

1 EDMUND G. BROWN JR.
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 KAREN L. GORDON
Deputy Attorney General
4 State Bar No. 137969
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2073
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

13 In the Matter of the Accusation Against:

Case No. 3287

14 **LUKE D. DAGUE**
15 **FPO AE 09566-2840**
16 **USS CARL VINSON**
Newport News, VA 23601

DEFAULT DECISION AND ORDER

17 **Pharmacy Technician Registration**
No. TCH 53510

[Gov. Code, §11520]

18 Respondent.

19
20 FINDINGS OF FACT

21 1. On or about August 17, 2009, Complainant Virginia Herold, in her official capacity
22 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed
23 Accusation No. 3287 against Luke D. Dague (Respondent) before the Board of Pharmacy.

24 2. On or about January 2, 2004, the Board of Pharmacy (Board) issued Pharmacy
25 Technician Registration No. TCH 53510 to Respondent. 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, 2011, unless renewed.
28

1 3. On or about August 20, 2009, S. Sotelo, an employee of the Department of Justice,
2 served by Certified and First Class Mail a copy of the Accusation No. 3287, Statement to
3 Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5,
4 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is:
5 Luke D. Dague, FPO AE 09566-2840, USS CARL VINSON, Newport News, VA 23601.
6 A copy of the Accusation is attached as Exhibit A, and is incorporated herein by reference:

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

9 5. On or about September 14, 2009, certified mailing of the Accusation and supporting
10 documents were returned by the U.S. Postal Service marked "Attempted not known."

11 6. On or about September 18, 2009, the first class mailing of the Accusation and
12 supporting documents were returned by the U.S. Postal Service marked "Attempted not known."

13 7. Government Code section 11506 states, in pertinent part:

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

19 8. Respondent failed to file a Notice of Defense within 15 days after service upon him
20 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
21 3287.

22 9. California Government Code section 11520 states, in pertinent part:

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

27 10. Pursuant to its authority under Government Code section 11520, the Board finds
28 Respondent is in default. The Board will take action without further hearing and, based on the
evidence on file herein, finds that the allegations in Accusation No. 3287 are true.

 11. The total cost for investigation and enforcement in connection with the Accusation
are \$1,807.50 as of October 1, 2009.

DETERMINATION OF ISSUES

1
2 1. Based on the foregoing findings of fact, Respondent Luke D. Dague has subjected his
3 Pharmacy Technician Registration No. TCH 53510 to discipline.

4 2. A copy of the Accusation is attached.

5 3. The agency has jurisdiction to adjudicate this case by default.

6 4. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
7 Registration based upon the following violations alleged in the Accusation:

8 a. On or about May 27, 2007, while on duty as a pharmacy technician at Loma Linda
9 University Hospital, Respondent stole a patient's medication bottle containing the controlled
10 substance Alprazolam.

11 b. Respondent furnished the controlled substance Alprazolam to himself without
12 authorization from a prescriber.

13 c. While on duty as a pharmacy technician, Respondent possessed the controlled
14 substance Alprazolam that he took from a patient.

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

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

ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 53510, heretofore issued to Respondent Luke D. Dague, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This decision shall become effective on January 28, 2010.

It is so ORDERED on December 29, 2009.

Kenneth H. Schell

KENNETH H. SCHELL, BOARD PRESIDENT
FOR THE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS

DOJ docket number: Sd2009803784

Attachment: Exhibit A: Accusation No.3287

Exhibit A
Accusation No. 3287

1 EDMUND G. BROWN JR.
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 KAREN L. GORDON
Deputy Attorney General
4 State Bar No. 137969
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2073
7 Facsimile: (619) 645-2061
Attorneys for Complainant
8

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

12 In the Matter of the Accusation Against:

Case No. 3287

13 **LUKE D. DAGUE**
FPO AE 09566-2840
14 **USS CARL VINSON**
NEWPORT NEWS, VA 23601

ACCUSATION

15 **Pharmacy Technician Registration**
16 **No. TCH 53510**

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 2, 2004, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 53510 to Luke D. Dague (Respondent). The Pharmacy Technician
25 Registration was in full force and effect at all times relevant to the charges brought herein. The
26 Registration will expire on April 30, 2011, unless renewed.

27 ///

28

JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 4300 of the Code states, in pertinent part:

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

5. Section 118 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

STATUTORY PROVISIONS

6. Section 4059 of the Code provides, in pertinent part, that a person may not furnish any dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

7. Section 4060 of the Code states, in pertinent part:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist . . .

8. Section 4301 of the Code states, in pertinent part:

The board shall take action against any holder of a license who is guilty of unprofessional conduct . . . Unprofessional conduct shall include, but is not limited to, any of the following:

...

(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.

...

(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing

1 pharmacy, including regulations established by the board or by any other state or
2 federal regulatory agency.

3 9. Section 4306 of the Code provides that it shall constitute unprofessional conduct and
4 a violation of this chapter for any person licensed under this chapter to violate, attempt to violate,
5 directly or indirectly, . . . any provision or term of this article. . .

6 10. Health and Safety Code section 11170 states:

7 No person shall prescribe, administer, or furnish a controlled substance for himself.

8 **COST RECOVERY**

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

12 **DRUGS**

13 12. Alprazolam is a Schedule IV controlled substance as designated by Health and Safety
14 Code section 11057, subdivision (d)(1), and is a dangerous drug pursuant to Business and
15 Professions Code section 4022.

16 **FACTUAL BACKGROUND**

17 13. On or about May 27, 2007, Respondent, while on duty working as a pharmacy
18 technician at Loma Linda University Hospital, took a patient's medication bottle containing the
19 controlled substance Alprazolam. Respondent was terminated from the hospital on June 1, 2007.

20 **FIRST CAUSE FOR DISCIPLINE**

21 (Obtained Controlled Substances from a Patient by Theft)

22 14. Respondent is subject to disciplinary action for unprofessional conduct under Code
23 section 4301(f) in that on or about May 27, 2007, while on duty as a pharmacy technician at
24 Loma Linda University Hospital, Respondent stole a patient's medication bottle containing the
25 controlled substance Alprazolam.

26 ///

27 ///

28

SECOND CAUSE FOR DISCIPLINE

(Furnishing Controlled Substances to Himself)

15. Respondent is subject to disciplinary action for unprofessional conduct under Code section 4301 (j) in that on or about May 27, 2007; while on duty as a pharmacy technician at Loma Linda University Hospital, Respondent furnished the controlled substance Alprazolam to himself without authorization from a prescriber in violation of Health and Safety Code section 11170.

THIRD CAUSE FOR DISCIPLINE

(Violated Pharmacy Laws)

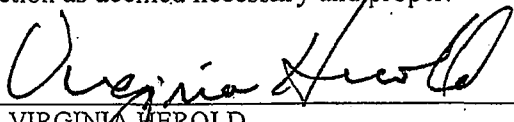
16. Respondent is subject to disciplinary action for unprofessional conduct under Code section 4301 (o) in that on or about May 27, 2007, while on duty as a pharmacy technician at Loma Linda University Hospital, Respondent possessed the controlled substance Alprazolam that he took from a patient in violation of Code section 4060.

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 Number TCH 53510, issued to Luke D. Dague.
2. Ordering Luke D. Dague 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: 8/17/09



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

SD2009803784
80357605.doc