

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 ADRIAN R. CONTRERAS
Deputy Attorney General
4 State Bar No. 267200
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2634
7 Facsimile: (619) 645-2061
E-mail: Adrian.Contreras@doj.ca.gov
8 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 4954

13 **TIA LASHA KELLY**
14 **8760 Jamacha Road, 2G**
Spring Valley, CA 91977

A C C U S A T I O N

15 **Pharmacy Technician Registration No. TCH**
16 **80650**

17 Respondent.

18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about January 8, 2008, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 80650 to Tia Lasha Kelly (Respondent). The Pharmacy Technician
24 Registration expired on August 31, 2013, and has not been renewed.

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.

1 4. Section 4300 of the Code states:

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

3 "(b) The board shall discipline the holder of any license issued by the board, whose default
4 has been entered or whose case has been heard by the board and found guilty, by any of the
5 following methods:

6 "(1) Suspending judgment.

7 "(2) Placing him or her upon probation.

8 "(3) Suspending his or her right to practice for a period not exceeding one year.

9 "(4) Revoking his or her license.

10 "(5) Taking any other action in relation to disciplining him or her as the board in its
11 discretion may deem proper.

12 " . . .

13 "(e) The proceedings under this article shall be conducted in accordance with Chapter 5
14 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board
15 shall have all the powers granted therein. The action shall be final, except that the propriety of the
16 action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil
17 Procedure."

18 5. Section 4300.1 of the Code states:

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

24 **STATUTORY PROVISIONS**

25 6. Section 480 of the Code states:

26 "(a) A board may deny a license regulated by this code on the grounds that the applicant has
27 one of the following:

28 " . . .

1 "(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially
2 benefit himself or herself or another, or substantially injure another.

3 "[3](B) The board may deny a license pursuant to this subdivision only if the crime or act is
4 substantially related to the qualifications, functions, or duties of the business or profession for
5 which application is made.

6 "...."

7 7. Section 482 of the Code states:

8 "Each board under the provisions of this code shall develop criteria to evaluate the
9 rehabilitation of a person when:

10 "(a) Considering the denial of a license by the board under Section 480; or

11 "(b) Considering suspension or revocation of a license under Section 490.

12 "Each board shall take into account all competent evidence of rehabilitation furnished by
13 the applicant or licensee."

14 8. Section 490 of the Code provides, in pertinent part, that a board may suspend or
15 revoke a license on the ground that the licensee has been convicted of a crime substantially related
16 to the qualifications, functions, or duties of the business or profession for which the license was
17 issued.

18 9. Section 493 of the Code states:

19 "Notwithstanding any other provision of law, in a proceeding conducted by a board within
20 the department pursuant to law to deny an application for a license or to suspend or revoke a
21 license or otherwise take disciplinary action against a person who holds a license, upon the
22 ground that the applicant or the licensee has been convicted of a crime substantially related to the
23 qualifications, functions, and duties of the licensee in question, the record of conviction of the
24 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
25 and the board may inquire into the circumstances surrounding the commission of the crime in
26 order to fix the degree of discipline or to determine if the conviction is substantially related to the
27 qualifications, functions, and duties of the licensee in question.

28 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'"

1 10. 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 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
7 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
8 whether the act is a felony or misdemeanor or not.

9 ". . .

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

12 ". . .

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

28

1 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
2 indictment.

3 "...

4 "(p) Actions or conduct that would have warranted denial of a license.

5 "... "

6 11. Section 4060 of the Code states:

7 "No person shall possess any controlled substance, except that furnished to a person upon
8 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
9 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
10 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
11 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
12 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
13 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
14 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
15 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
16 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
17 labeled with the name and address of the supplier or producer.

18 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a
19 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and
20 devices."

21 REGULATORY PROVISIONS

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

23 "...

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

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

1 "(2) Total criminal record.

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

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

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

6 13. California Code of Regulations, title 16, section 1770, states:

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

13 COSTS

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

18 DRUGS

19 15. Hydrocodone/APAP is marketed under numerous trade names, including Vicodin and
20 Norco. Hydrocodone/APAP is a Schedule III controlled substance under Health and Safety Code
21 section 11056, subdivision (e)(5) and a dangerous drug under Code section 4022.

22 16. Alprazolam is marketed under numerous trade names, including Xanax. It is used to
23 relieve anxiety. It is a Schedule IV controlled substance under Health and Safety Code section
24 11057, subdivision (d)(1), and a dangerous drug under Code section 4022.

25 ///

26 ///

27 ///

28 ///

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(December 20, 2011, Criminal Conviction for Grand Theft**

3 **Between October 25 and 31, 2011)**

4 17. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision
5 (l) of the Code in that she was convicted of a crime substantially related to the qualifications,
6 functions, and duties of a licensee. The circumstances are as follows:

7 18. On or about December 20, 2011, in a criminal proceeding entitled *People v. Kelly*, in
8 San Diego County Superior Court, case number CD237403, Respondent was convicted on her
9 plea of guilty of violating Penal Code section 487, subdivision (a), grand theft, a felony. As a
10 result of a plea agreement, one count of violating Health and Safety Code section 11351,
11 possession for sale of a controlled substance, a felony, and one count of violating Health and
12 Safety Code section 11375, subdivision (b)(1), possession for sale of a designated controlled
13 substance, a felony, were dismissed.

14 19. As a result of the conviction, Respondent was sentenced to three years summary
15 probation, and ordered to pay fines and fees.

16 20. The facts that led to the conviction are that in October 2011, Respondent worked as a
17 pharmacy technician at the CVS Pharmacy on El Cajon Boulevard in San Diego. During her
18 employment, she stole from CVS Pharmacy 2500 tablets of alprazolam and 8000 tablets of Norco
19 and gave them to a drug dealer.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Unprofessional Conduct-Act of Moral Turpitude or Dishonesty)**

22 21. Respondent is subject to disciplinary action under Code section 4301, subdivision (f)
23 in that Respondent committed grand theft, an act of moral turpitude or dishonesty. Complainant
24 re-alleges and incorporates by reference the allegations set forth above in paragraphs 17-20.

25 ///

26 ///

27 ///

28 ///

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct-Violation of Laws Regulating Controlled Substances**
3 **and Dangerous Drugs)**

4 22. Respondent is subject to disciplinary action under Code sections 4301, subdivision (j)
5 in that Respondent violated laws regulating controlled substances and dangerous drugs.

6 Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs
7 17-20. The laws include the following:

8 a. **Code section 4059**: furnishing a controlled substance without a prescription.

9 b. **Code section 4060**: possession of a controlled substance without a prescription.

10 c. **Health and Safety Code section 11350, subd. (a)**: possession of a designated
11 controlled substance.

12 d. **Health and Safety Code section 11352, subd. (a)**: giving away a designated
13 controlled substance.

14 e. **Health and Safety Code section 11375, subd. (b)(1)**: possession for sale of a
15 designated controlled substance.

16 **FOURTH CAUSE FOR DISCIPLINE**

17 **(Unprofessional Conduct-Act Warranting Denial of Licensure)**

18 23. Respondent is subject to disciplinary action under section 4301, subdivision (p), in
19 that she committed an act that would have warranted denial of a license by stealing the controlled
20 substances alprazolam and Norco from her place of employment, an act enumerated in Code
21 section 480, subdivision (a)(2), which is cause for denial of a license to an applicant who
22 committed an act of dishonesty with the intent to substantially benefit herself or another.

23 Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs
24 17-20.

25 **PRAYER**

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

28

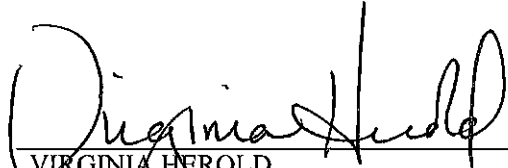
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. Revoking or suspending Pharmacy Technician Registration Number TCH 80650,
issued to Tia Lasha Kelly;

2. Ordering Tia Lasha Kelly 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: 2/3/14



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

SD2013706125
70778899.doc