

1 KAMALA D. HARRIS  
Attorney General of California  
2 MARC D. GREENBAUM  
Supervising Deputy Attorney General  
3 BORA SONG  
Deputy Attorney General  
4 State Bar No. 276475  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2674  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*  
7

8  
9 **BEFORE THE**  
**BOARD OF PHARMACY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:  
12  
13 **KELLEY JEAN MCDONALD**  
1244 E. Cypress  
Redlands, CA 92374  
14  
15 Pharmacy Technician Registration No. TCH  
16419  
16 Respondent.

Case No. 4557

**A C C U S A T I O N**

17  
18  
19 Complainant alleges:

20 **PARTIES**

- 21 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
22 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.  
23 2. On or about June 29, 1995, the Board of Pharmacy (Board) issued Pharmacy  
24 Technician Registration number TCH 16419 to Kelley Jean McDonald (Respondent). The  
25 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges  
26 brought herein, expired on April 30, 2013, and has not been renewed.

27 ///  
28 ///

1 **JURISDICTION**

2 3. This Accusation is brought before the Board, under the authority of the following  
3 laws.

4 **STATUTORY PROVISIONS**

5 4. Business and Professions Code section 118, subdivision (b),<sup>1</sup> provides that the  
6 suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of  
7 jurisdiction to proceed with a disciplinary action during the period within which the license may  
8 be renewed, restored, reissued or reinstated.

9 5. Section 490 states, in pertinent part:

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

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

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

24 6. Section 4300 provides that every license issued by the Board is subject to discipline,  
25 including suspension or revocation.

26 7. Section 4300.1 states:

27 <sup>1</sup> All further statutory references are to the Business and Professions Code unless  
28 otherwise indicated.

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

6           8.     Section 4301 states, in pertinent part:

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

10           ...

11           “(g) Knowingly making or signing any certificate or other document that falsely represents  
12 the existence or nonexistence of a state of facts.

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

18           ...

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

21           ...

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

28           The board may inquire into the circumstances surrounding the commission of the crime, in order

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

11 ...

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

16 9. Section 493 states:

17 “Notwithstanding any other provision of law, in a proceeding conducted by a board within  
18 the department pursuant to law to deny an application for a license or to suspend or revoke a  
19 license or otherwise take disciplinary action against a person who holds a license, upon the  
20 ground that the applicant or the licensee has been convicted of a crime substantially related to the  
21 qualifications, functions, and duties of the licensee in question, the record of conviction of the  
22 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,  
23 and the board may inquire into the circumstances surrounding the commission of the crime in  
24 order to fix the degree of discipline or to determine if the conviction is substantially related to the  
25 qualifications, functions, and duties of the licensee in question.

26 “As used in this section, ‘license’ includes ‘certificate,’ ‘permit,’ ‘authority,’ and  
27 ‘registration.’”

28 ///

1 **REGULATORY PROVISIONS**

2 10. California Code of Regulations, title 16, section 1770 states, in pertinent part:

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

9 **COST RECOVERY**

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

14 **CONTROLLED SUBSTANCES**

15 11. Marijuana is a Schedule I controlled substance as designated by Section 4021 and  
16 Health and Safety Code section 11054, subdivision (d)(13).

17 12. Methamphetamine is a Schedule II controlled substance as designated by Section  
18 4021 and Health and Safety Code section 11055, subdivision (d)(2).

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(Conviction of a Substantially Related Crime)**

21 13. Respondent is subject to disciplinary action under Section 490 and Section 4301,  
22 subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, in that  
23 Respondent was convicted of a crime substantially related to the qualifications, functions, or  
24 duties of a pharmacy technician, as follows:

25 14. On February 17, 2011, in a criminal proceeding entitled *People v. Kelly Beachman et*  
26 *al.* (Super. Ct. San Bernardino County, 2012, No. MWV1005772), Respondent pled guilty to  
27 count 1, a violation of Health and Safety Code section 11550, subdivision (a) [under the influence  
28 of a controlled substance], a misdemeanor. Count 2, a violation of former Health and Safety

1 Code section 11357, subdivision (b)<sup>2</sup> [unauthorized possession of marijuana], was dismissed in  
2 light of the plea. Pursuant to Penal Code section 1210.1, pronouncement of judgment was  
3 withheld and conditional revocable release was granted for a period of 24 months with standard  
4 terms and conditions including participation in a counseling program. On June 28, 2012, an ex  
5 parte hearing was held, during which it was alleged that Respondent failed to enroll in and  
6 complete a counseling program as ordered, and Respondent's probation was consequently  
7 revoked. On October 25, 2012, Respondent failed to appear at the hearing on his violation of  
8 probation. As of November 4, 2013, Respondent's probation remained revoked in case no.  
9 MWV1005772.

10 a. The factual circumstances of the offense are as follows: On or about November  
11 29, 2010, Deputy M.B. of the San Bernardino Sheriff's Department made a traffic stop on a  
12 bicycle that was being ridden by K.L. During his contact with K.L., Deputy M.B. determined that  
13 K.L. had an active \$25,000 warrant in Los Angeles County and the deputy placed K.L. under  
14 arrest. Upon K.L.'s request, Deputy K.B. and K.L. dropped off K.L.'s bicycle at his residence.  
15 Deputy M.B. entered the residence upon K.L.'s consent, and while inside, the deputy made  
16 contact with Respondent. During this contact, Deputy M.B. determined that Respondent was  
17 under the influence of a controlled substance. Respondent admitted to Deputy M.B. that she had  
18 used methamphetamine that day or the day before. Respondent also told Deputy M.B. that she  
19 had marijuana in her belongings. During a search of Respondent's room, Deputy M.B. retrieved  
20 approximately 1.6 grams of marijuana and a marijuana pipe. Deputy M.B. arrested Respondent  
21 for violating Health and Safety Code section 11550 and former Health and Safety Code section  
22 11357, subdivision (b).

23 ///

24 <sup>2</sup> Former Health and Safety Code section 11357, subdivision (b), stated in pertinent part,  
25 "[E]very person who possesses not more than 28.5 grams of marijuana, other than concentrated  
26 cannabis, is guilty of a *misdemeanor* . . ." (Stats. 1983, ch. 434, § 1.5, italics added.) In 2010,  
27 former Health and Safety Code section 11357, subdivision (b), was amended (Stats. 2010, ch.  
28 708, § 1) to read in pertinent part, "[E]very person who possesses not more than 28.5 grams of  
marijuana, other than concentrated cannabis, is guilty of an *infraction* . . ." (Italics added.) The  
statute as amended became operative on January 1, 2011. In 2011, the statute was amended once  
again, but without substantive changes to subdivision (b). (Stats. 2011, ch. 15, § 159.)



1 11550, subdivision (a) [under the influence of a controlled substance], and 11357, subdivision (b)  
2 [unauthorized possession of marijuana]. Complainant refers to, and by this reference  
3 incorporates, the allegations set forth above in paragraphs 14 and 14(a), as though set forth fully  
4 herein.

5 **FOURTH CAUSE FOR DISCIPLINE**

6 **(Knowingly Making a False Statement of Fact)**

7 18. Respondent is subject to disciplinary action under Section 4301, subdivision (g), in  
8 that Respondent knowingly made a false statement of fact to the Board by failing to disclose her  
9 2011 conviction on her renewal application for licensure. The circumstances are as follows: On  
10 or about April 30, 2011, Respondent submitted a renewal application for Pharmacy Technician  
11 Registration number TCH 16419. On the renewal application, Respondent checked box "H",  
12 answering "NO" to the inquiry, "Since you last renewed your license, have you had any license  
13 discipline by a government agency or other disciplinary body; or, have you been convicted of any  
14 crime in any state, the U S A and its territories, military court or a foreign country?" Complainant  
15 also refers to, and by this reference incorporates, the allegations set forth above in paragraph 14,  
16 as though set forth fully herein.

17 **FIFTH CAUSE FOR DISCIPLINE**

18 **(Violation of State Laws and Regulations Governing Pharmacy)**

19 19. Respondent is subject to disciplinary action under Section 4301, subdivision (o), in  
20 that Respondent committed an act or several acts in violation of the state laws and regulations  
21 governing pharmacy, including regulations established by the Board or by any other state or  
22 federal regulatory agency. Complainant refers to, and by this reference incorporates, the  
23 allegations set forth above in paragraphs 14-18, inclusive, as though set forth fully herein.

24 **PRAYER**

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

27 1. Revoking or suspending Pharmacy Technician Registration number TCH 16419,  
28 issued to Kelley Jean McDonald;

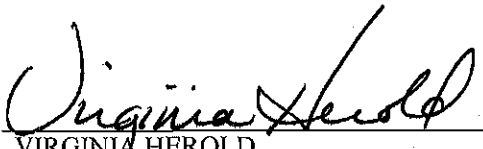


1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

2. Ordering Kelley Jean McDonald 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: 12/6/13



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

LA2013508866  
51397804.doc