

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 State Bar No. 101336  
AMANDA DODDS  
4 Senior Legal Analyst  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2141  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*  
8

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

12 In the Matter of the Accusation Against:

Case No. 4994

13 **JESSICA MELLOR-DAVIS**  
109 E. 9th Street  
14 National City, CA 91950

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

15 **Pharmacy Technician Registration**  
16 **No. TCH 66885**

17 Respondent.

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 January 10, 2006, the Board of Pharmacy issued Pharmacy Technician  
24 Registration Number TCH 66885 to Jessica Mellor-Davis (Respondent). Respondent is also  
25 known as Jessica Mendoza, and Jessica Shigeko Mellor. The Pharmacy Technician Registration  
26 was in full force and effect at all times relevant to the charges brought herein and will expire on  
27 April 30, 2015, unless renewed.

28 ///

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 482 of the Code states:

14 Each board under the provisions of this code shall develop criteria to evaluate the  
15 rehabilitation of a person when:

- 16 (a) Considering the denial of a license by the board under Section 480; or  
17 (b) Considering suspension or revocation of a license under Section 490.

18 Each board shall take into account all competent evidence of rehabilitation  
19 furnished by the applicant or licensee.

20 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or  
21 revoke a license on the ground that the licensee has been convicted of a crime substantially  
22 related to the qualifications, functions, or duties of the business or profession for which the  
23 license was issued.

24 8. Section 493 of the Code states:

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

1 discipline or to determine if the conviction is substantially related to the qualifications,  
2 functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority," and  
4 "registration."

5 9. Section 4022 of the Code states

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

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

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

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

16 10. Section 4059 of the Code states, in pertinent part, that a person may not furnish any  
17 dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,  
18 veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any  
19 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist,  
20 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

21 11. Section 4301 of the Code states:

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

26 . . . .

27 (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit,  
28 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.

(g) Knowingly making or signing any certificate or other document that falsely  
represents the existence or nonexistence of a state of facts.

. . . .

(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.

///

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

11 . . . .  
12 (o) Violating or attempting to violate, directly or indirectly, or assisting in or  
13 abetting the violation of or conspiring to violate any provision or term of this chapter or  
14 of the applicable federal and state laws and regulations governing pharmacy, including  
15 regulations established by the board or by any other state or federal regulatory agency.

14 . . . .  
15 12. Section 4323 of the Code states:

16 Every person who, in order to obtain any drug, falsely represents himself or herself  
17 to be a physician or other person who can lawfully prescribe the drug, or falsely  
18 represents that he or she is acting on behalf of a person who can lawfully prescribe the  
19 drug, in a telephone or electronic communication with a pharmacist, shall be punished by  
20 imprisonment in the county jail for not more than one year.

21 13. Section 4324 of the Code states:

22 (a) Every person who signs the name of another, or of a fictitious person, or  
23 falsely makes, alters, forges, utters, publishes, passes, or attempts to pass, as genuine,  
24 any prescription for any drugs is guilty of forgery and upon conviction thereof shall be  
25 punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal  
26 Code, or by imprisonment in a county jail for not more than one year.

27 (b) Every person who has in his or her possession any drugs secured by a forged  
28 prescription shall be punished by imprisonment pursuant to subdivision (h) of Section  
1170 of the Penal Code, or by imprisonment in the county jail for not more than one  
year.

14. Section 4325, subdivision (a) of the Code states:

No person other than a physician, dentist, podiatrist, veterinarian, pharmacist, or  
other person authorized by law to dispense, administer, or prescribe controlled  
substances, or the person's agent acting under authorization by the person to print

1 prescription blanks, and acting in the regular practice of the person's profession, shall  
2 knowingly and willfully manufacture, copy, reproduce, or possess, or cause to be  
3 manufactured, copied, reproduced, or possessed, any prescription blank that purports to  
4 bear the name, address, and federal registry or other identifying information of a  
physician, dentist, podiatrist, veterinarian, or other person authorized by law to dispense,  
administer, or prescribe controlled substances.

5 15. Health and Safety Code section 11368 states:

6 Every person who forges or alters a prescription or who issues or utters an altered  
7 prescription, or who issues or utters a prescription bearing a forged or fictitious signature  
8 for any narcotic drug, or who obtains any narcotic drug by any forged, fictitious, or  
9 altered prescription, or who has in possession any narcotic drug secured by a forged,  
fictitious, or altered prescription, shall be punished by imprisonment in the county jail  
for not less than six months nor more than one year, or in the state prison.

10 16. United States Code, title 21, section 843 states, in pertinent part:

11 (a) It shall be unlawful for any person knowingly or intentionally –

12 . . . .

13 (3) to acquire or obtain possession of a controlled substance by  
14 misrepresentation, fraud, forgery, deception, or subterfuge;

15 . . . .

16 **REGULATORY PROVISIONS**

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

18 . . . .

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

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

22 (2) Total criminal record.

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

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

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

27 ///

28 ///

1 18. California Code of Regulations, title 16, section 1770, states:

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

#### 6 COSTS

7 19. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
8 administrative law judge to direct a licentiate found to have committed a violation or violations of  
9 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
10 enforcement of the case, with failure of the licentiate to comply subjecting the license to not  
11 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs  
12 may be included in a stipulated settlement.

#### 13 DRUG

14 20. Hydrocodone/APAP, sold commercially as Vicodin, is a Schedule III controlled  
15 substance as designated by Health and Safety Code Section 11056, subdivision (e)(4), and is a  
16 dangerous drug pursuant to Business and Professions Code section 4022.

#### 17 FIRST CAUSE FOR DISCIPLINE

#### 18 (September 26, 2013 Criminal Conviction for Identity Theft)

19 21. Respondent has subjected her registration to discipline under sections 490 and 4301,  
20 subdivision (l) of the Code in that she was convicted of a crime that is substantially related to the  
21 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

22 a. On or about September 26, 2013, in a criminal proceeding entitled *People of*  
23 *the State of California v. Jessica Shigeko Mellor*, in San Diego County Superior Court, case  
24 number SCD249804, Respondent pled guilty to violating Health and Safety Code section 11368,  
25 prescription forgery (Count 1); and Penal Code section 530.5, subdivision (a), identity theft  
26 (Count 2), felonies. As a result of a plea agreement, the court dismissed eight additional counts  
27 of prescription forgery (Health & Saf. Code, § 11368), eight counts of identity theft (Pen. Code, §  
28 530.5(a)), and three counts of commercial burglary (Pen. Code, § 459).



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

**THIRD CAUSE FOR DISCIPLINE**

**(Knowingly Making/Signing Documents That Falsely Represent This Existence of a State of Facts)**

23. Respondent has subjected her registration to discipline under section 4301, subdivisions (g) of the Code for unprofessional conduct in that Respondent created fraudulent prescription forms on her computer and signed the prescription forms using the identity of others in order to obtain controlled substances illegally, as described in paragraph 21, above.

**FOURTH CAUSE FOR DISCIPLINE**

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

24. Respondent has subjected her registration to discipline under section 4301, subdivision (j) of the Code for unprofessional conduct in that on or between April 29, 2013 and June 9, 2013, Respondent knowingly violated Health and Safety Code section 11368, Title 21 U.S.C. section 843, subdivision (a)(3), and the California Uniform Controlled Substances Act (Health and Safety Code 11000, et seq.), as described in paragraph 21, above.

**FIFTH CAUSE FOR DISCIPLINE**

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

25. Respondent is subject to disciplinary action under section 4301, subdivision (o) of the Code for unprofessional conduct in that on or between April 29, 2013 and June 9, 2013, Respondent violated Business and Professions Code sections 4022, 4059, 4060, 4323, 4324, and 4325, and Board of Pharmacy Regulations (California Code of Regulations, Title 16, Section 1700, et seq.), when she obtained controlled substances using fraud and deceit, as described in paragraph 21, 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 66885, issued to Jessica Mellor-Davis;

///  
///

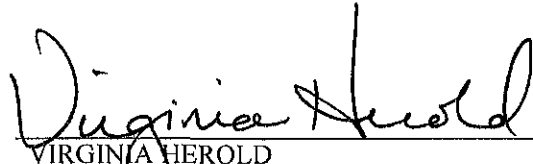


1           2.     Ordering Jessica Mellor-Davis to pay the Board of Pharmacy the reasonable costs of  
2 the investigation and enforcement of this case, pursuant to Business and Professions Code section  
3 125.3;

4           3.     Taking such other and further action as deemed necessary and proper.  
5

6  
7 DATED: \_\_\_\_\_

2/15/14



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

8  
9  
10  
11 SD2013706256  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28