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

11 In the Matter of the Accusation Against:

Case No. 3855

12 **DUSTIN MATTHEW LIKENS**
13 **5030 Gavilan Way, #46**
Oceanside, CA 92057

A C C U S A T I O N

14 **Pharmacy Technician License No. TCH**
15 **83670**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about June 2, 2008, the Board of Pharmacy issued Pharmacy Technician
22 License Number TCH 83670 to Dustin Matthew Likens (Respondent). The Pharmacy Technician
23 License was in full force and effect at all times relevant to the charges brought herein and will
24 expire on May 31, 2012, unless renewed.

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1 JURISDICTION

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

5 4. Section 4300 of the Code states:

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

7 (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
8 found guilty, by any of the following methods:

9 (1) Suspending judgment.

(2) Placing him or her upon probation.

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

(4) Revoking his or her license.

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

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

15 5. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
16 surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
17 disciplinary action during the period within which the license may be renewed, restored, reissued
18 or reinstated.

19 STATUTORY PROVISIONS

20 6. Section 4022 of the Code states:

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

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

23 (b) Any device that bears the statement: "Caution: federal law restricts this
device to sale by or on the order of a _____," "Rx only," or words of similar
24 import, the blank to be filled in with the designation of the practitioner licensed to
use or order use of the device.

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 7. Section 4060 of the Code states:

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
5 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
6 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant
7 pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a
8 pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
9 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section
10 shall not apply to the possession of any controlled substance by a manufacturer,
11 wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist,
12 veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or
13 physician assistant, when in stock in containers correctly labeled with the name and
14 address of the supplier or producer.

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

18 8. Section 4301 of the Code states:

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

23 (h) The administering to oneself, of any controlled substance, or the use of
24 any dangerous drug or of alcoholic beverages to the extent or in a manner as to be
25 dangerous or injurious to oneself, to a person holding a license under this chapter, or
26 to any other person or to the public, or to the extent that the use impairs the ability
27 of the person to conduct with safety to the public the practice authorized by the
28 license.

(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.

(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
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
federal regulatory agency....

COST RECOVERY

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

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1 **DRUGS**

2 10. Marijuana is a Schedule I controlled substance as designated by Health and Safety
3 Code section 11054, subdivision (d)(13), and is a dangerous drug pursuant to Business &
4 Professions Code section 4022.

5 11. Methylenedioxymethamphetamine, or Ecstasy, is a Schedule I controlled substance as
6 designated by Health and Safety Code section 11054 and is a dangerous drug pursuant to
7 Business & Professions Code section 4022.

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(Unprofessional Conduct-Possession of Controlled Substance)**

10 12. Respondent is subject to disciplinary action under Code sections 4301, subdivisions
11 (j) and (o), in conjunction with section 4060, for unprofessional conduct in that Respondent
12 unlawfully possessed controlled substances, to wit, marijuana and Ecstasy on or about August 15,
13 2009 and/or August 16, 2009. The circumstances are as follows:

14 13. In or about April 2009, K.F., the Pharmacy Manager of Wal-Mart store 10-5075,
15 noted there were missing prescription bottles of Norco, or hydrocodone, a controlled substance.
16 An investigation was initiated that prompted an immediate and unscheduled drug screening of all
17 of the store's employees on Monday, August 17, 2009.

18 14. Respondent was employed at the store as a Pharmacy Technician and was working at
19 the store on August 17, 2009. When Respondent was informed of the investigation and the drug
20 screening, Respondent advised K.F. that he did not want to submit to drug screening because he
21 had "smoked pot" over the weekend and that he chose to resign instead.

22 15. Respondent also admitted to D.M., the Health and Wellness Director of the store, that
23 Respondent had taken Ecstasy and smoked marijuana over the weekend and that he refused to
24 submit to the drug test. Respondent was terminated from his employment on August 17, 2009.

25 **SECOND CAUSE FOR DISCIPLINE**

26 **(Unprofessional Conduct - Unlawful Self-Administration of Controlled Substance)**

27 16. Respondent is subject to disciplinary action under Code section 4301, subdivision (h),
28 for unprofessional conduct in that Respondent unlawfully self-administered a controlled

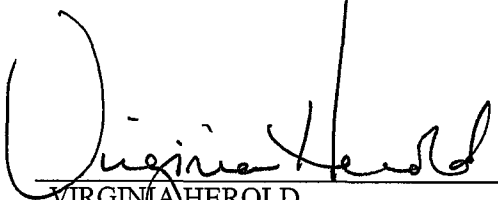
1 substance, to wit, marijuana and Ecstasy to himself on or about August 15, 2009 and/or August
2 16, 2009, as more fully set forth in paragraphs 13-15 above, and incorporated herein as though set
3 forth in full.

4 **PRAYER**

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

- 7 1. Revoking or suspending Pharmacy Technician Number TCH 83670, issued to Dustin
8 Matthew Likens;
- 9 2. Ordering Dustin Matthew Likens to pay the Board of Pharmacy the reasonable costs
10 of the investigation and enforcement of this case, pursuant to Business and Professions Code
11 section 125.3; and,
- 12 3. Taking such other and further action as deemed necessary and proper.

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14
15 DATED: 2/23/11



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

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