

BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 3471

VANESSA CUMMINGS
9898 Bolsa Avenue
Westminster, CA 92683

Original Pharmacy Technician
Registration No. PHY 40567

Respondent.

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on May 26, 2010.

It is so ORDERED on April 26, 2010.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

Kenneth H. Schell

KENNETH H. SCHELL
Board President

1 EDMUND G. BROWN JR.
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 RENE JUDKIEWICZ
Deputy Attorney General
4 State Bar No. 141773
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2537
6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

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

10 In the Matter of the Accusation Against:

Case No. AC 2009 3471

11 **VANESSA CUMMINGS**
12 **8573 Palmetto Avenue**
13 **Fontana, CA 92335**
Pharmacy Technician License No. TCH
14 **34068**

STIPULATED SURRENDER OF
LICENSE AND ORDER

15 Respondent.

16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
18 proceeding that the following matters are true:

19 PARTIES

20 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy
21 (Board). She brought this action solely in her official capacity and is represented in this matter by
22 Edmund G. Brown Jr., Attorney General of the State of California, by Rene Judkiewicz, Deputy
23 Attorney General.

24 2. Vanessa Cummings (Respondent) is representing herself in this proceeding and has
25 chosen not to exercise her right to be represented by counsel.

26 3. On or about July 31, 2000, the Board issued Pharmacy Technician License No. TCH
27 34068 to Respondent. The license was in full force and effect at all times relevant to the charges
28 brought in Accusation No. 3471 and will expire on November 30, 2011, unless renewed.

1 JURISDICTION

2 4. Accusation No. 3471 was filed before the Board, Department of Consumer Affairs,
3 and is currently pending against Respondent. The Accusation and all other statutorily required
4 documents were properly served on Respondent on February 18, 2010. Respondent does not
5 contest the Accusation, and therefore has not filed a Notice of Defense. A copy of Accusation
6 No. 3471 is attached as exhibit A and incorporated herein by reference.

7 ADVISEMENT AND WAIVERS

8 5. Respondent has carefully read, and understands the charges and allegations in
9 Accusation No. 3471. Respondent also has carefully read, and understands the effects of this
10 Stipulated Surrender of License and Order.

11 6. Respondent is fully aware of her legal rights in this matter, including the right to a
12 hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at
13 her own expense; the right to confront and cross-examine the witnesses against her; the right to
14 present evidence and to testify on her own behalf; the right to the issuance of subpoenas to
15 compel the attendance of witnesses and the production of documents; the right to reconsideration
16 and court review of an adverse decision; and all other rights accorded by the California
17 Administrative Procedure Act and other applicable laws.

18 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
19 every right set forth above.

20 CULPABILITY

21 8. Respondent admits the truth of each and every charge and allegation in Accusation
22 No. 3471, agrees that cause exists for discipline and hereby surrenders her Pharmacy Technician
23 License No. TCH 34068 for the Board's formal acceptance.

24 9. Respondent understands that by signing this stipulation she enables the Board to issue
25 an order accepting the surrender of her Pharmacy Technician License without further process.

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CONTINGENCY

1
2 10. This stipulation shall be subject to approval by the Board. Respondent understands
3 and agrees that counsel for Complainant and the Board staff may communicate directly with the
4 Board regarding this stipulation and surrender, without notice to or participation by Respondent.
5 By signing the stipulation, Respondent understands and agrees that she may not withdraw her
6 agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it.
7 If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and
8 Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible
9 in any legal action between the parties, and the Board shall not be disqualified from further action
10 by having considered this matter.

11 11. The parties understand and agree that facsimile copies of this Stipulated Surrender of
12 License and Order, including facsimile signatures thereto, shall have the same force and effect as
13 the originals.

14 12. This Stipulated Surrender of License and Order is intended by the parties to be an
15 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
16 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
17 negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order
18 may not be altered, amended, modified, supplemented, or otherwise changed except by a writing
19 executed by an authorized representative of each of the parties.

20 13. In consideration of the foregoing admissions and stipulations, the parties agree that
21 the Board may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

22
23 IT IS HEREBY ORDERED that Pharmacy Technician License No. TCH 34068, issued to
24 Respondent Vanessa Cummings is surrendered and accepted by the Board of Pharmacy.

25 14. The surrender of Respondent's Pharmacy Technician License and the acceptance of
26 the surrendered license by the Board shall constitute the imposition of discipline against
27 Respondent. This stipulation constitutes a record of the discipline and shall become a part of
28 Respondent's license history with the Board.

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15. Respondent shall lose all rights and privileges as a pharmacy technician in California as of the effective date of the Board's Decision and Order.

16. Respondent shall cause to be delivered to the Board both her wall license certificate and, if one was issued, pocket license on or before the effective date of the Decision and Order.

17. Respondent may not apply, reapply, or petition for any licensure or registration of the Board for three (3) years from the effective date of the Decision and Order.

18. Respondent fully understands and agrees that if she ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 3471 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

19. Should Respondent ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation No. 3471 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

20. Respondent shall pay the Board its costs of investigation and enforcement in the amount of \$2,000.00 prior to issuance of a new or reinstated license.

ACCEPTANCE

I have carefully read the Stipulated Surrender of License and Order. I understand the stipulation and the effect it will have on my Pharmacy Technician License. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 2-23-10

VANESSA CUMMINGS
Respondent

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ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated: February 24, 2010

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of California
KAREN B. CHAPPELLE
Supervising Deputy Attorney General


RENE JUDKIEWICZ
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 3471

1 EDMUND G. BROWN JR.
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 RENE JUDKIEWICZ
Deputy Attorney General
4 State Bar No. 141773
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2537
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:
12 **VANESSA CUMMINGS**
13 **8573 Palmetto Avenue**
Fontana, CA 92335
14
15 **Pharmacy Technician License TCH 34068**
16 Respondent.

Case No. 3471

A C C U S A T I O N

17
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 July 31, 2000, the Board of Pharmacy (Board) issued Pharmacy
23 Technician License No. TCH 34068 to Vanessa Cummings (Respondent). The Pharmacy
24 Technician License was in full force and effect at all times relevant to the charges brought herein
25 and expired on November 30, 2009.

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JURISDICTION

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

STATUTORY PROVISIONS

4. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 490 states, in pertinent part:

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

"(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

"(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken 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 the provisions of Section 1203.4 of the Penal Code."

6. Section 4060 states:

"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

1 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
2 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
3 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
4 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
5 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
6 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
7 labeled with the name and address of the supplier or producer.

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

11 7. Section 4301 states:

12 "The board shall take action against any holder of a license who is guilty of unprofessional
13 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

14 Unprofessional conduct shall include, but is not limited to, any of the following:

15

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

19

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

22

23 "(l) The conviction of a crime substantially related to the qualifications, functions, and
24 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
25 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
26 substances or of a violation of the statutes of this state regulating controlled substances or
27 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
28 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

1 The board may inquire into the circumstances surrounding the commission of the crime, in order
2 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
3 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
4 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
5 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
6 of this provision. The board may take action when the time for appeal has elapsed, or the
7 judgment of conviction has been affirmed on appeal or when an order granting probation is made
8 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
9 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
10 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
11 indictment.”

12 REGULATORY PROVISIONS

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

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

20 CONTROLLED SUBSTANCE/DANGEROUS DRUG

21 9. Hydrocodone/acetaminophen is a Schedule III controlled substance narcotic pursuant
22 to Health and Safety Code section 11056, subdivision (e)(4) and a dangerous drug pursuant to
23 Business and Professions Code section 4022.

24 COST RECOVERY

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

1 FIRST CAUSE FOR DISCIPLINE

2 (Criminal Convictions)

3 11. Respondent is subject to disciplinary action under sections 4301, subdivisions (l) and
4 490, in conjunction with California Code of Regulations, title 16, section 1770, in that on July 24,
5 2008, Respondent was convicted of crimes substantially related to the qualifications, functions or
6 duties of a pharmacy technician as follows:

7 a. On or about July 24, 2008, after pleading guilty, Respondent was convicted on two
8 felony counts of violating Penal Code section 503 [embezzlement] and Health and Safety Code
9 section 11351 [possession of a controlled substance for sales], in the criminal proceeding entitled
10 *People v. Cummings* (Super. Ct. Riverside County, 2008, No. RIF 143320). The criminal court
11 sentenced Respondent to 88 days in jail to be served on consecutive weekends, beginning
12 September 5, 2008, register with local law enforcement per Health and Safety Code section
13 11590, pay fines and 36 months' probation with terms and conditions.

14 b. The circumstances surrounding the convictions are that during the month of January
15 2007, Respondent was observed on three separate occasions stealing Hydrocodone/Norco, a
16 Schedule III controlled substance, while working at CVS Pharmacy in Riverside, California. The
17 Bureau of Narcotic Enforcement recovered approximately 1,200 pills along with \$1,076 in U.S.
18 currency. On January 31, 2007, investigators recovered 11 bottles that were labeled
19 Hydrocodone Bitartrate 10mg and Acetaminophen tablets 325mg. Each bottle was labeled as
20 containing 100 tablets. Respondent admitted to stealing the Hydrocodone/Norco approximately
21 fifteen times from the CVS Pharmacy over a period of 5 to 6 months, and selling the controlled
22 substance.

23 SECOND CAUSE FOR DISCIPLINE

24 (Furnishing Dangerous Drugs Without a Prescription)

25 12. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the
26 Code for violating section 4060 in that on or about January 22, 2007, January 24, 2007, January
27 26, 2007 and January 31, 2007, Respondent stole at least 11 bottles of Hydrocodone/Norco from
28

1 her employer. Complainant refers to, and by this reference incorporates, the allegations set forth
2 above in paragraph 11, subparagraphs (a) and (b), inclusive, as though fully set forth.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Dishonest Acts)**

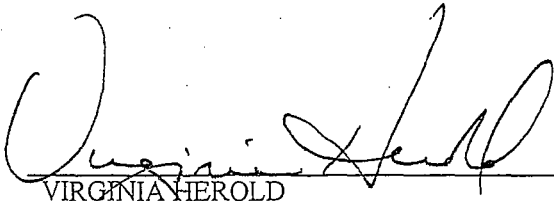
5 13. Respondent is subject to disciplinary action under section 4301, subdivision (f), in
6 that Respondent committed dishonest acts by stealing dangerous drugs from her employer and
7 selling them without a prescription, for profit. Complainant refers to, and by this reference
8 incorporates, the allegations set forth above in paragraph 11, subparagraph (a), inclusive, as
9 though fully set forth.

10 **PRAYER**

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

- 13 1. Revoking or suspending Pharmacy Technician License No. TCH 34068, issued to
14 Respondent;
- 15 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
16 enforcement of this case, pursuant to Business and Professions Code section 125.3; and
- 17 3. Taking such other and further action as deemed necessary and proper.

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21 DATED: 2/8/10


22 VIRGINIA HEROLD
23 Executive Officer
24 Board of Pharmacy
25 Department of Consumer Affairs
26 State of California
27 Complainant

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