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

In the Matter of the Accusation Against:  
  
LORI-JAN CLEAVE  
39668 North General Kearny Road  
Murietta, CA 92563  
  
Pharmacy Technician Registration No. TCH 76217  
  
Respondent.

Case No. 5868

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about October 31, 2016, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 5868 against Lori-Jan Cleave (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)
2. On or about May 24, 2007, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 76217 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 5868 and expired on June 30, 2016, and has not been renewed. This lapse in licensure, however,

1 pursuant to Business and Professions Code sections 118(b) and/or 4300.1, does not deprive the  
2 Board of its authority to institute or continue this disciplinary proceeding.

3 3. On or about November 17, 2016, Respondent was served by Certified and First Class  
4 Mail copies of the Accusation No. 5868, Statement to Respondent, Notice of Defense, Request  
5 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and  
6 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code  
7 section 4100, is required to be reported and maintained with the Board. Respondent's address of  
8 record was and is: 39668 North General Kearny Road, Murietta, CA 92563.

9 4. On or about February 7, 2017, Respondent was served by Certified and First Class  
10 Mail copies of the Accusation No. 5868, Statement to Respondent, Notice of Defense, Request  
11 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and  
12 11507.7) at her following additional address: 259 Aliento, Rancho Santa Margarita, CA 92688.

13 5. On or about March 6, 2011, the aforementioned documents sent to Respondent's  
14 additional address were returned by the U.S. Postal Service marked "Return to Sender" and  
15 "Unable to Forward."

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

19 7. Government Code section 11506(c) states, in pertinent part:

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

25 8. Respondent failed to file a Notice of Defense within 15 days after service upon her of  
26 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 5868.

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1 9. California Government Code section 11520(a) states, in pertinent part:

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

5 10. Pursuant to its authority under Government Code section 11520, the Board finds  
6 Respondent is in default. The Board will take action without further hearing and, based on the  
7 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as  
8 taking official notice of all the investigatory reports, exhibits and statements contained therein on  
9 file at the Board's offices regarding the allegations contained in Accusation No. 5868, finds that  
10 the charges and allegations in Accusation No. 5868, are separately and severally, found to be true  
11 and correct by clear and convincing evidence.

12 11. Taking official notice of its own internal records, pursuant to Business and  
13 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation  
14 and Enforcement of this matter is \$8,438.00 as of April 3, 2017.

15 DETERMINATION OF ISSUES

16 1. Based on the foregoing findings of fact, Respondent Lori-Jan Cleave has subjected  
17 her Pharmacy Technician Registration No. TCH 76217 to discipline.

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

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

- 22 a. **Dishonest Act** (Bus. & Prof. Code section 4301, subdivision (f));
- 23 b. **Furnishing Dangerous Drug Without Prescription** (Bus. & Prof. Code sections  
24 4301, subdivision (o), and 4059, subdivision (a));
- 25 c. **Violation of State Statute Regulating Dangerous Drugs** (Bus. & Prof. Code  
26 sections 4301, subdivision (j), and 4059, subdivision (a)); and
- 27 d. **Failure to Notify Board of Change of Address** (Bus. & Prof. Code sections 4301,  
28 subdivision (o), and 4100, subdivision (a)).

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**ORDER**

**IT IS SO ORDERED** that Pharmacy Technician Registration No. TCH 76217, heretofore issued to Respondent Lori-Jan Cleave, 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 at 5:00 p.m. on July 13, 2017.

It is so ORDERED on June 13, 2017.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By \_\_\_\_\_

Amy Gutierrez, Pharm.D.  
Board President

Attachments:  
Exhibit A: Accusation

# Exhibit A

Accusation

1 KAMALA D. HARRIS  
Attorney General of California  
2 JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
3 RON ESPINOZA  
Deputy Attorney General  
4 State Bar No. 176908  
600 West Broadway, Suite 1800  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 738-9447  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

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

11  
12 In the Matter of the Accusation Against:

Case No. 5868

13 LORI-JAN CLEAVE  
39668 North General Kearny Road  
14 Murietta, CA 92563

**ACCUSATION**

15 Pharmacy Technician Registration No. TCH  
16 76217

Respondent.

17  
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19 Complainant alleges:

**PARTIES**

20  
21 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity as  
22 the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

23 2. On or about May 24, 2007, the Board of Pharmacy issued Pharmacy Technician  
24 Registration Number TCH 76217 to Lori-Jan Cleave (Respondent). The Pharmacy Technician  
25 Registration was in full force and effect at all times relevant to the charges brought herein and  
26 expired on June 30, 2016, and has not been renewed.

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JURISDICTION

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

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.

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

"(1) Medical or psychiatric evaluation.

"(2) Continuing medical or psychiatric treatment.

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

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

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

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

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





1           7.    Section 4059, subdivision (a) of the Code states:

2           “(a) A person may not furnish any dangerous drug, except upon the prescription of a  
3 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section  
4 3640.7. A person may not furnish any dangerous device, except upon the prescription of a  
5 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section  
6 3640.7.”

7           8.    Section 4100, subdivision (a) of the Code states:

8           “Within 30 days after changing his or her address of record with the board or after changing  
9 his or her name according to law, a pharmacist, intern pharmacist, technician, or designated  
10 representative shall notify the executive officer of the board of the change of address or change of  
11 name.”

12          9.    Section 4301 of the Code states:

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

16          “... ”

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

20          “(j) The violation of any of the statutes of this state, of any other state, or of the United  
21 States regulating controlled substances and dangerous drugs.

22          “... ”

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

27          “... ”

28          ///

1 DRUGS AT ISSUE

2 10. Suboxone is a dangerous drug as defined by Business and Professions Code section  
3 4022(a) and is a Schedule III controlled substance (federal law) pursuant to 21 C.F.R. section  
4 1308.13(e)(2).

5 11. Nexium is a dangerous drug as defined by Business and Professions Code section  
6 4022(a) and used to treat esophagitis, gastroesophageal reflux disease, prevent ulcers and  
7 Zollinger-Ellison syndrome.

8 COST RECOVERY

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

13 FIRST CAUSE FOR DISCIPLINE

14 (Dishonest Act)

15 13. Respondent is subject to disciplinary action under Code section 4301, subdivision (f),  
16 in that she committed an act involving moral turpitude, dishonesty, fraud, or deceit, when she  
17 stole items from her employer, Dial Drug, Inc., while working there as a pharmacy technician. The  
18 circumstances are as follows:

19 14. In or about May 2013, Respondent was working as a pharmacy technician at Dial  
20 Drug, Inc. An employee of Dial Drug found a bag in Respondent's work area containing, among  
21 other things, bottles of Suboxone<sup>1</sup> and Nexium<sup>2</sup> that had been taken from the pharmacy.  
22 Respondent was confronted about the items by the Pharmacist in Charge and asked to return  
23 anything that she had stolen from the pharmacy. Respondent returned the Nexium (as well as  
24

25 <sup>1</sup> Suboxone is a Schedule V controlled substance in California and is used to treat narcotic  
26 (opiate) addiction.

27 <sup>2</sup> Nexium is a medication used to treat certain stomach and esophagus problems. Until  
28 March 28, 2014, Nexium required a prescription and therefore was considered a dangerous drug  
and could not be purchased over the counter by consumers.

1 some over the counter items like lotion) and was fired on or about May 5, 2013, for stealing from  
2 her employer.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Furnishing Dangerous Drug Without Prescription)**

5 15. Respondent is subject to disciplinary action under Code section 4301, subdivision (o),  
6 in conjunction with Section 4059, subdivision (a), in that she furnished to herself, without  
7 prescription, a dangerous drug (two bottles of Nexium) that she had stolen from her employer,  
8 Dial Drug, Inc., as more fully alleged in paragraphs 13-14, above, which are hereby incorporated  
9 by reference.

10 **THIRD CAUSE FOR DISCIPLINE**

11 **(Violation of State Statute Regulating Dangerous Drugs)**

12 16. Respondent is subject to disciplinary action under Code section 4301, subdivision (j),  
13 in that she violated Business and Professions Code section 4059, subdivision (a), by furnishing to  
14 herself, without prescription, a dangerous drug (two bottles of Nexium) that she had stolen from  
15 her employer, Dial Drug, Inc., as more fully alleged in paragraphs 13-14, above, which are hereby  
16 incorporated by reference.

17 **FOURTH CAUSE FOR DISCIPLINE**

18 **(Failure to Notify Board of Change of Address)**

19 17. Respondent is subject to disciplinary action under Code section 4301, subdivision (o),  
20 in conjunction with Section 4100, subdivision (a), in that Respondent failed to notify the Board  
21 within 30 days after she had changed her address. The circumstances are as follows:

22 18. On or about June 23, 2015, the Board mailed Respondent a letter to her address of  
23 record with the Board regarding its investigation of this matter and requesting that Respondent  
24 contact the Board within 72 business hours. The Board was never contacted by Respondent. On  
25 or about July 21, 2015, the Board sent Respondent a second letter to her address of record, again  
26 requesting that Respondent contact the Board within 72 business hours. The Board was never  
27 contacted by Respondent regarding this second letter. On or about August 11, 2015, and  
28

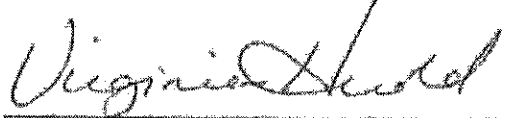
1 August 13, 2015, the Board received back the letters it had sent to Respondent, marked forward  
2 time expired and return to sender.

3 **PRAYER**

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

- 6 1. Revoking or suspending Pharmacy Technician Registration Number TCH 76217,  
7 issued to Lori-Jan Cleave;
- 8 2. Ordering Lori-Jan Cleave to pay the Board of Pharmacy the reasonable costs of the  
9 investigation and enforcement of this case, pursuant to Business and Professions Code section  
10 125.3:
- 11 3. Taking such other and further action as deemed necessary and proper.

12  
13 DATED: 10/31/16



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

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