. § 1308.13(e)(1)(iii) and (iv)) to  
22 Schedule II (21 C.F.R. § 1308.12(b)(1)). This includes hydrocodone with APAP drugs.

23 18. Phenergan with codeine is a brand name for a compound consisting of the  
24 antihistamine promethazine, a dangerous drug as designated by Code section 4022, and codeine, a  
25 Schedule V controlled substance as designated by Health and Safety Code section 11058 and a  
26 dangerous drug as designated by Code section 4022. This drug is also known generically as  
27 promethazine with codeine. It is an antihistamine/antitussive, a narcotic analgesic, and a sleep  
28 aid.

1 COST RECOVERY

2 19. Code section 125.3 states, in pertinent part, that the Board may request the  
3 administrative law judge to direct a licentiate found to have committed a violation or violations of  
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
5 enforcement of the case.

6 FACTUAL BACKGROUND

7 20. On or about August 14, 2014, a Board Inspector inspected Respondent Pharmacy  
8 after receiving a letter from the pharmacist-in-charge indicating a loss of controlled substances at  
9 Respondent Pharmacy. The Inspector discovered the following:

10 a. Shortages of the following controlled substances between May 2013 and May 2014:

- 11 1. Promethazine w/ codeine: 6,088 ml;  
12 2. Carisprodol: 4,195 tablets (350 mg);  
13 3. Hydrocodone w/APAP: 22, 410 tablets (10/325 mg); 992 tablets (5/325 mg).

14 b. Respondent Pharmacy's video surveillance footage from May 2, 2014 and May 6,  
15 2014, showed Respondent Technician taking bottles of promethazine w/codeine from Respondent  
16 Pharmacy without permission.

17 21. Respondent Technician resigned from her position on May 16, 2014.

18  
19 Respondent Safeway Pharmacy

20 FIRST CAUSE FOR DISCIPLINE

21 (Failure to Maintain Controlled Substances in Safe and Secure Manner )

22 22. Respondent Pharmacy is subject to disciplinary action under Code sections 4301,  
23 subdivisions (j) and/or (o), and/or California Code of Regulations, title 16, section 1714,  
24 subdivision (b), in that it failed to ensure the security of its controlled substance and dangerous  
25 drug stock against employee pilferage, as described in paragraph 20, above.

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1 SECOND CAUSE FOR DISCIPLINE

2 (Failure to Have Records of Acquisition and Disposition)

3 23. Respondent Pharmacy is subject to disciplinary action under Code sections 4301,  
4 subdivisions (j) and/or (o), and/or 4081, subdivision (a), in that, due to the shortage, Respondent  
5 Pharmacy's records of disposition were inaccurate or incomplete.

6  
7 Respondent Ayesha Niema Dixon

8 THIRD CAUSE FOR DISCIPLINE

9 (Furnishing Dangerous Drugs Without Prescription)

10 24. Respondent Technician is subject to disciplinary action under Code sections 4301,  
11 subdivisions (j) and/or (o), and/or 4059, subdivision (a), in that Respondent Technician furnished  
12 controlled substances and/or dangerous drugs from Respondent Pharmacy to herself or another, as  
13 described in paragraph 20, above.

14 FOURTH CAUSE FOR DISCIPLINE

15 (Possession of Controlled Substances)

16 25. Respondent Technician is subject to disciplinary action under Code sections 4060  
17 and/or 4301, subdivisions (j) and/or (o), and/or Health and Safety Code section 11350, in that she  
18 possessed, conspired to possess, and/or assisted in or abetted possession of a controlled substances  
19 without a prescription, as described in paragraph 20, above.

20 FIFTH CAUSE FOR DISCIPLINE

21 (Dishonesty)

22 26. Respondent Technician is subject to disciplinary action under Code section 4301,  
23 subdivisions (f), (j) and/or (o), in that Respondent Technician committed a dishonest act when she  
24 pilfered controlled substances from Respondent Pharmacy, as described in paragraph 20, above.

25 SIXTH CAUSE FOR DISCIPLINE

26 (Unprofessional Conduct)

27 27. Respondent Technician is subject to discipline under Code section 4301 in that she  
28 engaged in unprofessional conduct, as described in paragraph 20, above.

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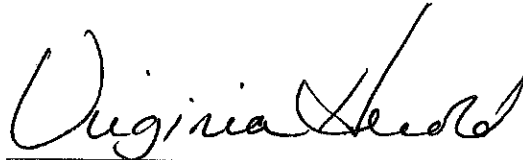
PRAYER

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 Original Pharmacy License Number PHY 46760, issued to Safeway Pharmacy #2940 (Respondent Pharmacy);
2. Revoking or suspending Original Pharmacy License Number PHY 52250, issued to Respondent Pharmacy;
3. Revoking or suspending Pharmacy Technician Registration Number TCH 53272, issued to Ayesha Niema Dixon (Respondent Technician);
4. Ordering Respondents 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; and
5. Taking such other and further action as deemed necessary and proper.

DATED: \_\_\_\_\_

10/14/16



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

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