

1 KAMALA D. HARRIS
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 SYDNEY M. MEHRINGER
Deputy Attorney General
4 State Bar No. 245282
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2537
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**

12 In the Matter of the Accusation Against:

Case No. 4384

13 **KEYLA LORRAINE FONSECA**
114 S. Starglen Drive
Covina, CA 91724

A C C U S A T I O N

14 Pharmacy Technician Registration No. TCH
108037

15 Respondent.

16
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 November 5, 2010, the Board of Pharmacy ("Board") issued Pharmacy
23 Technician Registration No. TCH 108037 to Keyla Lorraine Fonseca ("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 March 31, 2014, unless renewed.

26 **JURISDICTION**

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

1 4. Business and Professions Code section 4300.1 states:

2 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by
3 operation of law or by order or decision of the board or a court of law, the placement of a license
4 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
5 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
6 proceeding against, the licensee or to render a decision suspending or revoking the license."

7 **STATUTORY PROVISIONS**

8 5. Section 490 states, in pertinent part:

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

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

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

23 6. Section 492 states:

24 "Notwithstanding any other provision of law, successful completion of any diversion
25 program under the Penal Code, or successful completion of an alcohol and drug problem
26 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of
27 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2
28 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that

1 division, from taking disciplinary action against a licensee or from denying a license for
2 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a
3 record pertaining to an arrest.

4 "This section shall not be construed to apply to any drug diversion program operated by any
5 agency established under Division 2 (commencing with Section 500) of this code, or any
6 initiative act referred to in that division."

7 7. Section 4300 provides in pertinent part, that every license issued by the Board is
8 subject to discipline, including suspension or revocation.

9 8. Section 4301 states, in pertinent part:

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

13

14 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous
15 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
16 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
17 to the extent that the use impairs the ability of the person to conduct with safety to the public the
18 practice authorized by the license.

19

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

22

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

27 **REGULATORY PROVISIONS**

28 9. California Code of Regulations, title 16, section 1770 states, in pertinent part:

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

7 **DRUG STATUTES**

8 10. Health and Safety Code section 11357, subdivision (a) states:

9 "Except as authorized by law, every person who possesses any concentrated cannabis shall
10 be punished by imprisonment in the county jail for a period of not more than one year or by a fine
11 of not more than five hundred dollars (\$500), or by both such fine and imprisonment, or shall be
12 punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code."

13 **COST RECOVERY**

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

18 **CONTROLLED SUBSTANCE**

19 12. "Marijuana (Cannabis)," is a hallucinogenic Schedule I controlled substance as
20 defined in Health and Safety Code section 11054(d)(13) and a dangerous drug according to
21 Business and Professions Code section 4022.

22 **FIRST CAUSE FOR DISCIPLINE**

23 **(Illegal Possession of a Controlled Substance)**

24 13. Respondent is subject to disciplinary action under Code section 4301, subdivisions (j)
25 and (o), in conjunction with California Code of Regulations, title 16, section 1170, in that
26 Respondent was in possession of a controlled substance as follows:

27 a. On or about February 3, 2012, the Los Angeles County Sheriff's Department
28 investigated a group of individuals, including Respondent, who were hanging out in Ladera Serra

1 Park in San Dimas after the park was closed. During a search of Respondent, the officer
2 recovered a small brown paper bindle from her left jacket pocket. When she was asked what was
3 inside, Respondent replied, "Hash." The officer opened the bindle and saw a solid brown rock
4 like substance resembling Marijuana hash. Respondent admitted to smoking Marijuana and hash
5 before going to the park to pick up her friends.

6 b. On or about May 11, 2012, the Court placed Respondent on 24 months Deferred
7 Entry of Judgment for violating Health and Safety code section 11357, subdivision (a)
8 [possession of concentrated cannabis] in the criminal proceeding entitled *The People of the State*
9 *of California vs. Keyla Lorraine Fonseca* (Super. Ct. Los Angeles County, 2012, No. 2PK01085).

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Dangerous Use of a Controlled Substance)**

12 14. Respondent is subject to disciplinary action under Code section 4301, subdivision (h)
13 in that on February 3, 2012, Respondent was under the influence of a controlled substance, to wit,
14 concentrated cannabis. Complainant refers to, and by reference incorporates, the allegations set
15 forth above in paragraph 13; subparagraph (a), as though fully set forth herein.

16 **PRAYER**

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

- 19 1. Revoking or suspending Pharmacy Technician Registration No. TCH 108037, issued
20 to Keyla Lorraine Fonseca;
- 21 2. Ordering Keyla Lorraine Fonseca to pay the Board the reasonable costs of the
22 investigation and enforcement of this case, pursuant to section 125.3; and
- 23 3. Taking such other and further action as deemed necessary and proper.

24 DATED: 8/14/13

25 
VIRGINIA K. HEROLD

26 Executive Officer
27 California State Board of Pharmacy
State of California
Complainant

28 LA2012507399
51300935.doc