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

12 In the Matter of the Accusation Against:

13 **BRITTANY JANE LABIAK**
14 5933 Morrill Ave., Apt. B
15 Whittier, CA 90606

16 **Pharmacy Technician Registration No.**
17 **TCH 137467**

18 Respondent.

Case No. 5970

DEFAULT DECISION AND ORDER

Gov. Code, §11520]

19 **FINDINGS OF FACT**

20 1. On or about January 30, 2017, Complainant Virginia K. Herold, in her official
21 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs,
22 filed Accusation No. 5970 against Brittany Jane Labiak (Respondent) before the Board of
23 Pharmacy. (Accusation attached as Exhibit A.)

24 2. On or about April 1, 2014, the Board of Pharmacy (Board) issued Pharmacy
25 Technician Registration No. TCH 137467 to Respondent. The Pharmacy Technician Registration
26 was in full force and effect at all times relevant to the charges brought in Accusation No. 5970
27 and will expire on July 31, 2017, unless renewed.

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1 3. On or about February 9, 2017, Respondent was served by Certified and First Class
2 Mail copies of the Accusation No. 5970, Statement to Respondent, Notice of Defense, Request
3 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
4 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
5 section 4100, is required to be reported and maintained with the Board. Respondent's address of
6 record was and is: 5933 Morrill Ave., Apt. B, Whittier, CA 90606.

7 4. Service of the Accusation was effective as a matter of law under the provisions of
8 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
9 124.

10 5. Government Code section 11506(c) states, in pertinent part:

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

16 6. Respondent failed to file a Notice of Defense within 15 days after service upon her of
17 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 5970.

18 7. California Government Code section 11520(a) states, in pertinent part:

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

23 8. Pursuant to its authority under Government Code section 11520, the Board finds
24 Respondent is in default. The Board will take action without further hearing and, based on the
25 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
26 taking official notice of all the investigatory reports, exhibits and statements contained therein on
27 file at the Board's offices regarding the allegations contained in Accusation No. 5970, finds that
28 the charges and allegations in Accusation No. 5970, are separately and severally, found to be true
and correct by clear and convincing evidence.

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1 9. Taking official notice of its own internal records, pursuant to Business and
2 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
3 and Enforcement are \$4,949.25 as of March 16, 2017.

4 **DETERMINATION OF ISSUES**

5 1. Based on the foregoing findings of fact, Respondent Brittany Jane Labiak has
6 subjected her Pharmacy Technician Registration No. TCH 137467 to discipline.

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

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

11 a. Business and Professions Code section 4301, subdivision (f), by and through Code
12 section 4060, in that Respondent committed acts involving moral turpitude, dishonesty, fraud,
13 deceit, or corruption. The circumstances are as follows:

14 i. On or about April 1, 2016, a Whittier Police Department officer was dispatched
15 to a Walgreens located in Whittier to investigate a pharmacy technician who was detained
16 for theft. Security camera footage from March 23, 2016 displayed Respondent stealing
17 pills. Security camera footage from March 28, 2016 displayed Respondent taking a \$100.00
18 bill from a customer at the drive thru window and then placing the bill in the \$1.00 slot of
19 the cash register. The cash register was short \$99.99 on this day. Respondent later admitted
20 to taking the \$100.00 bill from the cash register on March 28, 2016 and taking Alprazolam
21 1mg tablets on March 23, 2016. Respondent further admitted that she stole approximately
22 100 Alprazolam 1mg tablets since July of 2015. Respondent stated she had never been
23 prescribed Alprazolam but felt she needed the drug for depression.

24 ii. On or about July 1, 2016, Respondent entered a plea of nolo contendere for
25 violating Penal Code sections 504 and 490.2 [embezzlement and grand theft], in the
26 criminal proceeding entitled *The People of the State of California v. Brittany Jane Labiak*
27 (Super. Ct. L.A. County, 2016, No. 6BL04269). The court placed Respondent on a 12-
28 month Deferred Entry of Judgment.

b. Business and Professions Code section 4301, subdivision (j), by and through Code section 4060, Health and Safety Code sections 11170, 11171, and 11350, and section 829, subdivision (b), of Title 21 of the United States Code, in that Respondent violated the statutes of this state and the United States regulating controlled substances and dangerous drugs.

c. Business and Professions Code 4301, subdivision (o), by and through Code section 4060, Health and Safety Code sections 11170, 11171, and 11350, and section 829, subdivision (b), of Title 21 of the United States Code, in that Respondent violated or attempted to violate the provisions of the terms of this chapter and the applicable federal and state laws and regulations governing pharmacy.

ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 137467, heretofore issued to Respondent Brittany Jane Labiak, 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 June 7, 2017.

It is so ORDERED on May 8, 2017.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

Azhar Gortiz

By

Amy Gutierrez, Pharm.D.
Board President

Attachment:
Exhibit A: Accusation

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Exhibit A

Accusation

1 XAVIER BECERRA
Attorney General of California
2 LINDA K. SCHNEIDER
Senior Assistant Attorney General
3 ARMANDO ZAMBRANO
Supervising Deputy Attorney General
4 State Bar No. 225325
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2542
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:

Case No. 5970

12 **BRITTANY JANE LABIAK**
13 5933 Morrill Ave., Apt. B
Whittier, CA 90606

A C C U S A T I O N

14 Pharmacy Technician Registration No. TCH
15 137467

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 April 1, 2014, the Board of Pharmacy ("Board") issued Pharmacy
23 Technician Registration No. TCH 137467 to Brittany Jane Labiak ("Respondent"). The
24 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges
25 brought herein and will expire on July 31, 2017, unless renewed.

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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 ("Code") unless otherwise
4 indicated.

5 4. Section 4300, provision (a), of the Code states, in pertinent part, "[e]very license
6 issued may be suspended or revoked. . . ."

7 5. Section 4300.1 of the Code states "[t]he expiration, cancellation, forfeiture, or
8 suspension of a board-issued license by operation of law or by order or decision of the board or a
9 court of law, the placement of a license on a retired status, or the voluntary surrender of a license
10 by a licensee shall not deprive the board of jurisdiction to commence or proceed with any
11 investigation of, or action or disciplinary proceeding against, the licensee or to render a decision
12 suspending or revoking the license."

13 STATUTORY PROVISIONS

14 6. Section 490 of the Code provides, in pertinent part, that a board may suspend or
15 revoke a license on the ground that the licensee has been convicted of a crime substantially
16 related to the qualifications, functions, or duties of the business or profession for which the
17 license was issued.

18 7. Section 4021 of the Code states "'[c]ontrolled substance' means any substance listed
19 in Chapter 2 (commencing with Section 11053) of Division 10 of the health and Safety Code."

20 8. Section 4022 of the Code states, in pertinent part:

21 "Dangerous drug" or "dangerous device" means any drug or device unsafe for
22 self use in humans or animals, and includes the following:

23 (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing
24 without prescription," "Rx only," or words of similar import.

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25 (c) Any other drug or device that by federal or state law can be lawfully
26 dispensed only on prescription or furnished pursuant to Section 4006.

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1 9. Section 4060 of the Code states, in pertinent part:

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

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

18 10. Section 4301 of the Code states, in pertinent part:

19 The board shall take action against any holder of a license who is guilty of
20 unprofessional conduct or whose license has been issued by mistake. Unprofessional
21 conduct shall include, but is not limited to, any of the following:

22

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

26

27 (g) The violation of any of the statutes of this state, or any other state, or of
28 the United States regulating controlled substances and dangerous drugs.

 (h) 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

1 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
2 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
3 dismissing the accusation, information, or indictment.

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5 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
6 abetting the violation of or conspiring to violate any provision or term of this chapter
7 or of the applicable federal and state laws and regulations governing pharmacy,
8 including regulations established by the board or by any other state or federal
9 regulatory agency. . . .”

10 11. California Health and Safety Code section 11170 states, “[n]o person shall prescribe,
11 administer, or furnish a controlled substance for himself.”

12 12. California Health and Safety Code section 11171 states, “[n]o person shall prescribe,
13 administer, or furnish a controlled substance except under the conditions and in the manner
14 provided by this division.”

15 13. California Health and Safety Code section 11350 states, in pertinent part:

16 (a) Except as otherwise provided in this division, every person who possesses
17 (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of
18 subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of
19 subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section
20 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled
21 substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the
22 written prescription of a physician, dentist, podiatrist, or veterinarian licensed to
23 practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of
24 Section 1170 of the Penal Code. . . .

25 REGULATORY PROVISION

26 14. Title 21 of the United States Code, section 829, subdivision (b), states, in pertinent
27 part:

28 Except when dispensed directly by a practitioner, other than a pharmacist, to an
ultimate user, no controlled substance in schedule III or IV, which is a prescription
drug as determined under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301
et seq.], may be dispensed without a written or oral prescription in conformity with
section 503(b) of that Act [21 U.S.C. 353(b)]. Such prescriptions may not be filled or
refilled more than six months after the date thereof or be refilled more than five times
after the date of the prescription unless renewed by the practitioner.

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1 2016, No. 6BL04269). The court placed Respondent on a 12-month Deferred Entry of Judgment.

2 **SECOND CAUSE FOR DISCIPLINE**

3 **(Unprofessional Conduct - Violation of Statutes of This State and the United States**
4 **Regulating Controlled Substances and Dangerous Drugs)**

5 20. Respondent is subject to disciplinary action under section 4301(j) of the Code, by and
6 through section 4060 of the Code, sections 11170, 11171, and 11350 of the Health and Safety
7 Code, and section 829, subdivision (b), of Title 21 of the United States Code, in that Respondent
8 violated the statutes of this state and the United States regulating controlled substances and
9 dangerous drugs. The facts and circumstances are described with more particularity in paragraph
10 18, above.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Unprofessional Conduct - Violating or Attempting to Violate Any Provision or Term of**
13 **This Chapter or of the Applicable Federal and State Laws and Regulations Governing**
14 **Pharmacy)**

15 21. Respondent is subject to disciplinary action under section 4301(o) of the Code, by
16 and through section 4060 of the Code, sections 11170, 11171, and 11350 of the Health and Safety
17 Code, and section 829, subdivision (b), of Title 21 of the United States Code, in that Respondent
18 violated or attempted to violate the provisions of the terms of this chapter and the applicable
19 federal and state laws and regulations governing pharmacy. The facts and circumstances are
20 described with more particularity in paragraph 18, above.

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1 PRAYER

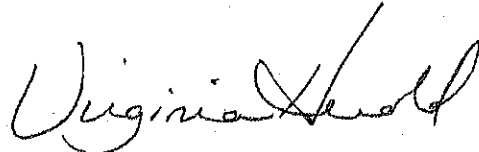
2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Board issue a decision:

4 1. Revoking or suspending Pharmacy Technician Registration No. TCH 137467, issued
5 to Brittany Jane Labiak;

6 2. Ordering Brittany Jane Labiak to pay the Board the reasonable costs of the
7 investigation and enforcement of this case, pursuant to Code section 125.3; and,

8 3. Taking such other and further action as deemed necessary and proper.
9

10
11 DATED: 1/30/17



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

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