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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:

Case No. 3307

13 **KIMBERLY MARIE HEGEMAN AKA**
14 **KIMBERLY MARIE HODKINSON**
15 **9723 Lehigh Ave.**
16 **Montclair, CA 91763**

A C C U S A T I O N

17 **Pharmacy Technician License No. TCH**
18 **69009**

Respondent.

19 Complainant alleges:

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 May 18, 2006, the Board of Pharmacy issued Pharmacy Technician
23 License Number TCH 69009 to Kimberly Marie Hegeman aka Kimberly Marie Hodkinson
24 (Respondent). The Pharmacy Technician License was in full force and effect at all times relevant
25 to the charges brought herein and will expire on August 31, 2009, unless 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."

5. Section 4301 of the Code states:

"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."

"(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.

"(k) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances.

"(l) 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

1 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
2 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
3 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
4 of this provision. The board may take action when the time for appeal has elapsed, or the
5 judgment of conviction has been affirmed on appeal or when an order granting probation is made
6 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
7 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
8 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
9 indictment."

10 6. Section 4060 of the Code states:

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

22 7. California Code of Regulations, title 16, section 1770, states:

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

1 8. Section 490 of the Code states:

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

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

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

16 "(d) The Legislature hereby finds and declares that the application of this section has been
17 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th
18 554, and that the holding in that case has placed a significant number of statutes and regulations
19 in question, resulting in potential harm to the consumers of California from licensees who have
20 been convicted of crimes. Therefore, the Legislature finds and declares that this section
21 establishes an independent basis for a board to impose discipline upon a licensee, and that the
22 amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session do not
23 constitute a change to, but rather are declaratory of, existing law."

24 9. Section 492 of the Code states:

25 "Notwithstanding any other provision of law, successful completion of any diversion
26 program under the Penal Code, or successful completion of an alcohol and drug problem
27 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of
28 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2

1 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that
2 division, from taking disciplinary action against a licensee or from denying a license for
3 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a
4 record pertaining to an arrest.”

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

9 HEALTH AND SAFETY CODE SECTIONS

10 11. Health and Safety Code section 11550(a), states:

11 “No person shall use, or be under the influence of any controlled substance which is (1)
12 specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054,
13 specified in paragraph (14), (15), (21), (22), or (23) of subdivision (d) of Section 11054, specified
14 in subdivision (b) or (c) of Section 11055, or specified in paragraph (1) or (2) of subdivision (d)
15 or in paragraph (3) of subdivision (e) of Section 11055, or (2) a narcotic drug classified in
16 Schedule III, IV, or V, except when administered by or under the direction of a person licensed
17 by the state to dispense, prescribe, or administer controlled substances.”

18 12. Health and Safety Code section 11364(a), states:

19 “It is unlawful to possess an opium pipe or any device, contrivance, instrument, or
20 paraphernalia used for unlawfully injecting or smoking (1) a controlled substance specified in
21 subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in
22 paragraph (14), (15), or (20) of subdivision (d) of Section 11054, specified in subdivision (b) or
23 (c) of Section 11055, or specified in paragraph (2) of subdivision (d) of Section 11055, or (2) a
24 controlled substance which is a narcotic drug classified in Schedule III, IV, or V.”

25 13. Health and Safety Code section 11377(a), states:

26 “Except as authorized by law and as otherwise provided in subdivision (b) or Section
27 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business
28 and Professions Code, every person who possesses any controlled substance which is (1)

1 classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision
2 (d), Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in
3 paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of
4 subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of section 11055,
5 unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice
6 in this state, shall be punished by imprisonment in a county jail for a period of not more than one
7 year or in the state prison."

8 PENAL CODE SECTION

9 14. Penal Code section 476, states:

10 "Every person who makes, passes, utters, or publishes, with intent to defraud any other
11 person, or who, with the like intent, attempts to pass, utter, or publish, or who has in his or her
12 possession, with like intent to utter, pass, or publish, any fictitious or altered bill, note, or check,
13 purporting to be the bill, note, or check, or other instrument in writing for the payment of money
14 or property of any real or fictitious financial institution as defined in Section 186.9 is guilty of
15 forgery."

16 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

17 15. Methamphetamine is a Schedule II controlled substance as designated by Health and
18 Safety Code section 11055, subdivision (d)(2), and is categorized as a dangerous drug pursuant
19 to Business and Professions Code section 4022.

20 FIRST CAUSE FOR DISCIPLINE

21 (Conviction of a Substantially Related Crime)

22 16. Respondent is subject to disciplinary action under sections 490, 4300, subdivision (a),
23 and 4301, on the grounds of unprofessional conduct, as defined in California Code of
24 Regulations, title 16, section 1770, Respondent was convicted of a crime substantially related to
25 the qualifications, functions, or duties of a licensee which to a substantial degree evidence the
26 present or potential unfitness of a licensee to perform the functions authorized by her license or
27 registration in a manner consistent with the public health, safety, or welfare. The circumstances
28 are as follows:

1 a. On or about December 6, 2007, in a criminal proceeding entitled *The People of the*
2 *State of California v. Kimberly Marie Hodkinson* in San Bernardino County Superior Court
3 (Superior Ct. San Bernardino, 2007, Case No. MVW705762), Respondent was convicted of her
4 pleas of guilty to violating Health and Safety Code section 11550(a) [Under the Influence of a
5 Control Substance], a misdemeanor.

6 b. On or about August 20, 2008, in a criminal proceeding entitled *The People of the*
7 *State of California v. Kimberly Marie Hodkinson* in Orange County Superior Court (Superior Ct.
8 Orange, 2008, Case No. 08NF2693), Respondent was convicted of her pleas of guilty to violating
9 Health and Safety Code section 11550(a) [Under the Influence of a Control Substance], a
10 misdemeanor and Health and Safety Code section 11377(a) [Possession of a Control Substance],
11 a felony.

12 c. On or about October 1, 2008, in a criminal proceeding entitled *The People of the*
13 *State of California v. Kimberly Marie Hodkinson* in San Bernardino County Superior Court
14 (Superior Ct. San Bernardino, 2008, Case Nos. MVW805214 and MVW804642), Respondent
15 was convicted of her pleas of guilty to violating Health and Safety Code section 11377(a)
16 [Possession of a Control Substance] and Penal Code 476 [Making, Possessing, Uttering Fictitious
17 Instrument], both misdemeanors.

18 d. On or about October 17, 2008, in a criminal proceeding entitled *The People of the*
19 *State of California v. Kimberly Marie Hodkinson* in Orange County Superior Court (Superior Ct.
20 Orange, 2008, Case No. 08NM10688), Respondent was convicted of her pleas of guilty to
21 violating Health and Safety Code section 11364(a) [Possession of a Control Substance
22 Paraphernalia], a misdemeanor.

23 SECOND CAUSE FOR DISCIPLINE

24 (Unprofessional Conduct-Commission of Act Involving Moral Turpitude)

25 17. Respondent is subject to disciplinary action under section 4300(a) and
26 4301(f)(j)(k)(l), in that Respondent, as more fully described in paragraph 16, above.

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1 THIRD CAUSE FOR DISCIPLINE

2 (Unlawful Possession of Controlled Substances)

3 18. Respondent is subject to disciplinary action under section 4300(a) and 4301(j), on the
4 grounds of unprofessional conduct, for violating Section 4060 of the Code and Health and Safety
5 Code section 11377(a), in that Respondent was in possession of controlled substances and
6 dangerous drugs without valid prescriptions, as more fully described in paragraph 16, above.

7 PRAYER

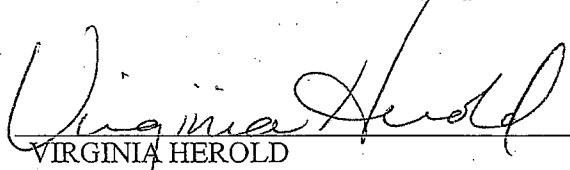
8 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
9 and that following the hearing, the Board of Pharmacy issue a decision:

10 1. Revoking or suspending Pharmacy Technician License Number TCH 69009, issued
11 to Kimberly Marie Hegeman aka Kimberly Marie Hodkinson.

12 2. Ordering Kimberly Marie Hegeman to pay the Board of Pharmacy the reasonable
13 costs of the investigation and enforcement of this case, pursuant to Business and Professions
14 Code section 125.3;

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

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17 DATED: 7/8/09


18 VIRGINIA HEROLD
19 Executive Officer
20 Board of Pharmacy
21 Department of Consumer Affairs
22 State of California
23 Complainant
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