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

In the Matter of the Accusation Against:

**DIANA DEBBIE BAUMER,
AKA DIANA DEBBIE VALENZUELA
1201 Parnell Place
Costa Mesa, CA 92626**

**Pharmacy Technician Registration
No. TCH 1484**

Respondent.

Case No. 5548

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about April 8, 2016, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, filed Accusation No. 5548 against Diana Debbie Baumer, also known as Diana Debbie Valenzuela (Respondent) before the Board. (A copy of the Accusation is attached as Exhibit A.)
2. On or about November 4, 1992, the Board issued Pharmacy Technician Registration No. TCH 1484 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 5548 and will expire on August 31, 2016, unless renewed. Section 4300.1 of the Code provides that the expiration of a

1 license shall not deprive the board of jurisdiction to commence or proceed with any investigation
2 of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or
3 revoking the license.

4 3. On or about April 22, 2016, Respondent was served by Certified and First Class Mail
5 copies of the Accusation No. 5548, Statement to Respondent, Notice of Defense, Request for
6 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
7 Respondent's address of record which, pursuant to Business and Professions Code section 4100,
8 is required to be reported and maintained with the Board. Respondent's address of record was
9 and is:

10 1201 Parnell Place
11 Costa Mesa, CA 92626

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

14 5. On or about April 27, 2016, the aforementioned documents were delivered to
15 Respondent's address of record.

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

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

22 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
23 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 5548.

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

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

9 Pursuant to its authority under Government Code section 11520, the Board finds
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

1 taking official notice of all the investigatory reports, exhibits and statements contained therein on
2 file at the Board's offices regarding the allegations contained in Accusation No. 5548, finds that
3 the charges and allegations in Accusation No. 5548, are separately and severally, found to be true
4 and correct by clear and convincing evidence.

5 10. Taking official notice of its own internal records, pursuant to Business and
6 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
7 and Enforcement is \$3,381 in costs as of May 23, 2016.

8 **DETERMINATION OF ISSUES**

9 1. Based on the foregoing findings of fact, Respondent Diana Debbie Baumer has
10 subjected her Pharmacy Technician Registration No. TCH 1484 to discipline.

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

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

15 4. Respondent has subjected her registration to discipline under section 4301(f) of the
16 Code for unprofessional conduct in that Respondent stole hydrocodone APAP from a patient and
17 her employer using fraud, deceit, and dishonesty.

18 5. Respondent has subjected her registration to discipline under section 4301(j) of the
19 Code for unprofessional conduct in that Respondent knowingly violated Health and Safety Code
20 section 11173(a), Title 21 U.S.C. section 843(a)(3), and the California Uniform Controlled
21 Substances Act (Health and Safety Code 11000, et seq.).

22 6. Respondent is subject to disciplinary action under section 4301(o) of the Code for
23 unprofessional conduct in that she violated Business and Professions Code sections 4059 and
24 4060, and Board of Pharmacy Regulations (California Code of Regulations, Title 16, Section
25 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 1484, heretofore issued to Respondent Diana Debbie Baumer, also known as Diana Debbie Valenzuela, 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 at 5:00 p.m. on July 29, 2016.

It is so ORDERED on June 29, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____

Amy Gutierrez, Pharm.D.
Board President

DOJ Matter ID: SD2015801878

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

(DIANA DEBBIE BAUMER)

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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:
13 **DIANA DEBBIE BAUMER,**
AKA DIANA DEBBIE VALENZUELA
14 **1201 Parnell Place**
Costa Mesa, CA 92626
15 **Pharmacy Technician Registration**
16 **No. TCH 1484**
17 Respondent.

Case No. 5548
ACCUSATION

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 November 4, 1992, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 1484 to Diana Debbie Baumer, also known as Diana Debbie
25 Valenzuela (Respondent). The Pharmacy Technician Registration was in full force and effect at
26 all times relevant to the charges brought herein and will expire on August 31, 2016, unless
27 renewed.
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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 (Code) unless otherwise indicated.

5 4. Section 4300, subdivision (a) of the Code states: "Every license issued may be
6 suspended or revoked."

7 5. Section 4300.1 of the Code states:

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

12 STATUTORY PROVISIONS

13 6. Section 4022 of the Code states

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

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

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

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

24 7. Section 4026 of the Code states: "'Furnish' means to supply by any means, by sale or
25 otherwise."

26 8. Section 4059 of the Code states, in pertinent part, that a person may not furnish any
27 dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,
28 veterinarian, or naturopathic doctor.

9. Section 4060 of the Code states, in pertinent part, that a person may not possess any
controlled substance, except that furnished to a person upon the prescription of a physician,
dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor.

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10. Section 4301 of the Code states:

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

....

(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, or 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. . .

11. Health and Safety Code section 11173, subdivision (a) states:

No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

12. United States Code, title 21, section 843, subdivision (a)(3) states:

(a) It shall be unlawful for any person knowingly or intentionally – (3) to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge.

REGULATORY PROVISIONS

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.

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1 **COSTS**

2 14. Section 125.3 of the Code provides, 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, with failure of the licentiate to comply subjecting the license to not
6 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs
7 may be included in a stipulated settlement.

8 **DRUG**

9 15. Hydrocodone bitartate with acetaminophen (hydrocodone APAP), is a Schedule II
10 controlled substance as designated by Title 21, Code of Federal Regulations section 1308.12,
11 subdivision (b)(1)(vi), and it is designated as a Schedule III controlled substance under
12 (California) Health and Safety Code section 11056, subdivision (e)(4). It is a dangerous drug
13 pursuant to Business and Professions Code section 4022.

14 **FACTUAL ALLEGATIONS**

15 16. On April 29, 2014, the Board received notification that a CVS Pharmacy in Costa
16 Mesa had reported a significant loss of hydrocodone APAP and carisoprodol from its inventory.
17 In a subsequent inspection of the pharmacy conducted by the Board on March 5, 2015, a CVS
18 pharmacist told the Board Inspector that Respondent had been involved in the diversion of
19 hydrocodone APAP while employed as a pharmacy technician. On or about November 20, 2014,
20 Patient MB contacted CVS Pharmacy after she discovered she received only three of the four
21 prescriptions she picked up at the pharmacy. One bottle containing 100 tablets of hydrocodone
22 APAP 10/325 mg was missing. Respondent was identified as the employee who dispensed the
23 prescription to Patient MB. A CVS Loss Prevention Manager interviewed Respondent on
24 December 11, 2014. In a written statement, Respondent admitted that she stole the hydrocodone
25 APAP prescription that she did not give to Patient MB, and she also admitted stealing additional
26 hydrocodone at least four times. Respondent stated that she gave the stolen medication to her
27 father "who was always in pain." The total loss attributed to Respondent's diversion was 220
28 tablets of hydrocodone APAP 10/325 mg, and 5 tablets of hydrocodone APAP 5/325 mg.

1 Respondent agreed to reimburse CVS Pharmacy in the amount of \$169.98 for the stolen
2 hydrocodone APAP. Respondent's employment with CVS Pharmacy was terminated.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Commission of Acts Involving Dishonesty, Fraud, Deceit & Corruption)**

5 17. Respondent has subjected her registration to discipline under section 4301,
6 subdivision (f) of the Code for unprofessional conduct in that Respondent stole hydrocodone
7 APAP from a patient and her employer using fraud, deceit, and dishonesty, as described in
8 paragraph 16, above.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Violation of California Statutes Regulating Controlled Substances)**

11 18. Respondent has subjected her registration to discipline under section 4301,
12 subdivision (j) of the Code for unprofessional conduct in that Respondent knowingly violated
13 Health and Safety Code section 11173, subdivision (a), Title 21 U.S.C. section 843, subdivision
14 (a)(3), and the California Uniform Controlled Substances Act (Health and Safety Code 11000, et
15 seq.), as described in paragraph 16, above.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Violating Federal & State Laws & Regulations Governing Pharmacy)**

18 19. Respondent is subject to disciplinary action under section 4301, subdivision (o) of the
19 Code for unprofessional conduct in that she violated Business and Professions Code sections
20 4059 and 4060, and Board of Pharmacy Regulations (California Code of Regulations, Title 16,
21 Section 1700, et seq.), when she obtained controlled substances using fraud and deceit, as
22 described in paragraph 16, above.

23 **PRAYER**

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

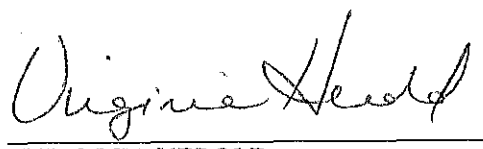
26 1. Revoking or suspending Pharmacy Technician Registration Number TCH 1484,
27 issued to Diana Debbie Baumer, also known as Diana Debbie Valenzuela;

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1 2. Ordering Diana Debbie Baumer to pay the Board of Pharmacy the reasonable costs of
2 the investigation and enforcement of this case, pursuant to Business and Professions Code section
3 125.3;

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

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7 DATED: 4/8/16



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

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