Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is:

6909 Knowlton Place, #103 Los Angeles, CA 90045.

- 4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c).
- 5. On or about June 9, 2010, the aforementioned documents were returned by the U.S. Postal Service marked "foe" and "fts."
 - 6. Government Code section 11506 states, in pertinent part:
 - (c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.
- 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 3555.
 - 8. California Government Code section 11520 states, in pertinent part:
 - (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.
- 9. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and finds that the allegations in Accusation No. 3555 are true.
- 10. The total cost for investigation and enforcement in connection with the Accusation are \$6,694 as of August 12, 2010.

DETERMINATION OF ISSUES

- 1. Based on the foregoing findings of fact, Respondent Lori Ann Maxie (Respondent) has subjected her Pharmacy Technician Registration No. TCH 21460 to discipline.
 - 2. The agency has jurisdiction to adjudicate this case by default.

- 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician Registration based upon the following violations alleged in the Accusation:
- a. Respondent has subjected her license to disciplinary action under Code section 4301, subdivisions (j) and/or (o), and/or Health and Safety Code section 11173, subdivision (a), in that Respondent obtained controlled substances by fraud, deceit, misrepresentation, subterfuge and/or the concealment of a material fact. The circumstances are that on or about October 14, 2008, while employed as a pharmacy technician at Longs Drugs in Los Angeles, California, Respondent utilized a forged prescription to remove ninety tablets of OxyContin 80 milligrams from the pharmacy by concealment, fraud and deceit in violation of law.
- b. Respondent has subjected her license to disciplinary action under Code section 4301, subdivision (f), in that Respondent engaged in an act involving moral turpitude, dishonesty, fraud, deceit, and/or corruption. The circumstances are that on or about October 14, 2008, while employed as a pharmacy technician at Longs Drugs in Los Angeles, California, Respondent utilized a forged prescription to remove ninety tablets of OxyContin 80 milligrams from the pharmacy by concealment, fraud and deceit in violation of law.
- c. Respondent has subjected her license to disciplinary action under Code sections 4301, subdivisions (j) and/or (o), and/or 4060, for possessing a controlled substance without a prescription. The circumstances are that on or about October 14, 2008, while employed as a pharmacy technician at Longs Drugs in Los Angeles, California, Respondent utilized a forged prescription to remove ninety tablets of OxyContin 80 milligrams from the pharmacy by concealment, fraud and deceit in violation of law.
- d. Respondent has subjected her license to disciplinary action under Code sections 4301, subdivisions (j) and/or (o), and/or 4324 subdivisions (a) and (b), for possessing a controlled substance secured with a forged prescription and for passing a forged prescription. The circumstances are that on or about October 14, 2008, while employed as a pharmacy technician at Longs Drugs in Los Angeles, California, Respondent utilized a forged prescription to remove ninety tablets of OxyContin 80 milligrams from the pharmacy by concealment, fraud and deceit in violation of law.

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ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 21460, heretofore issued to Respondent Lori Ann Maxie, 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 March 28, 2011.

It is so ORDERED February 25, 2011.

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STANLEY C. WEISSER, BOARD PRESIDENT FOR THE BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS

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1 2 3 4 5 6 7 8	EDMUND G. BROWN JR. Attorney General of California KAREN B. CHAPPELLE Supervising Deputy Attorney General CHRISTINA V. TUSAN Deputy Attorney General State Bar No. 192203 300 So. Spring Street, Suite 1702 Los Angeles, CA 90013 Telephone: (213) 897-2643 Facsimile: (213) 897-2804 Attorneys for Complainant BEFORE THE BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS			
10	STATE OF CALIFORNIA			
11	In the Matter of the Accusation Against: Case No. 3555			
12	LORI ANN MAXIE			
13	6909 Knowlton Place, #103 Los Angeles, CA 90045 A C C U S A T I O N			
14	Pharmacy Technician License No. TCH 21460			
15 16	Respondent.			
17	Complainant alleges:			
18	<u>PARTIES</u>			
19	1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity			
20	as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.			
21	2. On or about February 14, 1997, the Board of Pharmacy (Board) issued Pharmacy			
22	Technician License Number TCH 21460 to Lori A. Maxie, also known as Lori Ann Maxie			
23	(Respondent Maxie). The Pharmacy Technician License was in full force and effect at all times			
24	relevant to the charges brought herein and will expire on May 31, 2010, unless renewed.			
25	JURISDICTION			
26	3. This Accusation is brought before the Board, Department of Consumer Affairs, under			
27	the authority of the following laws. All section references are to the Business and Professions			
28	Code (Code) unless otherwise indicated.			
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- 4. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].
- 5. Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked.
 - 6. Section 4038 of the Code states:
- "(a) 'Pharmacy technician' means an individual who assists a pharmacist in a pharmacy in the performance of his or her pharmacy related duties, as specified in Section 4115."

STATUTORY AND REGULATORY PROVISIONS

- 7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action against any holder of a license who is guilty of "unprofessional conduct," defined to include, but not be 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 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 pharmacy, including regulations established by the board."
 - 8. Section 4324 of the Code states:
- "(a) Every person who signs the name of another, or of a fictitious person, or falsely makes, alters, forges, utters, publishes, passes, or attempts to pass, as genuine, any prescription for any drugs is guilty of forgery and upon conviction thereof shall be punished by imprisonment in the state prison, or by imprisonment in the county jail for not more than one year.
- "(b) Every person who has in his or her possession any drugs secured by a forged prescription shall be punished by imprisonment in the state prison, or by imprisonment in the

county jail for not more than one year."

9. 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, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either Section 4052.1 or 4052.2.

"This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer."

- 10. Section 11173 of the Health and Safety Code states:
- "(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact."

COST RECOVERY

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

CONTROLLED SUBSTANCES / DANGEROUS DRUGS

- 12. Section 4021 of the Code states:
- "'Controlled substance' means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code."
 - 13. Section 4022 of the Code states, in pertinent part:
- "Dangerous drug' or 'dangerous device' means any drug or device unsafe for self-use, except veterinary drugs that are labeled as such, 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.
- "(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."
- 14. OxyContin a brand name formation of oxycodone hydrochloride, is an opioid agonist and a Schedule II controlled substance pursuant to Health and Safety Code section 11055(b)(1)(n) and a dangerous drug pursuant to Business and Professions Code section 4022.

CHARGES AND ALLEGATIONS

- pharmacy technician at Longs Drugs Store 430¹ (Longs Drugs), located at 8900 Sepulveda Westway, Los Angeles, California 90045, presented a forged prescription for ninety tablets of OxyContin 80 milligrams written in the name of her ex-significant other Latron White. The pharmacist-in-charge Andre Bao Tuong Nguyen (Nguyen) filled the prescription and Respondent Maxie purchased the OxyContin from Longs Drugs. Several days later, as a pharmacist was preparing to dispense OxyContin 80 mg to another patient, he came upon the OxyContin prescription earlier dispensed to Latron White by another pharmacist and believed it prudent to verify its validity.
- 16. Doctor Tahira Stewart (Stewart), the prescribing doctor listed on the prescription presented by Respondent Maxie, confirmed the following: a) neither Respondent Maxie nor Latron White were ever patients of hers; b) the prescription was written during the time Stewart was on maternity leave; and c) her prescription pad used to write the prescription was stolen. The prescription was written on a prescription pad from La Vida Multi Specialty Medical Centers, located at 4644 Lincoln Blvd., Marina Del Rey, CA 90292. It was written to a Latron White and included the following address "3420 So. Budlong." No city, state or zip codes were listed on the handwritten prescription.

¹ Long Drugs underwent a change of ownership and became CVS Drug Store Number 9985 (CVS) on or about December 9, 2008.

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17. After Respondent Maxie was interviewed by Longs Drugs about her purchase of OxyContin with a forged prescription, Respondent Maxie quit her job at Longs Drugs.

FIRST CAUSE FOR DISCIPLINE

As to Respondent Maxie

(Unprofessional Conduct/ Act Involving Fraud, Deceit, Misrepresentation, Subterfuge or Concealment of Material Fact)

18. Respondent Maxie has subjected her license to disciplinary action under Code section 4301, subdivisions (j) and/or (o), and/or Health and Safety Code section 11173, subdivision (a), in that Respondent obtained controlled substances by fraud, deceit, misrepresentation, subterfuge and/or the concealment of a material fact. The circumstances are that on or about October 14, 2008, while employed as a pharmacy technician at Longs Drugs in Los Angeles, California, Respondent Maxie utilized a forged prescription to remove ninety tablets of OxyContin 80 milligrams from the pharmacy by concealment, fraud and deceit in violation of law. Complainant refers to and incorporates all the allegations set forth in paragraphs 15 through 17, inclusive, as though set forth fully.

SECOND CAUSE FOR DISCIPLINE

As to Respondent Maxie

(Unprofessional Conduct/ Act Involving Moral Turpitude, Dishonesty, Fraud or Corruption)

19. Respondent Maxie has subjected her license to disciplinary action under Code section 4301, subdivision (f), in that Respondent engaged in an act involving moral turpitude, dishonesty, fraud, deceit, and/or corruption. The circumstances are that on or about October 14, 2008, while employed as a pharmacy technician at Longs Drugs in Los Angeles, California, Respondent Maxie utilized a forged prescription to remove ninety tablets of OxyContin 80 milligrams from the pharmacy by concealment, fraud and deceit in violation of law. Complainant refers to and incorporates all the allegations set forth in paragraphs 15 through 18, inclusive, as though set forth fully.

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THIRD CAUSE FOR DISCIPLINE

As to Respondent Maxie

(Unprofessional Conduct/Possession of a Controlled Substance Without a Prescription)

20. Respondent Maxie has subjected her license to disciplinary action under Code sections 4301, subdivisions (j) and/or (o), and/or 4060, for possessing a controlled substance without a prescription. Complainant refers to and incorporates all the allegations set forth in paragraphs 15 through 19 as though set forth fully.

FOURTH CAUSE FOR DISCIPLINE

As to Respondent Maxie

(Unprofessional Conduct/Possession of a Drugs Obtained by Forged Prescription)

21. Respondent Maxie has subjected her license to disciplinary action under Code sections 4301, subdivisions (j) and/or (o), and/or 4324 subdivisions (a) and (b), for possessing a controlled substance secured with a forged prescription and for passing a forged prescription.

Complainant refers to and incorporates all the allegations set forth in paragraphs 15 through 20 as though set forth fully.

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 License Number TCH 21460, issued to Lori Ann Maxie;
- Ordering Lori Ann Maxie 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; and

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. / ,	d further action as deemed necessary and proper.
DATED: <u>5/28/10</u>	VIRGINIA HEROLD
	Executive Officer Board of Pharmacy
	Board of Pharmacy Department of Consumer Affairs State of California
	Complainant
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	DATED: <u>5/28/10</u> LA2009604714