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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. 3268

12  
13 **KELLY LYNN ANDREWS**

**DEFAULT DECISION AND ORDER**

14  
15 Respondent.

[Gov. Code, §11520]

16  
17 FINDINGS OF FACT

18 1. On or about April 16, 2009, Complainant Virginia Herold, in her official capacity as  
19 the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed  
20 Accusation No. 3268 against Kelly Lynn Andrews (Respondent) before the Board of Pharmacy.

21 2. On or about October 6, 2005, the Board of Pharmacy (Board) issued Pharmacy  
22 Technician Registration No. TCH 65210 to Respondent. The Pharmacy Technician Registration  
23 was in full force and effect at all times relevant to the charges brought herein and expired on  
24 April 30, 2009, and has not been renewed.

25 3. On or about April 23, 2009, Juana Meija, an employee of the Department of Justice,  
26 served by Certified and First Class Mail a copy of the Accusation No. 3268, Statement to  
27 Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5,  
28 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is:

1 864 North 2nd Street, #125, El Cajon, CA 92021. A copy of the Accusation is attached as  
2 exhibit A, and is incorporated herein by reference.

3 4. Service of the Accusation was effective as a matter of law under the provisions of  
4 Government Code section 11505, subdivision (c).

5 5. Government Code section 11506 states, in pertinent part:

6 ...  
7 (c) The respondent shall be entitled to a hearing on the merits if the  
8 respondent files a notice of defense, and the notice shall be deemed a specific  
9 denial of all parts of the accusation not expressly admitted. Failure to file a notice  
10 of defense shall constitute a waiver of respondent's right to a hearing, but the  
11 agency in its discretion may nevertheless grant a hearing.

12 Respondent failed to file a Notice of Defense within 15 days after service upon her of the  
13 Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 3268.

14 6. California Government Code section 11520 states, in pertinent part:

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

18 7. Pursuant to its authority under Government Code section 11520, the Board finds  
19 Respondent is in default. The Board will take action without further hearing and, based on the  
20 evidence on file herein, finds that the allegations in Accusation No. 3268 are true.

21 8. The total cost for investigation and enforcement in connection with the Accusation  
22 are \$4,879.00 as of June 3, 2009.

23 DETERMINATION OF ISSUES

24 1. Based on the foregoing findings of fact, Respondent Kelly Lynn Andrews has  
25 subjected her Pharmacy Technician Registration No. TCH 65210 to discipline.

26 2. A copy of the Accusation is attached.

27 3. The agency has jurisdiction to adjudicate this case by default.  
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1 seven (7) days after service of the Decision on Respondent. The agency in its discretion may  
2 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

3 This decision shall become effective on October 9, 2009.

4 It is so ORDERED on September 9, 2009.

5 BOARD OF PHARMACY  
6 DEPARTMENT OF CONSUMER AFFAIRS  
7 STATE OF CALIFORNIA

8  
9 By   
10 KENNETH H. SCHELL  
11 Board President

12 Attachment:

13 Exhibit A: Accusation No. 3268  
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**EXHIBIT A**  
**Accusation Number AC 3268**

1 EDMUND G. BROWN JR., Attorney General  
of the State of California  
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9 **BEFORE THE**  
10 **BOARD OF PHARMACY**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. 3268

14 KELLY LYNN ANDREWS  
864 North 2nd Street, #125  
El Cajon, CA 92021

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

15 Pharmacy Technician Reg. No. TCH 65210

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Virginia Herold (Complainant) brings this Accusation solely in her  
21 official

22 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

23 2. On or about October 6, 2005, the Board of Pharmacy issued Pharmacy  
24 Technician Registration Number TCH 65210 to Kelly Lynn Andrews (Respondent). The  
25 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges  
26 brought herein and will expire on April 30, 2009, unless renewed.

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.....  
(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.

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

.....  
9. Section 4022 of the Code states:

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

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

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

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

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

2 .....  
3 (b) When considering the suspension or revocation of a facility or a  
4 personal license on the ground that the licensee or the registrant has been  
5 convicted of a crime, the board, in evaluating the rehabilitation of such person  
6 and his present eligibility for a license will consider the following criteria:

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

8 (2) Total criminal record.

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

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

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

#### 13 COST RECOVERY

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

#### 18 DRUGS

19 16. Alprazolam, also known by the brand names Xanax and Nivaram, is a  
20 Schedule IV controlled substance under California Health and Safety Code section 11057,  
21 subdivision (d)(1), and is classified as a dangerous drug pursuant to Business and Professions  
22 Code section 4022.

23 17. Hydrocodone bitartate/acetaminophen, also known by the brand names  
24 Vicodin, Norco, and Lortab, is a Schedule III controlled substance as designated by Health and  
25 Safety Code section 11056, subdivision (e)(4), and is a dangerous drug pursuant to Business and  
26 Professions Code section 4022.

27 18. Codeine/APAP, a combination of codeine and acetaminophen, is a  
28 Schedule III controlled substance as designated by Health and Safety Code section 11056,  
subdivision (e), and is a dangerous drug pursuant to Business and Professions Code section  
4022.



1 a. November 7, 2007 at 1403: Respondent took a bottle from the  
2 shelf where the Hydrocodone was located and concealed the bottle inside the front of her pants.

3 b. November 10, 2007 at 1538: Respondent took a bottle from the  
4 shelf where the Hydrocodone was located and concealed the bottle inside the front of her pants.

5 c. November 11, 2007 at 1853: Respondent took a bottle from the  
6 shelf where the Hydrocodone was located and concealed the bottle inside the front of her pants.

7 d. November 12, 2007 at 1530: Respondent took a bottle from the  
8 shelf where the Hydrocodone was located and concealed the bottle inside the front of her pants.

9 e. November 12, 2007 at 1733: Respondent took a bottle from the  
10 shelf where the Hydrocodone was located and concealed the bottle inside the front of her pants.

11 f. November 15, 2007 at 1503: Respondent took a bottle from the  
12 shelf where the Hydrocodone was located and concealed the bottle inside the front of her pants.

13 g. November 15, 2007 at 1506: Respondent took a bottle from the  
14 shelf where the Hydrocodone was located and concealed the bottle inside the front of her pants.

15 h. November 23, 2007 at 1925: Respondent took a bottle from the  
16 shelf where the Carisoprodol was located and placed it on an aisle shelf.

17 i. November 23, 2007 at 1933: Respondent took the bottle of  
18 Carisoprodol from the aisle shelf and poured its contents into a vial located inside the front of  
19 her pants. Respondent returned the bottle to the shelf.

20 j. November 25, 2007 at 1629: Respondent took a bottle from the  
21 shelf where the Lortab was located and concealed the bottle inside the front of her pants.

22 25. Based on the evidence obtained by the surveillance camera, on or about  
23 December 9, 2007, agents from the Bureau of Narcotics Enforcement (BNE) followed  
24 Respondent home from work and confirmed her place of residence in El Cajon. The agents  
25 obtained a search warrant from the San Diego County Superior Court for Respondent's residence  
26 and vehicles.

27 26. On or about December 11, 2007, BNE agents met with Respondent while  
28 she was working at the CVS Pharmacy and placed her under arrest for theft of controlled

1 substances. Respondent was searched and an agent located an unopened bottle of Hydrocodone  
2 concealed in the crotch area of Respondent's pants, as well as two tablets of Soma and one tablet  
3 of Hydrocodone in the left front pocket of her pants. The agents conducted an audit of the  
4 pharmacy's records and confirmed that Respondent did not purchase the items found on her  
5 person, and she did not have a valid prescription for the items.

6           27. On or about December 11, 2007, the agents executed a search warrant of  
7 Respondent's vehicle, a Jaguar. Agents located one unlabeled bottle containing 93 tablets of  
8 Soma under the driver's seat, one unlabeled bottle containing 27 tablets of Soma in the center  
9 console, along with two unlabeled bottles containing 14 tablets and 10 tablets of Hydrocodone,  
10 respectively, as well as three loose tablets of Soma. There were no receipts found in the vehicle  
11 indicating the prescription drugs had been purchased by Respondent.

12           28. The agents transported Respondent to her El Cajon residence and executed  
13 a second search warrant. Respondent's husband was home at the time of the search and told the  
14 agents he had no knowledge of his wife's involvement in stealing prescription drugs from CVS  
15 even though two large unlabeled bottles containing Hydrocodone and Soma were found inside  
16 his lunch box. As a result of the search of Respondent's residence and another vehicle registered  
17 to her, agents located a large quantity of Hydrocodone, Soma, and Phenobarbital. Respondent  
18 was booked and transported to jail.

19           29. In a signed statement dated December 19, 2007, Respondent admitted to  
20 CVS Pharmacy investigators that she hid drugs in her pants almost every day she worked and  
21 took them home to share with her husband. Respondent signed a promissary note to pay CVS  
22 restitution in the amount of \$12,273.73. An audit revealed a shortage of 995 tablets of  
23 acetaminophen with codeine, 1880 tablets of Alprazolam, 27,291 tablets of Hydrocodone, 170  
24 tablets of Niravam, 495 tablets of Phentermine, and 200 tablets of Vicodin.

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1 FIRST CAUSE FOR DISCIPLINE

2 (March 21, 2008 Criminal Conviction for Commercial Burglary  
3 & Possession of Controlled Substances for Sale)

4 30. Respondent subjected her registration to discipline under sections 490 and  
5 4301, subdivision (l) of the Code in that she was convicted of a crime that is substantially related  
6 to the qualifications, duties, and functions of a pharmacy technician. The circumstances are as  
7 follows:

8 a. As a result of Respondent's arrest described in the facts set forth  
9 above, on or about March 21, 2008, in a criminal proceeding entitled *People of the State of*  
10 *California v. Kelly Lynn Andrews*, in San Diego County Superior Court, case number  
11 CD211137, Respondent was convicted on her plea of guilty for violating Health and Safety Code  
12 section 11351, possession of controlled substances for sale, and Penal Code section 459, second  
13 degree commercial burglary, felonies.

14 b. As a result of the conviction, on or about August 5, 2008,  
15 Respondent was sentenced to 180 days in custody, credit for two days served, stayed pending  
16 successful completion of three years formal probation, payment of \$1,840 in fees and fines. The  
17 court ordered Respondent pay \$12,373.29 in restitution to CVS Pharmacy. Respondent was  
18 further ordered to attend and complete a drug rehabilitation program.

19 SECOND CAUSE FOR DISCIPLINE

20 (Commission of Acts Involving Moral Turpitude, Dishonesty, Fraud & Deceit)

21 31. Respondent has subjected her registration to disciplinary action under  
22 section 4301, subdivision (f) of the Code in that between or about August 2007 and December  
23 2007, while working as a pharmacy technician, Respondent stole controlled substances and  
24 dangerous drugs from her employer, CVS Pharmacy, acts involving moral turpitude, fraud,  
25 deceit, and dishonesty, as detailed in paragraphs 22-29, above, which constitutes unprofessional  
26 conduct.

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**THIRD CAUSE FOR DISCIPLINE**

**(Violation of California Statutes Regulating Controlled Substances & Dangerous Drugs)**

32. Respondent has subjected her registration to disciplinary action under section 4301, subdivision (j) of the Code in that between or about August 2007 and December 2007, while working as a pharmacy technician, Respondent knowingly violated Business and Professions Code sections 4022, 4059, and 4060 regulating controlled substances and dangerous drugs, as detailed in paragraphs 22-29, above, which constitutes unprofessional conduct.

**FOURTH CAUSE FOR DISCIPLINE**

**(Violation of Federal/State Laws & Regulations Governing Pharmacy)**

33. Respondent has subjected her registration to disciplinary action under section 4301, subdivision (o) of the Code in that between or about August 2007 and December 2007, while working as a pharmacy technician, Respondent violated Title 21 United States Code section 843, subdivision (a)(3), Board of Pharmacy Regulations (California Code of Regulations, Title 16, Section 1700, et seq.), and the California Uniform Controlled Substances Act (Health and Safety Code 11000, et seq.), as detailed in paragraphs 22-29, above. Such violations constitute unprofessional conduct.

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PRAYER

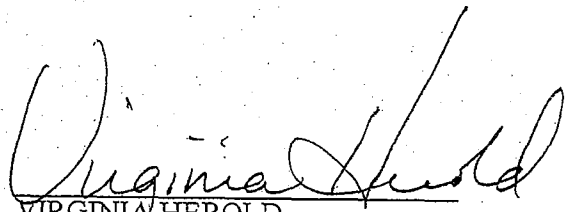
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

Revoking or suspending Pharmacy Technician Registration Number TCH 65210, issued to Kelly Lynn Andrews;

2. Ordering Kelly Lynn Andrews 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: 4/16/09

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

SD2009803615