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

In the Matter of the Accusation Against:

**JENIFER MARIE BRYANT
1609 Branstetter Circle
Redding, CA 96001**

**Pharmacy Technician Registration No. TCH
103123**

Respondent.

Case No. 5808

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

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FINDINGS OF FACT

1. On or about June 2, 2016, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 5808 against Jenifer Marie Bryant (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about June 10, 2010, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 103123 to Respondent. The Pharmacy Technician Registration expired on July 31, 2015, and has not been renewed.

3. On or about June 7, 2016, Respondent was served by Certified and First Class Mail copies of the Accusation No. 5808, 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: 1609 Branstetter Circle, Redding, CA 96001.

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1 4. Service of the Accusation was effective as a matter of law under the provisions of
2 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
3 124.

4 5. On or about June 17, 2016, the aforementioned documents were returned by the U.S.
5 Postal Service marked "No Forwarding Address." The address on the documents was the same as
6 the address on file with the Board. Respondent failed to maintain an updated address with the
7 Board and the Board has made attempts to serve the Respondent at the address on file.
8 Respondent has not made herself available for service and therefore, has not availed herself of her
9 right to file a notice of defense and appear at hearing.

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

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

14 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
15 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 5808.

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

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

20 9. Pursuant to its authority under Government Code section 11520, the Board finds
21 Respondent is in default. The Board will take action without further hearing and, based on the
22 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
23 taking official notice of all the investigatory reports, exhibits and statements contained therein on
24 file at the Board's offices regarding the allegations contained in Accusation No. 5808, finds that
25 the charges and allegations in Accusation No. 5808, are separately and severally, found to be true
26 and correct by clear and convincing evidence.

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1 10. Taking official notice of its own internal records, pursuant to Business and
2 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
3 and Enforcement is \$4,323.75 as of July 18, 2016.

4 **DETERMINATION OF ISSUES**

5 1. Based on the foregoing findings of fact, Respondent Jenifer Marie Bryant has
6 subjected her Pharmacy Technician Registration No. TCH 103123 to discipline.

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

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

11 a. Code section 4301(f), acts involving moral turpitude, dishonesty, fraud, or deceit.
12 Respondent authorized refills for two of her own prescriptions, phentermine and phendimetrazine
13 when there were no remaining authorized refills. Respondent's insurance was billed, and she
14 paid a co-pay.

15 b. Code section 4301(j), violation of statutes regulating controlled substances.
16 Respondent violated Health and Safety Code sections 11170, 11171, 11157, 11173(a), 11173(b),
17 and Code section 4060 by fraudulently authorizing the prescriptions as set forth in the previous
18 paragraph, obtaining controlled substances by fraud, deceit, or subterfuge, and possessing
19 controlled substances for which she did not have a valid prescription.

20 c. Code section 4301(o), violation of laws governing pharmacy by fraudulently
21 authorizing the prescriptions as set forth above.

22 **ORDER**

23 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 103123, heretofore
24 issued to Respondent Jenifer Marie Bryant, is revoked.

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

5 This Decision shall become effective at 5:00 p.m. on September 23, 2016.

6 It is so ORDERED on August 24, 2016.

7 BOARD OF PHARMACY
8 DEPARTMENT OF CONSUMER AFFAIRS
9 STATE OF CALIFORNIA

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12 By

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14 Amy Gutierrez, Pharm.D.
15 Board President
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Exhibit A

Accusation

(JENIFER MARIE BRYANT)

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7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 5808

12 **JENIFER MARIE BRYANT**
13 **1609 Branstetter Circle**
Redding, CA 96001

A C C U S A T I O N

14 **Pharmacy Technician Registration No.**
15 **TCH 103123**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about June 10, 2010, the Board of Pharmacy issued Pharmacy Technician
22 Registration Number TCH 103123 to Jenifer Marie Bryant (Respondent). The Pharmacy
23 Technician Registration expired on July 31, 2015, and was cancelled on November 1, 2015,
24 pursuant to Business and Professions Code section 4402, subdivision (e).

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.

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

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

5. Section 4300.1 of the Code states:

"The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee 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."

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

"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..."

7. Section 4060 of the Code states in pertinent part:

"No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician..."

8. Health and Safety Code section 11170 states in pertinent part:

"No person shall prescribe, administer, or furnish a controlled substance for himself."

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1 9. Health and Safety Code section 11171 states:

2 "No person shall prescribe, administer, or furnish a controlled substance except under the
3 conditions and in the manner provided by this division."

4 10. Health and Safety Code section 11157 states:

5 "No person shall issue a prescription that is false or fictitious in any respect."

6 11. Health and Safety Code section 11173 states in pertinent part:

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

10 "(b) No person shall make a false statement in any prescription, order, report, or record,
11 required by this division..."

12 DRUGS

13 12. Adipex P is the brand name for the drug phentermine. It is a dangerous drug pursuant
14 to Code section 4022, and a Schedule IV controlled substance pursuant to Health and Safety Code
15 section 11057.

16 13. Bontril is the brand name for the drug phendimetrazine tartrate. It is a dangerous drug
17 pursuant to Code section 4022, and a Schedule III controlled substance pursuant to Health and
18 Safety Code section 11056.

19 COST RECOVERY

20 14. Section 125.3 of the Code states, in pertinent part, that the Board may request the
21 administrative law judge to direct a licentiate found to have committed a violation or violations of
22 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
23 enforcement of the case.

24 FIRST CAUSE FOR DISCIPLINE

25 (Acts Involving Moral Turpitude, Dishonesty, Fraud, or Deceit)

26 15. Respondent is subject to disciplinary action for unprofessional conduct pursuant to
27 section 4301, subdivision (f), in that Respondent committed acts involving moral turpitude,
28 dishonesty, fraud, or deceit. The circumstances are as follows:

1 a. On or about April 15, 2015, while working as a Pharmacy Technician at
2 Walgreens, Respondent fraudulently authorized refills for two of her prescriptions in the
3 Walgreens computer system that did not have any authorized refills. The two prescriptions were
4 for 90 capsules of phentermine and 120 tablets of phendimetrazine. Respondent forged the
5 prescription refills by falsely indicating that "BCD" from her physician's office had authorized the
6 prescriptions. The prescription was filled by a Pharmacist and billed to Respondent's insurance,
7 and Respondent picked up and paid a co-pay to purchase the prescriptions.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Violation of Statutes Regulating Controlled Substances)**

10 16. Respondent is subject to disciplinary action for unprofessional conduct pursuant to
11 section 4301, subdivision (j), in that Respondent violated statutes regulating controlled substances.
12 The circumstances are as follows:

13 a. On or about April 15, 2015, Respondent violated Health and Safety Code
14 section 11170, by authorizing two prescriptions refills for herself, as set forth in paragraph 15,
15 above.

16 b. On or about April 15, 2015, Respondent violated Health and Safety Code
17 section 11171, by fraudulently authorizing two prescription refills that were not approved by her
18 treating physician, as set forth in paragraph 15, above.

19 c. On or about April 15, 2015, Respondent violated Health and Safety Code
20 section 11157, by issuing two prescriptions refills that were false and fictitious, as set forth in
21 paragraph 15, above.

22 d. On or about April 15, 2015, Respondent violated Health and Safety Code
23 section 11173, subdivision (a), by obtaining controlled substances by fraud, deceit, or subterfuge,
24 as set forth in paragraph 15, above.

25 e. On or about April 15, 2015, Respondent violated Health and Safety Code
26 section 11173, subdivision (b), by making a false statement on two prescriptions when she stated
27 that the prescription refills were authorized by "BCD," when in fact they were not.

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f. On or about April 15, 2015, Respondent violated Code section 4060 by possessing the controlled substances phentermine and phendimetrazine without a valid prescription.

THIRD CAUSE FOR DISCIPLINE

(Violation of Laws Governing Pharmacy)

17. Respondent is subject to disciplinary action for unprofessional conduct pursuant to section 4301, subdivision (o), in that Respondent committed acts in violation of the laws governing pharmacy as set forth in paragraphs 15 and 16, 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 103123, issued to Jenifer Marie Bryant;
- 2. Ordering Jenifer Marie Bryant 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
- 3. Taking such other and further action as deemed necessary and proper.

DATED: 6/2/16

Virginia Herold

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

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