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10 *Attorneys for Complainant*

11 **BEFORE THE**
12 **BOARD OF PHARMACY**
13 **DEPARTMENT OF CONSUMER AFFAIRS**
14 **STATE OF CALIFORNIA**

15 In the Matter of the Accusation Against:

Case No: 3543

16 **ASEFEH NIKTALEAN**
17 **3030 Frontier Avenue**
18 **Thousand Oaks, CA 91360**

A C C U S A T I O N

19 **Pharmacy Technician Registration No.**
20 **74975**

Respondent.

21 Complainant alleges:

22 **PARTIES**

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

25 2. On or about June 11, 2007, the Board of Pharmacy ("Board") issued Pharmacy
26 Technician Registration No. TCH 74975 to Asefeh Niktalean ("Respondent"). The Pharmacy
27 Technician Registration was in full force and effect at all times relevant to the charges brought
28 herein and will expire on September 30, 2010, unless renewed.

JURISDICTION

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

STATUTORY PROVISIONS

1
2 4. Section 4060 of the Code states:

3 "No person shall possess any controlled substance, except that furnished to a person upon
4 the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian. . ."

5 5. Section 4300 of the Code permits the Board to take disciplinary action to suspend or
6 revoke a license issued by the Board.

7 6. Section 4301 of the Code states, in pertinent part:

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

11 ...

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

13 ...

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

17 7. Section 11357 (b) of the Health and Safety Code states, in pertinent part,

18 "Except as authorized by law, every person who possesses not more than 28.5
19 grams of marijuana, other than concentrated cannabis, is guilty of a misdemeanor
and shall be punished by a fine of not more than one hundred dollars (\$100)."

20 8. Section 11377 of the Health and Safety Code states, in pertinent part:

21 "(a) Except as authorized by law and as otherwise provided in subdivision (b) or
22 Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of
Division 2 of the Business and Professions Code, every person who possesses any
23 controlled substance which is (1) classified in Schedule III, IV, or V, and which is
not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except
24 paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph
(11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of
25 subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of
Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or
26 veterinarian, licensed to practice in this state, shall be punished by imprisonment
27 in a county jail for a period of not more than one year or in the state prison."

28 9. Section 11350, subdivision (a) of the Health and Safety Code states:

1
2 “Except as otherwise provided in this division, every person who possesses (1) any
3 controlled substance specified in subdivision (b) or (c), or paragraph (1) of
4 subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of
5 subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section
6 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled
7 substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon
8 the written prescription of a physician, dentist, podiatrist, or veterinarian licensed
9 to practice in this state, shall be punished by imprisonment in the state prison.”

10
11 **COST RECOVERY**

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

16 **CONTROLLED SUBSTANCE-DANGEROUS DRUGS**

17 11. “Psilocybin (mushrooms)” is designated as a Schedule I controlled substance by
18 Health and Safety Code section 11054(d)(18) and is a dangerous drug pursuant to Business and
19 Professions Code section 4022.

20 12. Hydrocodone is designated as a Schedule II controlled substance by Health and
21 Safety Code section 11055(b)(j) and is a dangerous drug pursuant to Business and Professions
22 Code section 4022. “Norco” is a hydrocodone bitartrate and acetaminophen tablet.

23 13. Zolpidem is designated as a Schedule IV non-narcotic controlled substance by Health
24 and Safety Code section 11057 (d)(32). “Ambien” is a brand name of zolpidem.

25 14. Alprazolam is designated as a Schedule IV non-narcotic controlled substance by
26 Health and Safety Code section 11057(d)(1). “Xanax” is a brand name of allprazolam.

27 15. Marijuana is designated as a Schedule I controlled substance by Health and Safety
28 Code section 11054(d)(13) and is a dangerous drug pursuant to Business and Professions Code
section 4022.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Possession of Norco)**

3 16. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the
4 Code for unprofessional conduct in that Respondent possessed Norco, a controlled substance, in
5 violation of Health and Safety Code section 11350 as follows:

6 17. On or about December 13, 2008, an Officer with the California Highway Patrol
7 initiated a traffic enforcement stop on a silver BMW because the vehicle was traveling at a high
8 rate of speed. Respondent was a passenger in the vehicle at the time of the stop.

9 18. As the driver of the BMW provided the Officer with paperwork, the Officer
10 immediately was able to smell an odor of marijuana coming from inside the vehicle.

11 19. One by one, the occupants of the vehicle were asked if they had any marijuana in
12 their possession. Each occupant, including the Respondent, denied possessing any marijuana.

13 20. The Officer than conducted a search of the vehicle. Inside of the vehicle, the Officer
14 located a brown purse. Respondent claimed ownership of the brown purse. Inside of
15 Respondent's purse, the Officer located four Xanax pills, seven Ambien pills, a pill bottle
16 containing 14 grams of psilocybin mushrooms, three Norco pills and a digital pocket scale.

17 21. Respondent was arrested and transported to the Inyo County Jail. During the booking
18 process, Respondent removed from her bra area, a medication bottle containing 21 grams of
19 marijuana.

20 22. Respondent did not have a prescription for any of the controlled substances found in
21 her possession.

22 **SECOND CAUSE FOR DISCIPLINE**

23 **(Possession of Xanax)**

24 23. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the
25 Code for unprofessional conduct in that Respondent possessed Xanax, a controlled substance, in
26 violation of Business and Professions Code section 4060 and Health and Safety Code section
27 11377 (a). Complainant refers to, and by this reference incorporates, the allegations set forth in
28 paragraphs 17 through 22, inclusive, above, as though set forth fully.

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Possession of Ambien)**

3 24. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the
4 Code for unprofessional conduct in that Respondent possessed Ambien, a controlled substance, in
5 violation of Business and Professions Code section 4060 and Health and Safety Code section
6 11377 (a). Complainant refers to, and by this reference incorporates, the allegations set forth in
7 paragraphs 17 through 22, inclusive, above, as though set forth fully.

8 **FOURTH CAUSE FOR DISCIPLINE**

9 **(Possession of Psilocybin Mushroom)**

10 25. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the
11 Code for unprofessional conduct in that Respondent possessed Psilocybin Mushrooms, a
12 controlled substance, in violation of Health and Safety Code section 11377, subdivision (a).
13 Complainant refers to, and by this reference incorporates, the allegations set forth in paragraphs
14 17 through 22, inclusive, above, as though set forth fully.

15 **FIFTH CAUSE FOR DISCIPLINE**

16 **(Possession of Marijuana)**

17 26. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the
18 Code for unprofessional conduct in that Respondent possessed marijuana, a controlled substance,
19 in violation of Health and Safety Code section 11357, subdivision (b). Complainant refers to, and
20 by this reference incorporates, the allegations set forth in paragraphs 17 through 22, inclusive,
21 above, as though set forth fully.

22 **SIXTH CAUSE FOR DISCIPLINE**

23 **(Unprofessional Conduct)**

24 27. Respondent is subject to disciplinary action under section 4301 of the Code for
25 unprofessional conduct. Complainant refers to, and by this reference incorporates, the allegations
26 set forth in paragraphs 17 through 22, inclusive, above, as though set forth fully.

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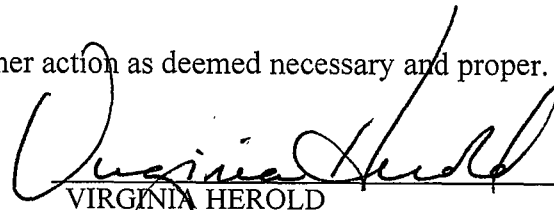
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PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration No. TCH 74975, issued to Respondent;
2. Ordering Respondent 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: 9/28/10



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