

1 EDMUND G. BROWN JR.
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 ANTOINETTE B. CINCOTTA
Deputy Attorney General
4 State Bar No. 120482
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2095
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 3847

12 **ROBERT LOUIS LINSDAY**
13 **413 Ford Road, #C**
14 **Costa Mesa, CA 92627**

A C C U S A T I O N

15 **Pharmacy Technician Registration No. TCH 85304**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about June 1, 2009, the Board issued Pharmacy Technician Registration
22 Number TCH 85304 to Robert Louis Lindsay (Respondent). The Pharmacy Technician
23 Registration was in full force and effect at all times relevant to the charges brought herein and
24 will expire on December 31, 2010, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board under the authority of the following
27 laws. All section references are to the Business and Professions Code (Code) unless otherwise
28 indicated.

1 4. Section 4300 of the Code states:

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

3 5. Section 118 of the Code states:

4 "(a) The withdrawal of an application for a license after it has been filed with a board in the
5 department shall not, unless the board has consented in writing to such withdrawal, deprive the
6 board of its authority to institute or continue a proceeding against the applicant for the denial of
7 the license upon any ground provided by law or to enter an order denying the license upon any
8 such ground.

9 "(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a
10 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by
11 order of a court of law, or its surrender without the written consent of the board, shall not, during
12 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
13 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
14 provided by law or to enter an order suspending or revoking the license or otherwise taking
15 disciplinary action against the licensee on any such ground.

16 "(c) As used in this section, 'board' includes an individual who is authorized by any
17 provision of this code to issue, suspend, or revoke a license, and 'license' includes 'certificate,'
18 'registration,' and 'permit.'"

19 **STATUTORY AUTHORITIES**

20 6. Section 4059 of the Code states in relevant part:

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

26 "

27 ///

28 ///

1 7. Section 4301 of the Code states:

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

5 “. . . .

6 “(h) The administering to oneself, of any controlled substance, or the use of any dangerous
7 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
8 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
9 to the extent that the use impairs the ability of the person to conduct with safety to the public the
10 practice authorized by the license.

11 “. . . .

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

16 “. . . .”

17 COST RECOVERY

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

22 DRUG

23 9. Cocaine is a Schedule II controlled substance as designated by Health and Safety
24 Code section 11055(b)(6), and is a dangerous drug pursuant to Business & Professions Code
25 section 4022.

26 ///

27 ///

28 ///

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct – Dangerous Use of Drugs and Alcohol)**

3 10. Respondent is subject to disciplinary action for unprofessional conduct under section
4 Code section 4301, subdivision (h), in that Respondent used a controlled substance, cocaine, and
5 alcohol in a manner dangerous to himself and others. The circumstances are as follows:

6 11. On or about February 20, 2010, an officer of the Costa Mesa Police Department was
7 on routine patrol when he observed two male subjects walking down the street at about 9:06 p.m.
8 The officer asked the subjects if either was on probation or parole. When one of the male
9 subjects responded that he was on probation, the officer told that subject to go into the parking lot
10 so he could talk to him. The officer then drove his police vehicle into the parking lot, got out of
11 his police vehicle to speak with the subject. The other male subject, later identified as
12 Respondent, followed his friend into the parking lot. As he spoke to the two men, the officer
13 observed Respondent repeatedly tapping his right foot on the ground. Respondent also repeatedly
14 crossed, and then uncrossed his arms in front of his chest. Respondent appeared to the officer to
15 be very agitated and nervous. The officer measured Respondent's pulse at 134 beats per minute.
16 During internal clock and balance testing, Respondent's eyelids were rapidly fluttering and the
17 officer could see his jaw muscles clenching together as if he were grinding his teeth. The officer
18 observed a heavy white coating on top of Respondent's tongue. At about 9:15 p.m. Respondent's
19 pulse measured 144 beats per minute. Respondent told the officer that he had snorted half a gram
20 of cocaine the prior night, and had consumed alcohol that day.

21 **SECOND CAUSE FOR DISCIPLINE**

22 **(Unprofessional Conduct – Unlawful Self-Furnishing of Dangerous Drugs)**

23 12. Respondent is subject to disciplinary action for unprofessional conduct under section
24 Code section 4301, subdivision (o), in that Respondent furnished a dangerous drug, cocaine, to
25 himself without a prescription in violation of Code section 4059 as set forth in paragraph 11,
26 which is incorporated here by this reference.

27 ///

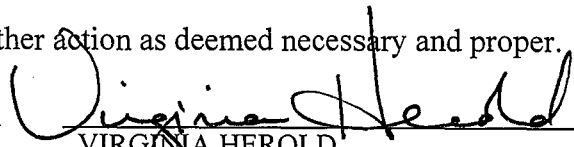
28 ///

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 85304, issued to Robert Louis Lindsay
2. Ordering Robert Louis Lindsay 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: 11/29/10



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

SD2010702572