

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 Petition to Revoke
Probation Against:

**LINDSAY KIMIYE TOMOOKA, a.k.a.
LINSAY KIMILIE TOMOOKA
5407 Southshore Drive
Bakersfield, CA 93312**

**Pharmacy Technician Registration No. TCH
53580**

Respondent.

Case No. 4748

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about February 3, 2014, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Petition to Revoke Probation No. 4748 against Lindsay Kimiye Tomooka, a.k.a. Linsay Kimilie Tomooka (Respondent) before the Board of Pharmacy. (Petition to Revoke Probation attached as Exhibit A.)

1 2. On or about January 8, 2004, the Board of Pharmacy (Board) issued Pharmacy
2 Technician Registration No. TCH 53580 to Respondent. The Pharmacy Technician Registration
3 was in full force and effect at all times relevant to the charges brought in Petition to Revoke
4 Probation No. 4748 and expired on August 31, 2013, and has not been renewed.

5 3. On or about February 12, 2014, Respondent was served by Certified and First Class
6 Mail copies of the Petition to Revoke Probation No. 4748, Statement to Respondent, Notice of
7 Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5,
8 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and
9 Professions Code section 4100, is required to be reported and maintained with the Board.
10 Respondent's address of record was and is:

11 5407 Southshore Drive
12 Bakersfield, CA 93312.

13 4. Service of the Petition to Revoke Probation was effective as a matter of law under the
14 provisions of Government Code section 11505, subdivision (c) and/or Business & Professions
15 Code section 124.

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

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

22 6. Respondent failed to file a Notice of Defense within 15 days after service upon her of
23 the Petition to Revoke Probation, and therefore waived her right to a hearing on the merits of
24 Petition to Revoke Probation No. 4748.

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

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

 8. 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

1 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
2 taking official notice of all the investigatory reports, exhibits and statements contained therein on
3 file at the Board's offices regarding the allegations contained in Petition to Revoke Probation No.
4 4748, finds that the charges and allegations in Petition to Revoke Probation No. 4748, are
5 separately and severally, found to be true and correct by clear and convincing evidence.

6 9. Taking official notice of its own internal records, pursuant to Business and
7 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
8 and Enforcement is two thousand one hundred seventy-two dollars (\$2,172.00) as of June 4,
9 2014.

10 **DETERMINATION OF ISSUES**

11 1. Based on the foregoing findings of fact, Respondent Lindsay Kimiye Tomooka, a.k.a.
12 Linsay Kimilie Tomooka has subjected her Pharmacy Technician Registration No. TCH 53580 to
13 discipline.

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

15 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
16 Registration based upon the following violations alleged in the Petition to Revoke Probation
17 which are supported by the evidence contained in the Default Decision Evidence Packet in this
18 case.:

19 a. First Cause to Revoke Probation - (Failure to Complete Certification). At all times
20 after the effective date of the Decision and Order imposing probation on Respondent's license,
21 Term and Condition Number 3 of that Order required in pertinent part:

22
23 Certification Prior to Resuming Work. Respondent shall be automatically suspended from
24 working as a pharmacy technician until she is certified as defined by Business and
25 Professions Code section 4202(a)(4) and provides satisfactory proof of certification to the
26 board. Respondent shall not resume working as a pharmacy technician until notified by
27 the board. Failure to achieve certification within one (1) year shall be considered a
28 violation of probation. Respondent shall not resume working as a pharmacy technician
until notified by the board.

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

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

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

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

10 Respondent's probation is subject to revocation as she failed to comply with Term and
11 Condition Number 3 of that probation, as referenced above. Respondent failed to obtain
12 certification by the Pharmacy Technician Certification Board within one year of the effective date
13 of probation.

14 b. Second Cause to Revoke Probation - (Failure to Submit Quarterly Reports). At all
15 times after the effective date of the Decision and Order imposing probation on Respondent's
16 license, Term and Condition Number 4 of that Order required in pertinent part:

17 Report to the Board. Respondent shall report to the Board quarterly, on a schedule as
18 directed by the Board or its designee. The report shall be made either in person or in
19 writing, as directed. Among other requirements, Respondent shall state in each report
20 under penalty of perjury whether there has been compliance with all the terms and
21 conditions of probation. Failure to submit timely reports in a form as directed shall
22 be considered a violation of probation. Any period(s) of delinquency in submission
23 of reports as directed may be added to the total period of probation. Moreover, if the
24 final probation report is not made as directed, probation shall be automatically
25 extended until such time as the final report is made and accepted by the Board.

26 Respondent's probation is subject to revocation as she failed to comply with Term and
27 Condition Number 4 of that probation, as referenced above. Respondent failed to timely submit
28 quarterly reports to the Board. No reports have been received by the Board since the start of
probation.

c. Third Cause to Revoke Probation - (Failure to Reimburse Board Costs). At all times
after the effective date of the Decision and Order imposing probation on Respondent's license,
Term and Condition Number 8 of that Order required in pertinent part:

Reimbursement of Board Costs. As a condition precedent to successful completion
of probation, Respondent shall pay to the Board its costs of investigation and
prosecution in the amount of three thousand four hundred seventeen dollars

1 (\$3,417.00). Respondent shall make said payments pursuant to a payment plan
2 approved by the Board or its designee. There shall be no deviation from this schedule
3 absent prior written approval by the Board or its designee. Failure to pay costs by the
4 deadline(s) as directed shall be considered a violation of probation.
5 The filing of bankruptcy by Respondent shall not relieve Respondent of her
6 responsibility to reimburse the Board its costs of investigation and prosecution.

7 Respondent's probation is subject to revocation as she failed to comply with Term and
8 Condition Number 8 of that probation, as referenced above. Respondent failed to reimburse the
9 Board for its costs by way of a payment plan approved by the Board. To date, no payments have
10 been received by the Board since the start of probation.

11 d. Fourth Cause to Revoke Probation - (Failure to Submit Substance Abuse Recovery
12 Relapse Prevention and Support Group for Board Approval). At all times after the effective date
13 of the Decision and Order imposing probation on Respondent's license, Term and Condition
14 Number 17 of that Order required in pertinent part:

15 Attend Substance Abuse Recovery Relapse Prevention and Support Groups. Within
16 thirty (30) days of the effective date of this decision, Respondent shall begin regular
17 attendance at a recognized and established substance abuse recovery support group in
18 California, (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been
19 approved by the Board or its designee. Respondent must attend at least one group
20 meeting per week unless otherwise directed by the Board or its designee. Respondent
21 shall continue regular attendance and submit signed and dated documentation
22 confirming attendance with each quarterly report for the duration of probation.
23 Failure to attend or submit documentation thereof shall be considered a violation of
24 probation.

25 Respondent's probation is subject to revocation as she failed to comply with the Term and
26 Condition Number 17 of that probation, as referenced above. Respondent failed to submit an
27 established substance abuse recovery relapse prevention and support group for Board approval
28 and begin regular attendance of the program at least once weekly. To date, a proposed support
group has not been received by the Board.

e. Fifth Cause to Revoke Probation - (Failure to Participate in Drug Testing). At all
times after the effective date of the Decision and Order imposing probation on Respondent's
license, Term and Condition Number 18 of that Order required in pertinent part:

Random Drug Screening. Respondent, at her own expense, shall participate in
random testing, including but not limited to biological fluid testing (urine, blood),
breathalyzer, hair follicle testing, or other drug screening program as directed by the

1 Board or its designee. Respondent may be required to participate in testing for the
2 entire probation period and the frequency of testing will be determined by the Board
3 or its designee. At all times Respondent shall fully cooperate with the Board or its
4 designee, and shall, when directed, submit to such tests and samples for the detection
5 of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the
6 Board or its designee may direct. Failure to timely submit to testing as directed shall
7 be considered a violation of probation. Upon request of the Board or its designee,
8 Respondent shall provide documentation from a licensed practitioner that the
9 prescription for a detected drug was legitimately issued and is a necessary part of the
10 treatment of the Respondent. Failure to timely provide such documentation shall be
11 considered a violation of probation. Any confirmed positive test for alcohol or for
12 any drug not lawfully prescribed by a licensed practitioner as part of a documented
13 medical treatment shall be considered a violation of probation and shall result in the
14 automatic suspension of work by Respondent. Respondent may not resume work as a
15 pharmacy technician until notified by the Board in writing.

16 During suspension, Respondent shall not enter any pharmacy area or any portion of or
17 any other Board licensed premises (wholesaler, veterinary food-animal drug retailer
18 or any other distributor of drugs) any drug manufacturer, or any other location where
19 dangerous drugs and devices or controlled substances are maintained. Respondent
20 shall not do any act involving drug selection, selection of stock, manufacturing,
21 compounding or dispensing; nor shall Respondent manage, administer, or assist any
22 licensee of the Board. Respondent shall not have access to or control the ordering,
23 manufacturing or dispensing of dangerous drugs and devices or controlled substances.
24 Respondent shall not resume work until notified by the Board.
25 Respondent shall not direct, control or perform any aspect of the practice of
26 pharmacy. Subject to the above restrictions, Respondent may continue to own or
27 hold an interest in any licensed premises in which she holds an interest at the time this
28 decision becomes effective unless otherwise specified in this order.

16 Respondent's probation is subject to revocation as she failed to comply with Term and
17 Condition Number 18 of that probation, as referenced above. Respondent failed to enroll and
18 participate in a random drug screening program by way of daily reporting and testing as
19 scheduled for the entire duration of probation. Specifically, Respondent failed to check-in with
20 FirstLab, the Board's approved vendor, on August 21, 2012, August 29, 2012, and all dates
21 following. Moreover, Respondent failed to submit to drug testing as scheduled on the following
22 dates:

- 23 * August 28, 29, 2012
- 24 * September 6, 18, 19, 25, 2012
- 25 * October 4, 5, 8, 11, 2012
- 26 * November 5, 14, 16, 29, 2012
- 27 * December 3, 26, 27, 28, 2012
- 28 * January 3, 4, 9, 16, 2013

1 * February 4, 8, 12, 19, 2013

2 * March 7, 13, 22, 2013

3 f. Sixth Cause to Revoke Probation - (Failure to Complete Community Service). At
4 all times after the effective date of the Decision and Order imposing probation on Respondent's
5 license, Term and Condition Number 23 of that Order required in pertinent part:

6 Community Services Program. Within sixty (60) days of the effective date of this
7 Decision, Respondent shall submit to the Board or its designee, for prior approval, a
8 community service program in which Respondent shall provide free health-care
9 related services on a regular basis to a community or charitable facility or agency for
10 at least forty (40) hours of community service per year for the first two (2) years of
11 probation. Within thirty (30) days of Board approval thereof, Respondent shall
12 submit documentation to the Board demonstrating commencement of the community
13 service program. A record of this notification must be provided to the Board upon
14 request. Respondent shall report on progress with the community service program in
15 the quarterly reports. Failure to timely submit, commence, or comply with the
16 program shall be considered a violation of probation.

17 Respondent's probation is subject to revocation as she failed to comply with Term and
18 Condition Number 23 of that probation, as referenced above. Respondent failed to submit a non-
19 profit community service program for Board approval and provide at least forty (40) hours of
20 community service per year for the first two years of probation. To date, a proposed program has
21 not been received by the Board since the start of probation.

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

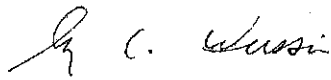
IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 53580, heretofore issued to Respondent Lindsay Kimiye Tomooka, a.k.a. Linsay Kimilie Tomooka, is revoked.

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 August 1, 2014.

It is so ORDERED July 2, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By 
STAN C. WEISSER
Board President

51527310.DOC
DOJ Matter ID:LA2013509543

Attachment:
Exhibit A: Petition to Revoke Probation

Exhibit A

Petition to Revoke Probation

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
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 Petition to Revoke
12 Probation Against:

Case No. 4748

13 **LINSAY KIMIYE TOMOOKA, a.k.a.**
14 **LINSAY KIMILIE TOMOOKA**
5407 Southshore Drive
15 Bakersfield, CA 93312

PETITION TO REVOKE PROBATION

16 **Pharmacy Technician Registration No. TCH**
17 **53580**

18 Respondent.

19
20 Complainant alleges:

21 **PARTIES**

22 1. Virginia Herold (Complainant) brings this Petition to Revoke Probation solely in her
23 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer
24 Affairs.

25 2. On or about January 8, 2004, the Board of Pharmacy issued Pharmacy Technician
26 Registration Number TCH 53580 to Lindsay Kimiye Tomooka, a.k.a. Linsay Kimilie Tomooka
27 (Respondent). The Pharmacy Technician Registration was in effect at all times relevant to the
28 charges brought herein and expired on August 31, 2013, and has not been renewed.

1 other distributor of drugs) any drug manufacturer, or any other location where dangerous
2 drugs and devices or controlled substances are maintained. Respondent shall not do any
3 act involving drug selection, selection of stock, manufacturing, compounding or
4 dispensing; nor shall respondent manage, administer, or assist any licensee of the board.
5 Respondent shall not have access to or control the ordering, manufacturing or dispensing
6 of dangerous drugs and devices or controlled substances. Respondent shall not resume
7 work until notified by the board.

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

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

12 7. Respondent's probation is subject to revocation as she failed to comply with Term
13 and Condition Number 3 of that probation, as referenced above. Respondent failed to complete
14 certification by the Pharmacy Technician Certification Board within one year of the effective date
15 of probation.

16 SECOND CAUSE TO REVOKE PROBATION

17 (Failure to Submit Quarterly Reports)

18 8. At all times after the effective date of the Decision and Order imposing probation on
19 Respondent's license, Term and Condition Number 4 of that Order required in pertinent part:

20 **Report to the Board.** Respondent shall report to the Board quarterly, on a schedule
21 as directed by the Board or its designee. The report shall be made either in person or
22 in writing, as directed. Among other requirements, Respondent shall state in each
23 report under penalty of perjury whether there has been compliance with all the terms
24 and conditions of probation. Failure to submit timely reports in a form as directed
25 shall be considered a violation of probation. Any period(s) of delinquency in
26 submission of reports as directed may be added to the total period of probation.
27 Moreover, if the final probation report is not made as directed, probation shall be
28 automatically extended until such time as the final report is made and accepted by the
Board.

9. Respondent's probation is subject to revocation as she failed to comply with Term
and Condition Number 4 of that probation, as referenced above. Respondent failed to timely
submit quarterly reports to the Board. No reports have been received by the Board since the start
of probation.

///

///

///

1 **THIRD CAUSE TO REVOKE PROBATION**

2 **(Failure to Reimburse Board Costs)**

3 10. At all times after the effective date of the Decision and Order imposing probation on
4 Respondent's license, Term and Condition Number 8 of that Order required in pertinent part:

5 **Reimbursement of Board Costs.** As a condition precedent to successful completion
6 of probation, Respondent shall pay to the Board its costs of investigation and
7 prosecution in the amount of three thousand four hundred seventeen dollars
8 (\$3,417.00). Respondent shall make said payments pursuant to a payment plan
9 approved by the Board or its designee. There shall be no deviation from this schedule
10 absent prior written approval by the Board or its designee. Failure to pay costs by the
11 deadline(s) as directed shall be considered a violation of probation.
12 The filing of bankruptcy by Respondent shall not relieve Respondent of her
13 responsibility to reimburse the Board its costs of investigation and prosecution.

14 11. Respondent's probation is subject to revocation as she failed to comply with Term
15 and Condition Number 8 of that probation, as referenced above. Respondent failed to reimburse
16 the Board for its costs by way of a payment plan approved by the Board. To date, no payments
17 have been received by the Board since the start of probation.

18 **FOURTH CAUSE TO REVOKE PROBATION**

19 **(Failure to Submit Substance Abuse Recovery Relapse Prevention and Support Group
20 for Board Approval)**

21 12. At all times after the effective date of the Decision and Order imposing probation on
22 Respondent's license, Term and Condition Number 17 of that Order required in pertinent part:

23 **Attend Substance Abuse Recovery Relapse Prevention and Support Groups:**
24 Within thirty (30) days of the effective date of this decision, Respondent shall begin
25 regular attendance at a recognized and established substance abuse recovery support
26 group in California, (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) which
27 has been approved by the Board or its designee. Respondent must attend at least one
28 group meeting per week unless otherwise directed by the Board or its designee.
Respondent shall continue regular attendance and submit signed and dated
documentation confirming attendance with each quarterly report for the duration of
probation. Failure to attend or submit documentation thereof shall be considered a
violation of probation.

13 13. Respondent's probation is subject to revocation as she failed to comply with the Term
14 and Condition Number 17 of that probation, as referenced above. Respondent failed to submit an
15 established substance abuse recovery relapse prevention and support group for Board approval

1 and begin regular attendance of the program at least once weekly. To date, a proposed support
2 group has not been received by the Board.

3 **FIFTH CAUSE TO REVOKE PROBATION**

4 **(Failure to Participate in Drug Testing)**

5 14. At all times after the effective date of the Decision and Order imposing probation on
6 Respondent's license, Term and Condition Number 18 of that Order required in pertinent part:

7
8 **Random Drug Screening.** Respondent, at her own expense, shall participate in
9 random testing, including but not limited to biological fluid testing (urine, blood),
10 breathalyzer, hair follicle testing, or other drug screening program as directed by the
11 Board or its designee. Respondent may be required to participate in testing for the
12 entire probation period and the frequency of testing will be determined by the Board
13 or its designee. At all times Respondent shall fully cooperate with the Board or its
14 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
16 Board or its designee may direct. Failure to timely submit to testing as directed shall
17 be considered a violation of probation. Upon request of the Board or its designee,
18 Respondent shall provide documentation from a licensed practitioner that the
19 prescription for a detected drug was legitimately issued and is a necessary part of the
20 treatment of the Respondent. Failure to timely provide such documentation shall be
21 considered a violation of probation. Any confirmed positive test for alcohol or for
22 any drug not lawfully prescribed by a licensed practitioner as part of a documented
23 medical treatment shall be considered a violation of probation and shall result in the
24 automatic suspension of work by Respondent. Respondent may not resume work as a
25 pharmacy technician until notified by the Board in writing.

26
27 During suspension, Respondent shall not enter any pharmacy area or any portion of or
28 any other Board licensed premises (wholesaler, veterinary food-animal drug retailer
or any other distributor of drugs) any drug manufacturer, or any other location where
dangerous drugs and devices or controlled substances are maintained. Respondent
shall not do any act involving drug selection, selection of stock, manufacturing,
compounding or dispensing; nor shall Respondent manage, administer, or assist any
licensee of the Board. Respondent shall not have access to or control the ordering,
manufacturing or dispensing of dangerous drugs and devices or controlled substances.
Respondent shall not resume work until notified by the Board.
Respondent shall not direct, control or perform any aspect of the practice of
pharmacy. Subject to the above restrictions, Respondent may continue to own or
hold an interest in any licensed premises in which she holds an interest at the time this
decision becomes effective unless otherwise specified in this order.

15. Respondent's probation is subject to revocation as she failed to comply with Term
and Condition Number 18 of that probation, as referenced above. Respondent failed to enroll and
participate in a random drug screening program by way of daily reporting and testing as
scheduled for the entire duration of probation. Specifically, Respondent failed to check-in with
FirstLab, the Board's approved vendor, on August 21, 2012, August 29, 2012, and all dates

1 following. Moreover, Respondent failed to submit to drug testing as scheduled on the following
2 dates:

- 3 * August 28, 29, 2012
- 4 * September 6, 18, 19, 25, 2012
- 5 * October 4, 5, 8, 11, 2012
- 6 * November 5, 14, 16, 29, 2012
- 7 * December 3, 26, 27, 28, 2012
- 8 * January 3, 4, 9, 16, 2013
- 9 * February 4, 8, 12, 19, 2013
- 10 * March 7, 13, 22, 2013

11 **SIXTH CAUSE TO REVOKE PROBATION**

12 **(Failure to Complete Community Service)**

13 16. At all times after the effective date of the Decision and Order imposing probation on
14 Respondent's license, Term and Condition Number 23 of that Order required in pertinent part:

15 **Community Services Program.** Within sixty (60) days of the effective date of this
16 Decision, Respondent shall submit to the Board or its designee, for prior approval, a
17 community service program in which Respondent shall provide free health-care
18 related services on a regular basis to a community or charitable facility or agency for
19 at least forty (40) hours of community service per year for the first two (2) years of
20 probation. Within thirty (30) days of Board approval thereof, Respondent shall
21 submit documentation to the Board demonstrating commencement of the community
22 service program. A record of this notification must be provided to the Board upon
23 request. Respondent shall report on progress with the community service program in
24 the quarterly reports. Failure to timely submit, commence, or comply with the
25 program shall be considered a violation of probation.

22 17. Respondent's probation is subject to revocation as she failed to comply with Term
23 and Condition Number 23 of that probation, as referenced above. Respondent failed to submit a
24 non-profit community service program for Board approval and provide at least forty (40) hours of
25 community service per year for the first two years of probation. To date, a proposed program has
26 not been received by the Board since the start of probation.

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

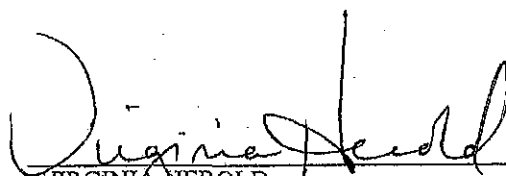
PRAYER

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 the probation that was granted by the Board of Pharmacy in Case No. 3806 and imposing the disciplinary order that was stayed thereby revoking Pharmacy Technician Registration No. TCH 53580 issued to Lindsay Kimiye Tomooka, a.k.a. Linsay Kimilie Tomooka;
2. Taking such other and further action as deemed necessary and proper.

DATED: _____

2/3/14



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

LA2013509543
51406344.doc

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

In the Matter of the Accusation Against:

Case No. 3806

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

OAH No. L-2011060305

Pharmacy Technician License No. TCH 53580

Respondent.

DECISION AND ORDER

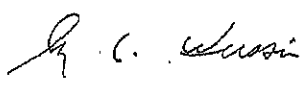
The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on 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

STATE OF CALIFORNIA
I, VIRGINIA HEROLD, OFFICIAL CUSTODIAN
OF THE RECORDS, DO HEREBY CERTIFY THAT
THIS/THESE DOCUMENTS IS/ARE TRUE AND
CORRECT COPY/COPIES OF THE ORIGINAL(S)
OF THE FILE IN THIS OFFICE.

DATED 6/13/13


VIRGINIA HEROLD
Executive Officer
California State Board of Pharmacy

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
Attorneys for Complainant

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

10
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.

1 9. Respondent agrees that her Pharmacy Technician Registration is subject to discipline
2 and she agrees to be bound by the Board's probationary terms as set forth in the Disciplinary
3 Order below.

4 CONTINGENCY

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

14 11. The parties understand and agree that facsimile copies of this Stipulated Settlement
15 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
16 effect as the originals.

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

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

26 ///

27 ///

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**
25 Deputy Attorney General
26 *Attorneys for Complainant*

27
28 LA2010600796 / 51044127.doc

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

5
 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

ENDORSEMENT

15
 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:

December 7, 2011

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

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**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:
12 **LINDSAY KIMIYE TOMOOKA**
13 a.k.a, **LINSAY KIMILIE TOMOOKA**
14 5407 Southshore Drive
Bakersfield, CA 93312

Case No. 3806

ACCUSATION

15 Original Pharmacy Technician Registration
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.

26 ///

27 ///

28 ///

1 JURISDICTION

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

4 STATUTORY PROVISIONS

5 4. Section 118, subdivision (b) provides, in pertinent part that the expiration of a license
6 shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period
7 within which the license may be renewed, restored, reissued or reinstated.

8 5. Section 490 states, in pertinent part:

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

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

17 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
18 conviction following a plea of nolo contendere. Any action that a board is permitted to take
19 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
20 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
21 made suspending the imposition of sentence, irrespective of a subsequent order under the
22 provisions of Section 1203.4 of the Penal Code."

23 6. Section 4300 provides in pertinent part, that every license issued by the Boards is
24 subject to discipline, including suspension or revocation.

25 7. Section 4301 states, in pertinent part:

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

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

5
6 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous
7 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
8 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
9 to the extent that the use impairs the ability of the person to conduct with safety to the public the
10 practice authorized by the license.

11
12 "(j) The violation of any of the statutes of this state, or any other state, or of the United
13 States regulating controlled substances and dangerous drugs.

14
15 "(l) . The conviction of a crime substantially related to the qualifications, functions, and
16 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
17 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
18 substances or of a violation of the statutes of this state regulating controlled substances or
19 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
20 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
21 The board may inquire into the circumstances surrounding the commission of the crime, in order
22 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
23 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
24 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
25 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
26 of this provision. The board may take action when the time for appeal has elapsed, or the
27 judgment of conviction has been affirmed on appeal or when an order granting probation is made
28 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 licensee 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 (I) 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)

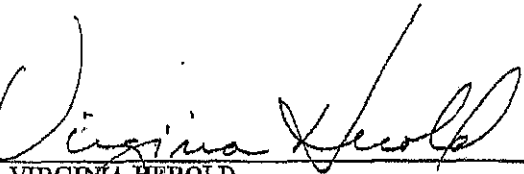
5 13. Respondent is subject to disciplinary action under section 4301, subdivision (f), in
6 that on or about March 14, 2010 and March 16, 2010, Respondent committed dishonest acts.
7 Complainant refers to, and by reference incorporates, the allegations set forth above in paragraph
8 11, subparagraph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

17
18
19
20 DATED: 4/27/11



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

21
22
23
24
25
26
27 LA2010600796
60559803.doc