

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

In the Matter of the Accusation Against:
GABRIELLE ELISA TALMADGE
6521 Stoneman Drive
North Highlands, CA 95660
Pharmacy Technician Registration No.
94269

Respondent.

Case No. 4650
DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about August 14, 2013, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4650 against Gabrielle Elisa Talmadge (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)
2. On or about September 17, 2009, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. 94269 to Respondent. The Pharmacy Technician Registration expired on January 31, 2013, and has not been renewed.
3. On or about August 27, 2013, Respondent was served by Certified and First Class Mail copies of the Accusation No. 2014-397, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,

1 and 11507.7) at Respondent's address of record which, pursuant to Business and Professions
2 Code section 4100, is required to be reported and maintained with the Board. Respondent's
3 address of record was and is:

4 6521 Stoneman Drive
5 North Highlands, CA 95660.

6 4. Service of the Accusation was effective as a matter of law under the provisions of
7 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
8 124.

9 5. On or about September 5, 2013, the aforementioned documents were returned by the
10 U.S. Postal Service marked "Unable to Forward." The address on the documents was the same as
11 the address on file with the Board. Respondent failed to maintain an updated address with the
12 Board and the Board has made attempts to serve the Respondent at the address on file.

13 Respondent has not made herself available for service and therefore, has not availed herself of her
14 right to file a notice of defense and appear at hearing.

15 6. Government Code section 11506 states, in pertinent part:

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

21 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
22 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 4650.

23 8. California Government Code section 11520 states, in pertinent part:

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

28 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, based on the
relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
taking official notice of all the investigatory reports, exhibits and statements contained therein on

1 file at the Board's offices regarding the allegations contained in Accusation No. 4650, finds that
2 the charges and allegations in Accusation No. 4650, are separately and severally, found to be true
3 and correct by clear and convincing evidence.

4 10. Taking official notice of its own internal records, pursuant to Business and
5 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
6 and Enforcement is \$1037.50 as of November 5, 2013.

7 DETERMINATION OF ISSUES

8 1. Based on the foregoing findings of fact, Respondent Gabrielle Elisa Talmadge has
9 subjected her Pharmacy Technician Registration No. 94269 to discipline.

10 2. The agency has jurisdiction to adjudicate this case by default.

11 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
12 Registration based upon the following violations alleged in the Accusation which are supported
13 by the evidence contained in the Default Decision Evidence Packet in this case:

14 a. Business and Professions Code section 4301(l), criminal conviction;

15 b. Business and Professions Code section 4301(j), violations of laws regulating
16 controlled substances and dangerous drugs.

17 //

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER

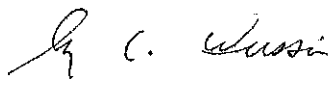
IT IS SO ORDERED that Pharmacy Technician Registration No. 94269, heretofore issued to Respondent Gabrielle Elisa Talmadge, is revoked.

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 February 18, 2014.

It is so ORDERED ON January 17, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA


By _____
STAN C. WEISSER
Board President

11208299.DOC
SA2013110880

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 ANAHITA S. CRAWFORD
Deputy Attorney General
4 State Bar No. 209545
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 322-8311
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 4650

13 **GABRIELLE ELISA TALMADGE**
6521 Stoneman Drive
North Highlands, CA 95660

ACCUSATION

14 **Pharmacy Technician Registration No. 94269**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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 September 17, 2009, the Board of Pharmacy issued Pharmacy Technician
22 Registration Number 94269 to Gabrielle Elisa Talmadge (Respondent). The Pharmacy
23 Technician Registration expired on January 31, 2013, and has not been renewed.

24 **JURISDICTION**

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

28 //

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

5 5. Section 4300 of the Code states:

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

7 (b) The board shall discipline the holder of any license issued by the board,
8 whose default has been entered or whose case has been heard by the board and found
9 guilty, by any of the following methods:

10 (1) Suspending judgment.

11 (2) Placing him or her upon probation.

12 (3) Suspending his or her right to practice for a period not exceeding one year.

13 (4) Revoking his or her license.

14 (5) Taking any other action in relation to disciplining him or her as the board in
15 its discretion may deem proper.

16 (c) The board may refuse a license to any applicant guilty of unprofessional
17 conduct. The board may, in its sole discretion, issue a probationary license to any
18 applicant for a license who is guilty of unprofessional conduct and who has met all
19 other requirements for licensure. The board may issue the license subject to any terms
20 or conditions not contrary to public policy, including, but not limited to, the
21 following:

22 (1) Medical or psychiatric evaluation.

23 (2) Continuing medical or psychiatric treatment.

24 (3) Restriction of type or circumstances of practice.

25 (4) Continuing participation in a board-approved rehabilitation program.

26 (5) Abstention from the use of alcohol or drugs.

27 (6) Random fluid testing for alcohol or drugs.

28 (7) Compliance with laws and regulations governing the practice of pharmacy.

 (d) The board may initiate disciplinary proceedings to revoke or suspend any
probationary certificate of licensure for any violation of the terms and conditions of
probation. Upon satisfactory completion of probation, the board shall convert the
probationary certificate to a regular certificate, free of conditions.

 (e) The proceedings under this article shall be conducted in accordance with
Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the

1 Government Code, and the board shall have all the powers granted therein. The action
2 shall be final, except that the propriety of the action is subject to review by the
3 superior court pursuant to Section 1094.5 of the Code of Civil Procedure.

4 6. Section 4300.1 of the Code states:

5 The expiration, cancellation, forfeiture, or suspension of a board-issued license
6 by operation of law or by order or decision of the board or a court of law, the
7 placement of a license on a retired status, or the voluntary surrender of a license by a
8 licensee shall not deprive the board of jurisdiction to commence or proceed with any
9 investigation of, or action or disciplinary proceeding against, the licensee or to render
10 a decision suspending or revoking the license.

11 STATUTORY PROVISIONS

12 7. Section 4301 of the Code states:

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

17 ...
18 (j) The violation of any of the statutes of this state, or any other state, or of the
19 United States regulating controlled substances and dangerous drugs.

20 ...
21 (l) The conviction of a crime substantially related to the qualifications,
22 functions, and duties of a licensee under this chapter. The record of conviction of a
23 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
24 States Code regulating controlled substances or of a violation of the statutes of this
25 state regulating controlled substances or dangerous drugs shall be conclusive
26 evidence of unprofessional conduct. In all other cases, the record of conviction shall
27 be conclusive evidence only of the fact that the conviction occurred. The board may
28 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 the Penal Code allowing the person to withdraw his or her plea of
guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
dismissing the accusation, information, or indictment.

29 **Drugs at Issue**

- 30 • "Marijuana" is a Schedule I controlled substance as designated by Health and Safety Code
31 section 11054, subdivision (d)(13).

1 **COST RECOVERY**

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

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Criminal Conviction)**

8 9. Respondent is subject to disciplinary action under section 4301, subsection (l) for
9 unprofessional conduct in that on or about January 8, 2013, in the case of *People v. Talmadge,*
10 *Gabrielle*, Superior Court of County of Sacramento, Case No. 12F000280, Respondent was
11 convicted on her plea of no contest, to violating Penal Code section 273A, subsection (a) (child
12 endangerment), a misdemeanor. The circumstances are as follows:

13 10. On or about November 19, 2011, at approximately 12:10 a.m., Sacramento County
14 Sheriff's Deputies were dispatched to San Juan Mercy Hospital's Emergency Room on a report of
15 a 3 year old child that tested positive for marijuana. Upon interview, Respondent disclosed to
16 deputies that she and the child's father had baked brownies containing marijuana. Deputies
17 searched Respondent's home and found a pan of brownies that appeared to have handfuls of
18 brownies removed from the pan. Marijuana leaves, residue and a scale were located in the home
19 within reach of the child.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Violation of Laws Regulating Controlled Substances and Dangerous Drugs)**

22 11. Respondent is subject to disciplinary action under section 4301, subsection (j) for
23 unprofessional conduct in on or about November 19, 2011, Respondent was in possession of
24 marijuana, a controlled substance and a dangerous drug, as further described in paragraphs 9-10.
25 Respondent did not have a medical marijuana card and had not been prescribed the substance by a
26 physician.

27 //

28 //

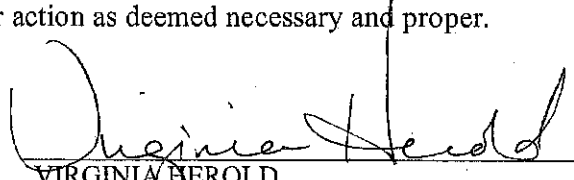
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 Registration Number 94269, issued to Gabrielle Elisa Talmadge.;
2. Ordering Gabrielle Elisa Talmadge to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: 8/14/13



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

SA2013110880
11100835.doc