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

In the Matter of the Accusation Against:

Case No. 4954

TIA LASHA KELLY

8760 Jamacha Road, 2G Spring Valley, CA 91977

Pharmacy Technician Registration No. TCH 80650

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 October 20, 2014.

It is so ORDERED on October 15, 2014.

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

 $\mathbf{B}\mathbf{y}$

STAN C. WEISSER Board President

	· F	•		
1	KAMALA D. HARRIS			
2	Attorney General of California JAMES M. LEDAKIS			
3	Supervising Deputy Attorney General ADRIAN R. CONTRERAS			
4	Deputy Attorney General State Bar No. 267200			
5	110 West "A" Street, Suite 1100 San Diego, CA 92101			
6	P.O. Box 85266 San Diego, CA 92186-5266			
7	Telephone: (619) 645-2634 Facsimile: (619) 645-2061			
8	E-mail: Adrian.Contreras@doj.ca.gov			
9	Attorneys for Complainant			
1	BEFORE THE BOARD OF PHARMACY			
10	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA			
11]		
12	In the Matter of the Accusation Against:	Case No. 4954		
13	TIA LASHA KELLY 8760 Jamacha Road, 2G	OAH No. 2014030594		
14	Spring Valley, CA 91977	STIPULATED SURRENDER OF LICENSE AND ORDER		
15	Pharmacy Technician Registration No. TCH 80650			
16	Respondent.			
17	reapondom.			
18	In the interest of a propert and small describe	amont of this matter, considered with the w. 1.1.		
19	In the interest of a prompt and speedy settlement of this matter, consistent with the public			
20	interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs,			
21	the parties hereby agree to the following Stipulated Surrender and Disciplinary Order which will			
22	be submitted to the Board for approval and adoption as the final disposition of the Accusation.			
23	PARTIES			
24	1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.			
25	She brought this action solely in her official capa	acity and is represented in this matter by Kamala		
26	D. Harris, Attorney General of the State of California, by Adrian R. Contreras, Deputy Attorney			
27	General,			
28	2. Tia Lasha Kelly (Respondent) is representing herself in this proceeding and has			
	chosen not to exercise her right to be represented by counsel.			
l		1		

3. On or about January 8, 2008, the Board of Pharmacy issued Pharmacy Technician Registration No. TCH 80650 to Tia Lasha Kelly (Respondent). The Pharmacy Technician Registration was cancelled on December 1, 2013, and has not been renewed.

JURISDICTION

4. Accusation No. 4954 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on February 10, 2014.

Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation No. 4954 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

- Respondent has carefully read, and understands the charges and allegations in Accusation No. 4954. Respondent also has carefully read, and understands the effects of this Stipulated Surrender of License and Order.
- 6. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.
- 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 4954, agrees that cause exists for discipline and hereby surrenders her Pharmacy Technician Registration No. TCH 80650 for the Board's formal acceptance.

9. Respondent understands that by signing this stipulation she enables the Board to issue an order accepting the surrender of her Pharmacy Technician Registration without further process.

CONTINGENCY

- 10. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.
- 11. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Surrender of License and Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.
- 12. This Stipulated Surrender of License and Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.
- 13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that Pharmacy Technician Registration No. TCH 80650, issued to Respondent Tia Lasha Kelly, is surrendered and accepted by the Board of Pharmacy.

28 II

///

 $/\!/\!/$

- 1. The surrender of Respondent's Pharmacy Technician Registration and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board of Pharmacy.
- 2. Respondent shall lose all rights and privileges as a Pharmacy Technician in California as of the effective date of the Board's Decision and Order.
- 3. Respondent shall cause to be delivered to the Board her pocket license and, if one was issued, her wall certificate on or before the effective date of the Decision and Order.
- 4. If Respondent ever applies for licensure or petitions for reinstatement in the State of California, the Board shall treat it as a new application for licensure. Respondent may not apply for any license, permit, or registration from the board for three years from the effective date of this decision. Respondent stipulates that should she apply for any license from the board on or after the effective date of this decision, all allegations set forth in the Accusation shall be deemed to be true, correct, and admitted by respondent when the board determines whether to grant or deny the application. Respondent shall satisfy all requirements applicable to that license as of the date the application is submitted to the board, including, but not limited to certification by a nationally recognized body prior to the issuance of a new license. Respondent is required to report this surrender as disciplinary action.
- 5. Respondent shall pay the agency its costs of investigation and enforcement in the amount of \$3,145.50 before issuance of a new or reinstated license.
- 6. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation No. 4954 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

ACCEPTANCE 1 I have carefully read the Stipulated Surrender of License and Order. I understand the 2 stipulation and the effect it will have on my Pharmacy Technician Registration. I enter into this 3 Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to 4 be bound by the Decision and Order of the Board of Pharmacy. 5 6 9-21-14 DATED: 7 TIA LASHA KELLY 8 Respondent 9 **ENDORSEMENT** 10 The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted 11 for consideration by the Board of Pharmacy of the Department of Consumer Affairs. 12 9/24/14 Dated: Respectfully submitted, 13 KAMALA D. HARRIS 14 Attorney General of California JAMES M. LEDAKIS 15 Supervising Deputy Attorney General 16 Mian R. antrerus 17 ADRIAN R. CONTRERAS 18 Deputy Attorney General Attorneys for Complainant 19 20 21 SD2013706125 70912829,doc 22 23

24

25

26

27

Exhibit A

Accusation No. 4954

1 2 3 4 5 6 7 8	KAMALA D. HARRIS Attorney General of California JAMES M. LEDAKIS Supervising Deputy Attorney General ADRIAN R. CONTRERAS Deputy Attorney General State Bar No. 267200 110 West "A" Street, Suite 1100 San Diego, CA 92101 P.O. Box 85266 San Diego, CA 92186-5266 Telephone: (619) 645-2634 Facsimile: (619) 645-2061 E-mail: Adrian.Contreras@doj.ca.gov		
	Attorneys for Complainant		
9	BEFORE THE BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
11	STATE OF CA	ALIFOKNIA	
12	In the Matter of the Accusation Against:	Case No. 4954	
13	TIA LASHA KELLY		
14	8760 Jamacha Road, 2G Spring Valley, CA 91977	ACCUSATION	
15	Pharmacy Technician Registration No. TCH 80650		
16	Respondent.		
17	Teopondon.		
18	Complainant alleges:		
19	PART	TIES	
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, 2008, the Board of Pharmacy issued Pharmacy Technician		
23	Registration Number TCH 80650 to Tia Lasha Kelly (Respondent). The Pharmacy Technician		
24	Registration expired on August 31, 2013, and has not been renewed.		
25	JURISDICTION		
26	3. This Accusation is brought before the Board of Pharmacy (Board), Department of		
27	Consumer Affairs, under the authority of the following laws. All section references are to the		
28	Business and Professions Code unless otherwise indicated.		
Ì	1	Accusation	

4. Section 4300 of the Code states:

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

- "(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:
 - "(1) Suspending judgment.
 - "(2) Placing him or her upon probation.
 - "(3) Suspending his or her right to practice for a period not exceeding one year.
 - "(4) Revoking his or her license.
- "(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

". .

- "(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 Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure."
 - 5. Section 4300.1 of the Code states:

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

STATUTORY PROVISIONS

- 6. Section 480 of the Code states:
- "(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

". .

"(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

"[3](B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

7. Section 482 of the Code states:

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

- "(a) Considering the denial of a license by the board under Section 480; or
- "(b) Considering suspension or revocation of a license under Section 490.

"Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee."

- 8. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.
 - 9. Section 493 of the Code states:

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

"As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration."

"The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

Unprofessional conduct shall include, but is not limited to, any of the following:

"(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.

li

"(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.

"...

It . . .

۳. . .

"(I) 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 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.

н...

"(p) Actions or conduct that would have warranted denial of a license.

11 11

11. Section 4060 of the Code states:

"No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

"Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices."

REGULATORY PROVISIONS

12. California Code of Regulations, title 16, section 1769, states:

"...

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

- "(2) Total criminal record.
- "(3) The time that has elapsed since commission of the act(s) or offense(s).
- "(4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
 - "(5) Evidence, if any, of rehabilitation submitted by the licensee.
 - 13. California Code of Regulations, title 16, section 1770, states:

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

COSTS

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

DRUGS

- 15. Hydrocodone/APAP is marketed under numerous trade names, including Vicodin and Norco. Hydrocodone/APAP is a Schedule III controlled substance under Health and Safety Code section 11056, subdivision (e)(5) and a dangerous drug under Code section 4022.
- 16. Alprazolam is marketed under numerous trade names, including Xanax. It is used to relieve anxiety. It is a Schedule IV controlled substance under Health and Safety Code section 11057, subdivision (d)(1), and a dangerous drug under Code section 4022.

|| ///

26 | ///

27 | ///

28 | ///

- 12

FIRST CAUSE FOR DISCIPLINE

(December 20, 2011, Criminal Conviction for Grand Theft Between October 25 and 31, 2011)

- 17. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision (I) of the Code in that she was convicted of a crime substantially related to the qualifications, functions, and duties of a licensee. The circumstances are as follows:
- 18. On or about December 20, 2011, in a criminal proceeding entitled *People v. Kelly*, in San Diego County Superior Court, case number CD237403, Respondent was convicted on her plea of guilty of violating Penal Code section 487, subdivision (a), grand theft, a felony. As a result of a plea agreement, one count of violating Health and Safety Code section 11351, possession for sale of a controlled substance, a felony, and one count of violating Health and Safety Code section 11375, subdivision (b)(1), possession for sale of a designated controlled substance, a felony, were dismissed.
- 19. As a result of the conviction, Respondent was sentenced to three years summary probation, and ordered to pay fines and fees.
- 20. The facts that led to the conviction are that in October 2011, Respondent worked as a pharmacy technician at the CVS Pharmacy on El Cajon Boulevard in San Diego. During her employment, she stole from CVS Pharmacy 2500 tablets of alprazolam and 8000 tablets of Norco and gave them to a drug dealer.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Act of Moral Turpitude or Dishonesty)

	21.	Respondent is subject to disciplinary action under Code section 4301, subdivision (f)
in tha	at Resp	pondent committed grand theft, an act of moral turpitude or dishonesty. Complainant
re-all	eges a	and incorporates by reference the allegations set forth above in paragraphs 17-20.

//.

///

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Violation of Laws Regulating Controlled Substances and Dangerous Drugs)

- 22. Respondent is subject to disciplinary action under Code sections 4301, subdivision (j) in that Respondent violated laws regulating controlled substances and dangerous drugs.

 Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs 17-20. The laws include the following:
 - a. Code section 4059: furnishing a controlled substance without a prescription.
 - b. Code section 4060: possession of a controlled substance without a prescription.
- c. Health and Safety Code section 11350, subd. (a): possession of a designated controlled substance.
- d. Health and Safety Code section 11352, subd. (a): giving away a designated controlled substance.
- e. <u>Health and Safety Code section 11375, subd. (b)(1)</u>: possession for sale of a designated controlled substance.

FOURTH CAUSE FOR DISCIPLINE

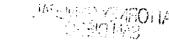
(Unprofessional Conduct-Act Warranting Denial of Licensure)

23. Respondent is subject to disciplinary action under section 4301, subdivision (p), in that she committed an act that would have warranted denial of a license by stealing the controlled substances alprazolam and Norco from her place of employment, an act enumerated in Code section 480, subdivision (a)(2), which is cause for denial of a license to an applicant who committed an act of dishonesty with the intent to substantially benefit herself or another.

Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs 17-20.

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 1. Revoking or suspending Pharmacy Technician Registration Number TCH 80650, issued to Tia Lasha Kelly;
 2 2. Ordering Tia Lasha Kelly to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
 - 3. Taking such other and further action as deemed necessary and proper.

DATED: 2/3/14

VIRGINIA HEROLD Executive Officer Board of Rhamacy

Department of Consumer Affairs

State of California Complainant

SD2013706125 70778899.doc