

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 RON ESPINOZA
Deputy Attorney General
4 State Bar No. 176908
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 738-9447
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11
12 In the Matter of the Accusation Against:
13 LORI-JAN CLEAVE
39668 North General Kearny Road
14 Murietta, CA 92563
15 Pharmacy Technician Registration No. TCH
76217
16
17 Respondent.

Case No. 5868

ACCUSATION

18
19 Complainant alleges:

20 **PARTIES**

- 21 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity as
22 the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
23 2. On or about May 24, 2007, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 76217 to Lori-Jan Cleave (Respondent). The Pharmacy Technician
25 Registration was in full force and effect at all times relevant to the charges brought herein and
26 expired on June 30, 2016, and has not been 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 unless otherwise indicated.

5 4. Section 4300 of the Code states:

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

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

10 "(1) Suspending judgment.

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

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

13 "(4) Revoking his or her license.

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

16 "(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The
17 board may, in its sole discretion, issue a probationary license to any applicant for a license who is
18 guilty of unprofessional conduct and who has met all other requirements for licensure. The board
19 may issue the license subject to any terms or conditions not contrary to public policy, including,
20 but not limited to, the following:

21 "(1) Medical or psychiatric evaluation.

22 "(2) Continuing medical or psychiatric treatment.

23 "(3) Restriction of type or circumstances of practice.

24 "(4) Continuing participation in a board-approved rehabilitation program.

25 "(5) Abstention from the use of alcohol or drugs.

26 "(6) Random fluid testing for alcohol or drugs.

27 "(7) Compliance with laws and regulations governing the practice of pharmacy.

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1 "(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary
2 certificate of licensure for any violation of the terms and conditions of probation. Upon
3 satisfactory completion of probation, the board shall convert the probationary certificate to a
4 regular certificate, free of conditions.

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

10 5. Section 4300.1 of the Code states:

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

16 STATUTORY PROVISIONS

17 6. Section 4022 of the Code states:

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

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

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

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

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1 7. Section 4059, subdivision (a) of the Code states:

2 “(a) A person may not furnish any dangerous drug, except upon the prescription of a
3 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
4 3640.7. A person may not furnish any dangerous device, except upon the prescription of a
5 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
6 3640.7.”

7 8. Section 4100, subdivision (a) of the Code states:

8 “Within 30 days after changing his or her address of record with the board or after changing
9 his or her name according to law, a pharmacist, intern pharmacist, technician, or designated
10 representative shall notify the executive officer of the board of the change of address or change of
11 name.”

12 9. Section 4301 of the Code states:

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

16 "...

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

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

22 "...

23 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
24 violation of or conspiring to violate any provision or term of this chapter or of the applicable
25 federal and state laws and regulations governing pharmacy, including regulations established by the
26 board or by any other state or federal regulatory agency.

27 "... "

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1 DRUGS AT ISSUE

2 10. Suboxone is a dangerous drug as defined by Business and Professions Code section
3 4022(a) and is a Schedule III controlled substance (federal law) pursuant to 21 C.F.R. section
4 1308.13(e)(2).

5 11. Nexium is a dangerous drug as defined by Business and Professions Code section
6 4022(a) and used to treat esophagitis, gastroesophageal reflux disease, prevent ulcers and
7 Zollinger-Ellison syndrome.

8 COST RECOVERY

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

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(Dishonest Act)**

15 13. Respondent is subject to disciplinary action under Code section 4301, subdivision (f),
16 in that she committed an act involving moral turpitude, dishonesty, fraud, or deceit, when she
17 stole items from her employer, Dial Drug, Inc., while working there as a pharmacy technician. The
18 circumstances are as follows:

19 14. In or about May 2013, Respondent was working as a pharmacy technician at Dial
20 Drug, Inc. An employee of Dial Drug found a bag in Respondent's work area containing, among
21 other things, bottles of Suboxone¹ and Nexium² that had been taken from the pharmacy.
22 Respondent was confronted about the items by the Pharmacist in Charge and asked to return
23 anything that she had stolen from the pharmacy. Respondent returned the Nexium (as well as
24

25 ¹ Suboxone is a Schedule V controlled substance in California and is used to treat narcotic
26 (opiate) addiction.

27 ² Nexium is a medication used to treat certain stomach and esophagus problems. Until
28 March 28, 2014, Nexium required a prescription and therefore was considered a dangerous drug
and could not be purchased over the counter by consumers.

1 some over the counter items like lotion) and was fired on or about May 5, 2013, for stealing from
2 her employer.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Furnishing Dangerous Drug Without Prescription)**

5 15. Respondent is subject to disciplinary action under Code section 4301, subdivision (o),
6 in conjunction with Section 4059, subdivision (a), in that she furnished to herself, without
7 prescription, a dangerous drug (two bottles of Nexium) that she had stolen from her employer,
8 Dial Drug, Inc., as more fully alleged in paragraphs 13-14, above, which are hereby incorporated
9 by reference.

10 **THIRD CAUSE FOR DISCIPLINE**

11 **(Violation of State Statute Regulating Dangerous Drugs)**

12 16. Respondent is subject to disciplinary action under Code section 4301, subdivision (j),
13 in that she violated Business and Professions Code section 4059, subdivision (a), by furnishing to
14 herself, without prescription, a dangerous drug (two bottles of Nexium) that she had stolen from
15 her employer, Dial Drug, Inc., as more fully alleged in paragraphs 13-14, above, which are hereby
16 incorporated by reference.

17 **FOURTH CAUSE FOR DISCIPLINE**

18 **(Failure to Notify Board of Change of Address)**

19 17. Respondent is subject to disciplinary action under Code section 4301, subdivision (o),
20 in conjunction with Section 4100, subdivision (a), in that Respondent failed to notify the Board
21 within 30 days after she had changed her address. The circumstances are as follows:

22 18. On or about June 23, 2015, the Board mailed Respondent a letter to her address of
23 record with the Board regarding its investigation of this matter and requesting that Respondent
24 contact the Board within 72 business hours. The Board was never contacted by Respondent. On
25 or about July 21, 2015, the Board sent Respondent a second letter to her address of record, again
26 requesting that Respondent contact the Board within 72 business hours. The Board was never
27 contacted by Respondent regarding this second letter. On or about August 11, 2015, and
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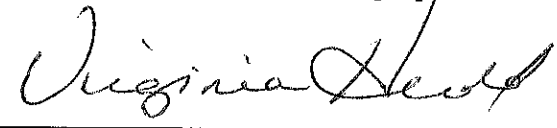
1 August 13, 2015, the Board received back the letters it had sent to Respondent, marked forward
2 time expired and return to sender.

3 **PRAYER**

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

- 6 1. Revoking or suspending Pharmacy Technician Registration Number TCH 76217,
7 issued to Lori-Jan Cleave;
- 8 2. Ordering Lori-Jan Cleave to pay the Board of Pharmacy the reasonable costs of the
9 investigation and enforcement of this case, pursuant to Business and Professions Code section
10 125.3;
- 11 3. Taking such other and further action as deemed necessary and proper.

12
13 DATED: 10/31/16



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

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