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

In the Matter of the Accusation Against:

Case No. 3621

LINDA SAMI BRYANT
3303 S. Archibald Avenue, #289
Ontario, CA 91761

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

Pharmacy Technician Registration
No. TCH 44259

Respondent.

FINDINGS OF FACT

1. On or about June 1, 2010, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 3621 against Linda Sami Bryant (Respondent) before the Board of Pharmacy.

2. On or about November 18, 2002, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 44259 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2010, unless renewed.

3. On or about June 11, 2010, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation No. 3621, Statement to Respondent,

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1 Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and
2 11507.7 to Respondent's address of record with the Board, which was and is:

3 3303 S. Archibald Avenue, #289
4 Ontario, CA 91761.

5 A copy of the Accusation is attached as exhibit A, and is incorporated herein by reference.

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

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

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

14 6. Respondent failed to file a Notice of Defense within 15 days after service upon her of
15 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 3621.

16 7. California Government Code section 11520 states, in pertinent part:

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

21 8. Pursuant to its authority under Government Code section 11520, the Board finds
22 Respondent is in default. The Board will take action without further hearing and, based on the
23 evidence on file herein, finds that the allegations in Accusation No. 3621 are true.

24 9. The total cost for investigation and enforcement in connection with the Accusation
25 are \$3,487.00, as of July 13, 2010.

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DETERMINATION OF ISSUES

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2 1. Based on the foregoing findings of fact, Respondent Linda Sami Bryant has subjected
3 her Pharmacy Technician Registration No. TCH 44259 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. Respondent subjected her license to discipline under Business and Professions
9 Code (Code) sections 490 and 4301, subdivision (l) in that she was convicted of a crime that is
10 substantially related to the qualifications, duties, and functions of a pharmacy technician in that
11 on April 22, 2009, in a criminal proceeding entitled *People of the State of California v. Linda*
12 *Sami Bryant*, in Orange County Superior Court, case number 08SF0964 FA, Respondent was
13 convicted on her plea of guilty for violating Penal Code section 487, subdivision (a), grand theft,
14 a felony.

15 b. Respondent is subject to disciplinary action under Code section 4301,
16 subdivision (f) in that between or about November 2007 to November 2008, while working as a
17 pharmacy technician, Respondent stole controlled substances and dangerous drugs from her
18 employer, Longs Drug Store, using fraud, deceit, and dishonesty.

19 c. Respondent is subject to disciplinary action under Code section 4301,
20 subdivision (o) for violation of the Pharmacy Act, in that between or about November 2007 and
21 November 2008, while working as a pharmacy technician, she unlawfully possessed controlled
22 substances and dangerous drugs, in violation of Code section 4060.

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Exhibit A
Accusation No. 3621

1 EDMUND G. BROWN JR.
Attorney General of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
4 State Bar No. 101336
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-3037
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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. 3621

12 **LINDA SAMI BRYANT**
13 3303 S. Archibald Avenue, #289
14 Ontario, CA 91761

ACCUSATION

15 Pharmacy Technician Reg. No. TCH 44259

16 Respondent.

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 November 18, 2002, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 44259 to Linda Sami Bryant (Respondent). The Pharmacy Technician
24 Registration was in full force and effect at all times relevant to the charges brought herein and
25 will expire on December 31, 2010, unless 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 118, subdivision (b), of the Code provides that the suspension, expiration,
6 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
7 disciplinary action during the period within which the license may be renewed, restored, reissued
8 or reinstated.

9 5. Section 4300, subdivision (a), provides that every license issued may be revoked or
10 suspended.

11 STATUTORY PROVISIONS

12 6. Section 482 of the Code states:

13 Each board under the provisions of this code shall develop criteria to
14 evaluate the rehabilitation of a person when:

15 (a) Considering the denial of a license by the board under Section 480; or

16 (b) Considering suspension or revocation of a license under Section 490.
17 Each board shall take into account all competent evidence of rehabilitation
furnished by the applicant or licensee.

18 Section 490 of the Code states:

19 (a) In addition to any other action that a board is permitted to take against
20 a licensee, a board may suspend or revoke a license on the ground that the licensee
21 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.

22 (b) Notwithstanding any other provision of law, a board may exercise any
23 authority to discipline a licensee for conviction of a crime that is independent of
24 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.

25 (c) A conviction within the meaning of this section means a plea or verdict of
26 guilty or a conviction following a plea of nolo contendere. Any action that a board is
27 permitted to take following the establishment of a conviction may be taken when the
28 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.

1 (d) The Legislature hereby finds and declares that the application of this
2 section has been made unclear by the holding in *Petropoulos v. Department of*
3 *Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed
4 a significant number of statutes and regulations in question, resulting in potential
5 harm to the consumers of California from licensees who have been convicted of
6 crimes. Therefore, the Legislature finds and declares that this section establishes an
7 independent basis for a board to impose discipline upon a licensee, and that the
8 amendments to this section made by Senate Bill 797 of the 2007-2008 Regular
9 Session.

10 7. Section 493 of the Code states:

11 Notwithstanding any other provision of law, in a proceeding conducted by a
12 board within the department pursuant to law to deny an application for a license or
13 to suspend or revoke a license or otherwise take disciplinary action against a person
14 who holds a license, upon the ground that the applicant or the licensee has been
15 convicted of a crime substantially related to the qualifications, functions, and duties
16 of the licensee in question, the record of conviction of the crime shall be conclusive
17 evidence of the fact that the conviction occurred, but only of that fact, and the board
18 may inquire into the circumstances surrounding the commission of the crime in order
19 to fix the degree of discipline or to determine if the conviction is substantially related
20 to the qualifications, functions, and duties of the licensee in question.

21 8. Section 4022 of the Code states:

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

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

26 (b) Any device that bears the statement: "Caution: federal law restricts this
27 device to sale by or on the order of a _____," "Rx only," or words of similar
28 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.

9. Section 4060 of the Code states, in pertinent part, that no person shall possess any
controlled substance, except that furnished to a person upon the prescription of a physician,
dentist, podiatrist, or veterinarian, or furnished pursuant to a drug order issued by a certified
nurse-midwife pursuant to Section 2746.61, a nurse practitioner pursuant to Section
2836.1, or a physician assistant pursuant to Section 3502.1.

10. Section 4301 of the Code states:

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

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

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

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

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REGULATORY PROVISIONS

11. Title 16, California Code of Regulations, section 1769 states:

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

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.

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

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

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

5 12. Title 16, California Code of Regulations, section 1770 states:

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

10 COST RECOVERY

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

15 DRUGS

16 14. Hydrocodone combined with acetaminophen is a Schedule III controlled substance as
17 designated by Health and Safety Code section 11056, subdivision (e)(4), and is a dangerous drug
18 pursuant to Business and Professions Code section 4022.

19 FIRST CAUSE FOR DISCIPLINE

20 (April 22, 2009 Criminal Conviction for Grand Theft in August Through November 2008)

21 15. Respondent subjected her license to discipline under sections 490 and
22 4301, subdivision (l) of the Code in that she was convicted of a crime that is substantially related
23 to the qualifications, duties, and functions of a pharmacy technician. The circumstances are as
24 follows:

25 16. On or about April 22, 2009, in a criminal proceeding entitled *People of the State of*
26 *California v. Linda Sami Bryant*, in Orange County Superior Court, case number 08SF0964 FA,
27 Respondent was convicted on her plea of guilty for violating Penal Code section 487, subdivision
28 (a) (grand theft), a felony.

1 17. The facts that led to the conviction are that between November 2007 and
2 November 2008, while Respondent was employed at the Longs Drug Store #242, located at
3 27750 Santa Margarita Parkway, Mission Viejo, CA 92691, she stole 6,918 hydrocodone tablets
4 from the pharmacy. The stolen hydrocodone had a value of \$1,404.14. Respondent used the
5 pharmacy's inventory system to hide the thefts by making false inventory updates. Pharmacy
6 staff installed surveillance cameras which show Respondent taking the controlled substances.

7 18. On November 3, 2008, Respondent was interviewed by pharmacy staff regarding
8 the thefts, and admitted taking the controlled substances, and updating the inventory system to
9 hide the thefts. Respondent wrote an "Admission" letter for pharmacy loss prevention staff. The
10 pharmacy's loss prevention staff detained Respondent and called the Orange County Sheriff's
11 Office to report the incident. Respondent admitted the thefts to Sheriff's deputies and told them
12 she stole the controlled substances for a friend.

13 19. As a result of the conviction, Respondent was sentenced and placed on formal
14 probation for three (3) years, ordered to violate no law, serve 60 days in the Orange County Jail,
15 with 2 days credit for time served. Respondent was also ordered, among other things, to pay
16 \$450 in fees and fines, ordered to pay restitution with 10% interest, submit to DNA testing,
17 ordered to not use unauthorized drugs, submit to drug or narcotic testing, and to submit to search
18 and seizure.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Unprofessional Conduct - Commission of Acts Involving**
21 **Moral Turpitude, Dishonesty, Fraud, Deceit & Corruption)**

22 20. Respondent is subject to disciplinary action under section 4301, subdivision (f) of
23 the Code in that between or about November 2007 to November 2008, while working as a
24 pharmacy technician, Respondent stole controlled substances and dangerous drugs from her
25 employer, Longs Drug Store, using fraud, deceit, and dishonesty, as detailed in paragraphs 16-19,
26 above.

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1 THIRD CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct - Violation of California Statutes Regulating
3 Controlled Substances & Dangerous Drugs)

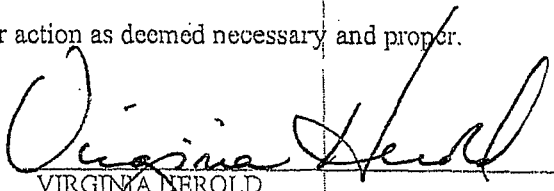
4 21. Respondent is subject to disciplinary action under section 4301, subdivision (o) of the
5 Code for violation of the Pharmacy Act, in that between or about November 2007 and November
6 2008, while working as a pharmacy technician, she unlawfully possessed controlled substances
7 and dangerous drugs, in violation of Code section 4060, as detailed in paragraphs 16-19, above.

8 PRAYER

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

- 11 1. Revoking or suspending Pharmacy Technician Registration Number TCH 44259,
12 issued to Linda Sami Bryant;
- 13 2. Ordering Linda Sami Bryant to pay the Board of Pharmacy the reasonable costs of the
14 investigation and enforcement of this case, pursuant to Business and Professions Code section
15 125.3;
- 16 3. Taking such other and further action as deemed necessary and proper.

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18 DATED: 6/1/10


19 VIRGINIA NEROLD
20 Executive Officer
21 Board of Pharmacy
22 Department of Consumer Affairs
23 State of California
24 Complainant

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