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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. 3748

13 **GARY PATRICK GWIN**
14 **1715 Ascot Ave.,**
15 **Sacramento, CA 95673**
16 **Pharmacy Technician Registration No. TCH**
17 **92152**

A C C U S A T I O N

Respondent.

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 July 7, 2009, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 92152 to Gary Patrick Gwin (Respondent). The Pharmacy Technician
24 Registration was in full force and effect at all times relevant to the charges brought herein and
25 will expire on April 30, 2011, unless renewed.

26 **JURISDICTION**

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

1 4. Section 4300 of the Code states in pertinent part:

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

3 "(b) The board shall discipline the holder of any license issued by the board, whose default
4 has been entered or whose case has been heard by the board and found guilty, by any of the
5 following methods:

6 "(1) Suspending judgment.

7 "(2) Placing him or her upon probation.

8 "(3) Suspending his or her right to practice for a period not exceeding one year.

9 "(4) Revoking his or her license.

10 "(5) Taking any other action in relation to disciplining him or her as the board in its
11 discretion may deem proper.

12 ...

13 "(e) The proceedings under this article shall be conducted in accordance with Chapter 5
14 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board
15 shall have all the powers granted therein. The action shall be final, except that the propriety of
16 the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of
17 Civil Procedure."

18 5. 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 unprofessional
20 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
21 Unprofessional conduct shall include, but is not limited to, any of the following:

22 ...

23 "(l) The conviction of a crime substantially related to the qualifications, functions, and
24 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
25 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
26 substances or of a violation of the statutes of this state regulating controlled substances or
27 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
28 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

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

12 ...”

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

17 CAUSE FOR DISCIPLINE

18 (Conviction of Crimes)

19 7. Respondent is subject to disciplinary action under section 4301(l) in that on April 6,
20 2010 he has been convicted of crimes which are substantially related to the qualifications,
21 functions, and duties of a pharmacy technician by his plea of guilty to two counts of Penal Code
22 section 288(a) (Felonies) (Committing lewd and lascivious acts with a 12 year old child) in the
23 case of *People of the State of California vs. Gary Patrick Gwin*, Sacramento County Superior
24 Court Case No. 09F07447.

25 The circumstances are as follows:

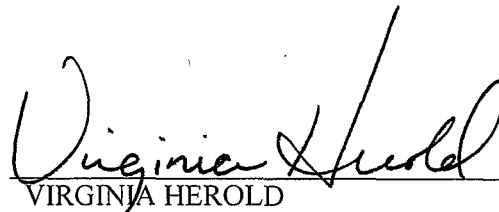
26 8. On or about October 2, 2009, after arranging to meet the 12 year old victim over the
27 internet, respondent drove to victim's house and placed his penis and finger on/in victims vagina
28 while in his car.

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. Revoking or suspending Pharmacy Technician Registration Number TCH 92152, issued to Gary Patrick Gwin
2. Ordering Gary Patrick Gwin 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;
3. Taking such other and further action as deemed necessary and proper.

DATED: 11/17/10



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

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