

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

In the Matter of the Accusation Against:

**LINDSAY KIMIYE TOMOOKA, AKA
LINSAY KIMILIE TOMOOKA
5407 Southshore Drive
Bakersfield, CA 93312**

Pharmacy Technician License No. TCH 53580

Respondent.

Case No. 3806

OAH No. L-2011060305

DECISION AND ORDER

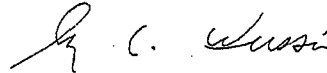
The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on March 26, 2012.

It is so ORDERED on February 23, 2012.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STANLEY C. WEISSER
Board President

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
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Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 3806

12 **LINDSAY KIMIYE TOMOOKA, AKA**
13 **LINSAY KIMILIE TOMOOKA**
14 **5407 Southshore Drive**
Bakersfield, CA 93312

OAH No. L-2011060305

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

15 **Pharmacy Technician Registration No. TCH**
16 **53580**

17 Respondent.

18
19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 **PARTIES**

- 22 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
23 She brought this action solely in her official capacity and is represented in this matter by Kamala
24 D. Harris, Attorney General of the State of California, by Heather Hua, Deputy Attorney General.
25 2. Respondent Lindsay Kimiye Tomooka, a.k.a. Linsay Kimilie Tomooka (Respondent)
26 is representing herself in this proceeding and has chosen not to exercise her right to be
27 represented by counsel.

28

1 **DISCIPLINARY ORDER**

2 IT IS HEREBY ORDERED that Pharmacy Technician Registration No. TCH 53580 issued
3 to Respondent is revoked. However, the revocation is stayed and Respondent is placed on
4 probation for five (5) years on the following terms and conditions.

5 1. **Suspension**

6 As part of probation, Respondent is suspended from working as a pharmacy technician for
7 60 days beginning the effective date of this decision.

8 During suspension, Respondent shall not enter any pharmacy area or any portion of or any
9 other Board licensed premises (wholesaler, veterinary food-animal drug retailer or any other
10 distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and
11 devices or controlled substances are maintained. Respondent shall not do any act involving drug
12 selection, selection of stock, manufacturing, compounding or dispensing; nor shall Respondent
13 manage, administer, or assist any licensee of the Board. Respondent shall not have access to or
14 control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled
15 substances.

16 Respondent shall not direct, control or perform any aspect of the practice of pharmacy.
17 Subject to the above restrictions, Respondent may continue to own or hold an interest in any
18 licensed premises in which he or she holds an interest at the time this decision becomes effective
19 unless otherwise specified in this order.

20 Failure to comply with this suspension shall be considered a violation of probation.

21 2. **Obey All Laws**

22 Respondent shall obey all state and federal laws and regulations.

23 Respondent shall report any of the following occurrences to the Board, in writing, within
24 seventy-two (72) hours of such occurrence:

- 25 an arrest or issuance of a criminal complaint for violation of any provision of the
26 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
27 substances laws
28 a plea of guilty or nolo contendere in any state or federal criminal proceeding to any

1 criminal complaint, information or indictment

2 a conviction of any crime

3 discipline, citation, or other administrative action filed by any state or federal agency
4 which involves Respondent's Pharmacy Technician Registration or which is related
5 to the practice of pharmacy or the manufacturing, obtaining, handling, distributing,
6 billing, or charging for any drug, device or controlled substance.

7 Failure to timely report any such occurrence shall be considered a violation of probation.

8 **3. Certification Prior to Resuming Work**

9 Respondent shall be automatically suspended from working as a pharmacy technician until
10 she is certified as defined by Business and Professions Code section 4202(a)(4) and provides
11 satisfactory proof of certification to the board. Respondent shall not resume working as a
12 pharmacy technician until notified by the board. Failure to achieve certification within one (1)
13 year shall be considered a violation of probation. Respondent shall not resume working as a
14 pharmacy technician until notified by the board.

15 During suspension, respondent shall not enter any pharmacy area or any portion of any
16 other board licensed premises (wholesaler, veterinary food-animal drug retailer or any other
17 distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and
18 devices or controlled substances are maintained. Respondent shall not do any act involving drug
19 selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent
20 manage, administer, or assist any licensee of the board. Respondent shall not have access to or
21 control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled
22 substances. Respondent shall not resume work until notified by the board.

23 Subject to the above restrictions, respondent may continue to own or hold an interest in any
24 licensed premises by the Board in which she holds an interest at the time this decision becomes
25 effective unless otherwise specified in this order.

26 Failure to comply with this suspension shall be considered a violation of probation.

27 **4. Report to the Board**

28 Respondent shall report to the Board quarterly, on a schedule as directed by the Board or its

1 designee. The report shall be made either in person or in writing, as directed. Among other
2 requirements, Respondent shall state in each report under penalty of perjury whether there has
3 been compliance with all the terms and conditions of probation. Failure to submit timely reports
4 in a form as directed shall be considered a violation of probation. Any period(s) of delinquency
5 in submission of reports as directed may be added to the total period of probation. Moreover, if
6 the final probation report is not made as directed, probation shall be automatically extended until
7 such time as the final report is made and accepted by the Board.

8 **5. Interview with the Board**

9 Upon receipt of reasonable prior notice, Respondent shall appear in person for interviews
10 with the Board or its designee, at such intervals and locations as are determined by the Board or
11 its designee. Failure to appear for any scheduled interview without prior notification to Board
12 staff, or failure to appear at two (2) or more scheduled interviews with the Board or its designee
13 during the period of probation, shall be considered a violation of probation.

14 **6. Cooperate with Board Staff**

15 Respondent shall cooperate with the Board's inspection program and with the Board's
16 monitoring and investigation of Respondent's compliance with the terms and conditions of her
17 probation. Failure to cooperate shall be considered a violation of probation.

18 **7. Notice to Employers**

19 During the period of probation, Respondent shall notify all present and prospective
20 employers of the Decision in Accusation case number 3806 and the terms, conditions and
21 restrictions imposed on Respondent by the decision, as follows:

22 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
23 Respondent undertaking any new employment, Respondent shall cause her direct supervisor,
24 pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent's
25 tenure of employment) and owner to report to the Board in writing acknowledging that the listed
26 individual(s) has/have read the decision in case number 3806 and the terms and conditions
27 imposed thereby. It shall be Respondent's responsibility to ensure that her employer(s) and/or
28 supervisor(s) submit timely acknowledgement(s) to the Board.

1 If Respondent works for or is employed by or through a pharmacy employment service,
2 Respondent must notify her direct supervisor, pharmacist-in-charge and owner at every pharmacy
3 of the terms and conditions of the Decision in Accusation case number 3806 in advance of the
4 Respondent commencing work at each pharmacy. A record of this notification must be provided
5 to the Board upon request.

6 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
7 (15) days of Respondent undertaking any new employment by or through a pharmacy
8 employment service, Respondent shall cause her direct supervisor with the pharmacy
9 employment service to report to the Board in writing acknowledging that she has read the
10 decision in case number 3806 and the terms and conditions imposed thereby. It shall be
11 Respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely
12 acknowledgment(s) to the Board.

13 Failure to timely notify present or prospective employer(s) or to cause that/those
14 employer(s) to submit timely acknowledgements to the Board shall be considered a violation of
15 probation.

16 "Employment" within the meaning of this provision shall include any full-time,
17 part-time, temporary or relief service or pharmacy management service as a pharmacy
18 technician or in any position for which a pharmacy technician license is a requirement
19 or criterion for employment, whether the Respondent is considered an employee,
20 independent contractor or volunteer.

21 **8. Reimbursement of Board Costs**

22 As a condition precedent to successful completion of probation, Respondent shall pay to the
23 Board its costs of investigation and prosecution in the amount of three thousand four hundred
24 seventeen dollars (\$3,417.00). Respondent shall make said payments pursuant to a payment plan
25 approved by the Board or its designee. There shall be no deviation from this schedule absent
26 prior written approval by the Board or its designee. Failure to pay costs by the deadline(s) as
27 directed shall be considered a violation of probation.

28 The filing of bankruptcy by Respondent shall not relieve Respondent of her responsibility

1 to reimburse the Board its costs of investigation and prosecution.

2 **9. Probation Monitoring Costs**

3 Respondent shall pay any costs associated with probation monitoring as determined by the
4 Board each and every year of probation. Such costs shall be payable to the Board on a schedule
5 as directed by the Board or its designee. Failure to pay such costs by the deadline(s) as directed
6 shall be considered a violation of probation.

7 **10. Status of License**

8 Respondent shall, at all times while on probation, maintain an active, current pharmacy
9 technician license with the Board, including any period during which suspension or probation is
10 tolled. Failure to maintain an active, current license shall be considered a violation of probation.

11 If Respondent's pharmacy technician license expires or is cancelled by operation of law or
12 otherwise at any time during the period of probation, including any extensions thereof due to
13 tolling or otherwise, upon renewal or reapplication Respondent's license shall be subject to all
14 terms and conditions of this probation not previously satisfied.

15 **11. License Surrender While on Probation/Suspension**

16 Following the effective date of this decision, should Respondent cease work due to
17 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
18 Respondent may tender her pharmacy technician license to the Board for surrender. The Board or
19 its designee shall have the discretion whether to grant the request for surrender or take any other
20 action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the
21 license, Respondent will no longer be subject to the terms and conditions of probation. This
22 surrender constitutes a record of discipline and shall become a part of the Respondent's license
23 history with the Board.

24 Upon acceptance of the surrender, Respondent shall relinquish her pharmacy technician
25 license to the Board within ten (10) days of notification by the Board that the surrender is
26 accepted. Respondent may not reapply for any license, permit, or registration from the Board for
27 three (3) years from the effective date of the surrender. Respondent shall meet all requirements
28 applicable to the license sought as of the date the application for that license is submitted to the

1 Board.

2 **12. Notification of a Change in Name, Residence Address, Mailing Address or**
3 **Employment**

4 Respondent shall notify the Board in writing within ten (10) days of any change of
5 employment. Said notification shall include the reasons for leaving, the address of the new
6 employer, the name of the supervisor and owner, and the work schedule if known. Respondent
7 shall further notify the Board in writing within ten (10) days of a change in name, residence
8 address and mailing address, or phone number.

9 Failure to timely notify the Board of any change in employer(s), name(s), address(es), or
10 phone number(s) shall be considered a violation of probation.

11 **13. Tolling of Probation**

12 Except during periods of suspension, Respondent shall, at all times while on probation, be
13 employed as a pharmacy technician in California for a minimum of 10 hours per calendar month.
14 Any month during which this minimum is not met shall toll the period of probation, i.e., the
15 period of probation shall be extended by one month for each month during which this minimum is
16 not met. During any such period of tolling of probation, Respondent must nonetheless comply
17 with all terms and conditions of probation.

18 Should Respondent, regardless of residency, for any reason (including vacation) cease
19 working as a pharmacy technician for a minimum of 10 hours per calendar month in California,
20 Respondent must notify the Board in writing within ten (10) days of cessation of work and must
21 further notify the Board in writing within ten (10) days of the resumption of the work. Any
22 failure to provide such notification(s) shall be considered a violation of probation.

23 It is a violation of probation for Respondent's probation to remain tolled pursuant to the
24 provisions of this condition for a total period, counting consecutive and non-consecutive months,
25 exceeding thirty-six (36) months.

26 "Cessation of work" means calendar month during which Respondent is not
27 working for at least 10 hours as a pharmacy technician, as defined in Business and
28 Professions Code section 4115. "Resumption of work" means any calendar month

1 during which Respondent is working as a pharmacy technician for at least 10 hours as
2 a pharmacy technician as defined by Business and Professions Code section 4115.

3 **14. Violation of Probation**

4 If Respondent has not complied with any term or condition of probation, the Board shall
5 have continuing jurisdiction over Respondent, and probation shall automatically be extended,
6 until all terms and conditions have been satisfied or the Board has taken other action as deemed
7 appropriate to treat the failure to comply as a violation of probation, to terminate probation, and
8 to impose the penalty that was stayed.

9 If Respondent violates probation in any respect, the Board, after giving Respondent notice
10 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
11 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a
12 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If
13 a petition to revoke probation or an accusation is filed against Respondent during probation, the
14 Board shall have continuing jurisdiction, and the period of probation shall be automatically
15 extended until the petition to revoke probation or accusation is heard and decided.

16 **15. Completion of Probation**

17 Upon written notice by the Board indicating successful completion of probation,
18 Respondent's pharmacy technician license will be fully restored.

19 **16. No Ownership of Licensed Premises**

20 Respondent shall not own, have any legal or beneficial interest in, or serve as a manager,
21 administrator, member, officer, director, trustee, associate, or partner of any business, firm,
22 partnership, or corporation currently or hereinafter licensed by the Board. Respondent shall sell
23 or transfer any legal or beneficial interest in any entity licensed by the Board within ninety (90)
24 days following the effective date of this decision and shall immediately thereafter provide written
25 proof thereof to the Board. Failure to timely divest any legal or beneficial interest(s) or provide
26 documentation thereof shall be considered a violation of probation.

27 **17. Attend Substance Abuse Recovery Relapse Prevention and Support Groups**

28 Within thirty (30) days of the effective date of this decision, Respondent shall begin regular

1 attendance at a recognized and established substance abuse recovery support group in California,
2 (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been approved by the Board
3 or its designee. Respondent must attend at least one group meeting per week unless otherwise
4 directed by the Board or its designee. Respondent shall continue regular attendance and submit
5 signed and dated documentation confirming attendance with each quarterly report for the duration
6 of probation. Failure to attend or submit documentation thereof shall be considered a violation of
7 probation.

8 **18. Random Drug Screening**

9 Respondent, at her own expense, shall participate in random testing, including but not
10 limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug
11 screening program as directed by the Board or its designee. Respondent may be required to
12 participate in testing for the entire probation period and the frequency of testing will be
13 determined by the Board or its designee. At all times Respondent shall fully cooperate with the
14 Board or its designee, and shall, when directed, submit to such tests and samples for the detection
15 of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the Board or
16 its designee may direct. Failure to timely submit to testing as directed shall be considered a
17 violation of probation. Upon request of the Board or its designee, Respondent shall provide
18 documentation from a licensed practitioner that the prescription for a detected drug was
19 legitimately issued and is a necessary part of the treatment of the Respondent. Failure to timely
20 provide such documentation shall be considered a violation of probation. Any confirmed positive
21 test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a
22 documented medical treatment shall be considered a violation of probation and shall result in the
23 automatic suspension of work by Respondent. Respondent may not resume work as a pharmacy
24 technician until notified by the Board in writing.

25 During suspension, Respondent shall not enter any pharmacy area or any portion of or any
26 other Board licensed premises (wholesaler, veterinary food-animal drug retailer or any other
27 distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and
28 devices or controlled substances are maintained. Respondent shall not do any act involving drug

1 selection, selection of stock, manufacturing, compounding or dispensing; nor shall Respondent
2 manage, administer, or assist any licensee of the Board. Respondent shall not have access to or
3 control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled
4 substances. Respondent shall not resume work until notified by the Board.

5 Respondent shall not direct, control or perform any aspect of the practice of pharmacy.
6 Subject to the above restrictions, Respondent may continue to own or hold an interest in any
7 licensed premises in which she holds an interest at the time this decision becomes effective unless
8 otherwise specified in this order.

9 Failure to comply with this suspension shall be considered a violation of probation.

10 **19. Work Site Monitor**

11 Within ten (10) days of the effective date of this decision, Respondent shall identify a work
12 site monitor, for prior approval by the Board, who shall be responsible for supervising
13 Respondent during working hours. Respondent shall be responsible for ensuring that the work
14 site monitor reports in writing to the Board quarterly. Should the designated work site monitor
15 determine at any time during the probationary period that Respondent has not maintained
16 sobriety, she shall notify the Board immediately, either orally or in writing as directed. Should
17 Respondent change employment, a new work site monitor must be designated, for prior approval
18 by the Board, within ten (10) days of commencing new employment. Failure to identify an
19 acceptable initial or replacement work site monitor, or to ensure quarterly reports are submitted to
20 the Board, shall be considered a violation of probation.

21 **20. Notification of Departure**

22 Prior to leaving the probationary geographic area designated by the Board or its designee
23 for a period greater than twenty-four (24) hours, Respondent shall notify the Board verbally and
24 in writing of the dates of departure and return. Failure to comply with this provision shall be
25 considered a violation of probation.

26 **21. Abstain from Drugs and Alcohol Use**

27 Respondent shall completely abstain from the possession or use of alcohol, controlled
28 substances, dangerous drugs and their associated paraphernalia except when the drugs are

1 lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon
2 request of the Board or its designee, Respondent shall provide documentation from the licensed
3 practitioner that the prescription for the drug was legitimately issued and is a necessary part of the
4 treatment of the Respondent. Failure to timely provide such documentation shall be considered a
5 violation of probation. Respondent shall ensure that she is not in the same physical location as
6 individuals who are using illicit substances even if Respondent is not personally ingesting the
7 drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia
8 not supported by the documentation timely provided, and/or any physical proximity to persons
9 using illicit substances, shall be considered a violation of probation.

10 **22. Tolling of Suspension**

11 During the period of suspension, Respondent shall not leave California for any period
12 exceeding ten (10) days, regardless of purpose (including vacation). Any such absence in excess
13 of ten (10) days during suspension shall be considered a violation of probation. Moreover, any
14 absence from California during the period of suspension exceeding ten (10) days shall toll the
15 suspension, i.e., the suspension shall be extended by one day for each day over ten (10) days
16 Respondent is absent from California. During any such period of tolling of suspension,
17 Respondent must nonetheless comply with all terms and conditions of probation.

18 Respondent must notify the Board in writing within ten (10) days of departure, and must
19 further notify the Board in writing within ten (10) days of return. The failure to provide such
20 notification(s) shall constitute a violation of probation. Upon such departure and return,
21 Respondent shall not return to work until notified by the Board that the period of suspension has
22 been satisfactorily completed.

23 **23. Community Services Program**

24 Within sixty (60) days of the effective date of this Decision, Respondent shall submit to the
25 Board or its designee, for prior approval, a community service program in which Respondent
26 shall provide free health-care related services on a regular basis to a community or charitable
27 facility or agency for at least forty (40) hours of community service per year for the first two (2)
28 years of probation. Within thirty (30) days of Board approval thereof, Respondent shall submit

1 documentation to the Board demonstrating commencement of the community service program. A
2 record of this notification must be provided to the Board upon request. Respondent shall report
3 on progress with the community service program in the quarterly reports. Failure to timely
4 submit, commence, or comply with the program shall be considered a violation of probation.

5 **ACCEPTANCE**

6 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the
7 stipulation and the effect it will have on my Pharmacy Technician Registration. I enter into this
8 Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree
9 to be bound by the Decision and Order of the Board of Pharmacy.

10
11
12 DATED: _____

Signature page attached

13 **LINDSAY KIMIYE TOMOOKA**
14 Respondent

15 **ENDORSEMENT**

16 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
17 submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

18
19
20 Dated:

Respectfully submitted,

21 **KAMALA D. HARRIS**
Attorney General of California
22 **GREGORY J. SALUTE**
Supervising Deputy Attorney General

23
24 **HEATHER HUA**
Deputy Attorney General
25 *Attorneys for Complainant*

26
27
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1 documentation to the Board demonstrating commencement of the community service program. A
 2 record of this notification must be provided to the Board upon request. Respondent shall report
 3 on progress with the community service program in the quarterly reports. Failure to timely
 4 submit, commence, or comply with the program shall be considered a violation of probation.

ACCEPTANCE

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 6 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the
 7 stipulation and the effect it will have on my Pharmacy Technician Registration. I enter into this
 8 Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree
 9 to be bound by the Decision and Order of the Board of Pharmacy.

10
11

12 DATED:

12/7/11



13 **LINDSAY KIMIYE TOMOOKA**
14 Respondent

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16

ENDORSEMENT

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19

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

20
21

Dated:

December 7, 2011

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
GREGORY J. SALUTE
Supervising Deputy Attorney General

22
23



HEATHER HUA
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 3806

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

In the Matter of the Accusation Against:

**LINDSAY KIMIYE TOMOOKA, AKA
LINSAY KIMILIE TOMOOKA
5407 Southshore Drive
Bakersfield, CA 93312**

**Pharmacy Technician Registration No. TCH
53580**

Respondent.

Case No. 3806

OAH No. L-2011060305

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary 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 _____.

It is so ORDERED _____.

FOR THE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 HEATHER HUA
Deputy Attorney General
4 State Bar No. 223418
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2574
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:
12 **LINDSAY KIMIYE TOMOOKA**
13 a.k.a, **LINSAY KIMILIE TOMOOKA**
5407 Southshore Drive
Bakersfield, CA 93312

Case No. 3806

ACCUSATION

14 Original Pharmacy Technician Registration
15 Number TCH 53580

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 January 8, 2004, the Board of Pharmacy (Board) issued Original
23 Pharmacy Technician Registration Number TCH 53580 to Lindsay Kimiye Tomooka, also known
24 as Linsay Kimilie Tomooka (Respondent). The license was in full force and effect at all times
25 relevant to the charges brought herein and will expire on August 31, 2011, 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.

....

"(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

....

"(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

1 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
2 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
3 indictment.”

4 **REGULATORY PROVISIONS**

5 8. California Code of Regulations, title 16, section 1770 states, in pertinent part:

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

12 **COST RECOVERY**

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

16 **CONTROLLED SUBSTANCE**

17 10. "Methamphetamine," is a Schedule II controlled substance as designated by Health
18 and Safety Code section 11055, subdivision (d)(2) and is categorized as a dangerous drug
19 pursuant to section 4022.

20 **FIRST CAUSE FOR DISCIPLINE**

21 **(Convictions of Substantially Related Crimes)**

22 11. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and
23 490, in conjunction with California Code of Regulations, title 16, section 1770, in that,
24 Respondent was convicted of crimes substantially related to the qualifications, functions or duties
25 of a pharmacy technician as follows:

26 a. On or about May 17, 2010, after pleading guilty, Respondent was convicted of one
27 misdemeanor count of violating Health and Safety Code section 11550, subdivision (a) [under the
28 influence of a controlled substance] in the criminal proceeding entitled *The People of the State of*

1 *California v. Lindsay Kimiye Tomooka* (Super Ct. Santa Barbara County, 2010, No. 1312359).
2 The Court ordered Respondent's pronouncement of judgment suspended and granted formal
3 probation for 3 years, with terms and conditions.

4 The circumstances surrounding the conviction are that on or about July 4, 2009, during a
5 narcotics investigation, officers from the Santa Maria Police Department observed Respondent on
6 the balcony of a Budget Inn in Santa Maria, California. Officers observed Respondent was
7 nervous, had a hard time sitting still, and had rapid speech. Officers questioned Respondent when
8 was the last time she used methamphetamine, and she responded the day before and through the
9 night. Respondent agreed to a drug test and tested positive for methamphetamine.

10 b. On or about May 17, 2010, after pleading nolo contendere, Respondent was convicted
11 of two misdemeanor counts of violating Penal Code section 484, subdivision (a) [petty theft] in
12 the criminal proceedings entitled *The People of the State of California v. Lindsay Kimiye*
13 *Tomooka* (Super. Ct. Santa Barbara County, 2010, No. 1348237). The Court sentenced
14 Respondent to 45 days in Santa Barbara County Jail and placed her on 3 years formal probation,
15 with terms and conditions.

16 The circumstances surrounding the conviction are that Respondent was employed as a
17 cashier at Sears in Santa Maria, California and was under suspicion for stealing. On or about
18 March 22, 2010, a Loss Prevention Agent for Sears reviewed the closed circuit television system
19 and the store's register information system on the computer regarding the losses that occurred at
20 Respondent's cash register. A review of the surveillance cameras showed that on or about March
21 14, 2010 and March 16, 2010, Respondent was observed stealing cash and merchandise from
22 Sears located in Santa Maria, California. When confronted by Sears' personnel, Respondent
23 admitted to the theft.

24 **SECOND CAUSE FOR DISCIPLINE**

25 **(Use/Under the Influence of a Controlled Substance)**

26 12. Respondent is subject to disciplinary action under section 4301, subdivision (h) and
27 (j), in that on or about July 4, 2009, Respondent used and/or was under the influence of a
28

1 controlled substance. Complainant refers to, and by this reference incorporates, the allegations
2 set forth above in paragraph 11, subparagraph (a), as though set forth in fully.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Dishonest Acts)**

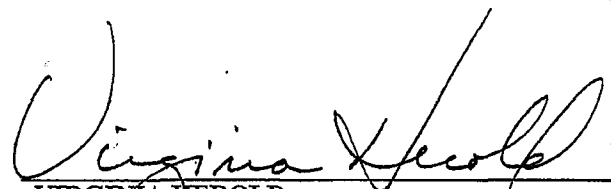
5 13. Respondent is subject to disciplinary action under section 4301, subdivision (f), in
6 that on or about March 14, 2010 and March 16, 2010, Respondent committed dishonest acts.
7 Complainant refers to, and by reference incorporates, the allegations set forth above in paragraph
8 11, subparagraph (b), as though set forth fully.

9 **PRAYER**

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

- 12 1. Revoking or suspending Original Pharmacy Technician Registration Number TCH
13 53580, issued to Respondent Lindsay Kimiye Tomooka.
- 14 2. Ordering Respondent Lindsay Kimiye Tomooka to pay the Board the reasonable
15 costs of the investigation and enforcement of this case, pursuant to section 125.3; and
- 16 3. Taking such other and further action as deemed necessary and proper.

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19
20 DATED: 4/27/11



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

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