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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. 4635

13 **SANDRA LYNN LUKES**
729 Camalot Court
Ontario, CA 91762

A C C U S A T I O N

14 **Pharmacy Technician Registration No. TCH**
26727

15 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Virginia K. Herold (Complainant) brings this Accusation solely in her official
21 capacity as the Executive Officer of the California State Board of Pharmacy.

22 2. On or about August 7, 1998, the Board issued Pharmacy Technician Registration
23 Number TCH 26727 to Sandra Lynn Lukes (Respondent). The Pharmacy Technician
24 Registration was in full force and effect at all times relevant to the charges brought herein. The
25 Registration expired on September 30, 2013, was cancelled, and has not been renewed.

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1 **JURISDICTION**

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

5 4. Section 4011 of the Code provides:

6 "The board shall administer and enforce this chapter [Pharmacy Law, (Business and
7 Professions Code, Sec 4000 et esq.)) and the Uniform Controlled Substances Act (Division 10
8 commencing with Section 11000) of the Health and Safety Code)."

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

11 6. Section 4300.1 of the Code states, "the expiration, cancellation, forfeiture, or
12 suspension of a board-issued license by operation of law or by order or decision of the board or a
13 court of law, the placement of a license on a retired status, or the voluntary surrender of a license
14 by a licensee shall not deprive the board of jurisdiction to commence or proceed with any
15 investigation of, or action or disciplinary proceeding against, the licensee or to render a decision
16 suspending or revoking the license."

17 **STATUTORY PROVISIONS**

18 7. Section 490 of the Code states, in pertinent part:

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

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

27 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
28 conviction following a plea of nolo contendere. Any action that a board is permitted to take

1 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
2 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
3 made suspending the imposition of sentence, irrespective of a subsequent order under the
4 provisions of Section 1203.4 of the Penal Code."

5 8. Section 493 of the Code states:

6 "Notwithstanding any other provision of law, in a proceeding conducted by a board within
7 the department pursuant to law to deny an application for a license or to suspend or revoke a
8 license or otherwise take disciplinary action against a person who holds a license, upon the
9 ground that the applicant or the licensee has been convicted of a crime substantially related to the
10 qualifications, functions, and duties of the licensee in question, the record of conviction of the
11 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
12 and the board may inquire into the circumstances surrounding the commission of the crime in
13 order to fix the degree of discipline or to determine if the conviction is substantially related to the
14 qualifications, functions, and duties of the licensee in question."

15 As used in this section, "license" includes "certificate," "permit," "authority," and
16 "registration."

17 9. Section 4301 of the Code states, in pertinent part:

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

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22 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
23 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
24 whether the act is a felony or misdemeanor or not.

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26 "(l) The conviction of a crime substantially related to the qualifications, functions, and
27 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
28 (commencing with Section 801) of Title 21 of the United States Code regulating controlled

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

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

20 **REGULATORY PROVISION**

21 10. California Code of Regulations, title 16, section 1770, states:

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

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1 **DANGEROUS DRUG**

2 11. Section 4022 of the Code states:

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

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

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

10 "(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
11 prescription or furnished pursuant to Section 4006."

12 **CONTROLLED SUBSTANCE**

13 12. "Methamphetamine," is a Schedule II controlled substance as designated by Health
14 and Safety Code section 11055, subdivision (d)(2) and is categorized as a dangerous drug
15 pursuant to section 4022 of the Code.

16 **COST RECOVERY**

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

21 **FIRST CAUSE FOR DISCIPLINE**

22 **(Conviction of a Substantially-Related Crime)**

23 14. Respondent is subject to disciplinary action under sections 490, 4300 and 4301,
24 subdivision (l) of the Code, in conjunction with California Code of Regulations, title 16, section
25 1770, on the grounds of unprofessional conduct as Respondent was convicted of a crime
26 substantially related to the qualifications, functions, or duties of a registered pharmacy technician.

27 a. On or about November 2, 2012, after pleading nolo contendere, Respondent was
28 convicted of six felony counts in violation of Health and Safety Code Section 11377(a)

1 [possession of a controlled substance methamphetamine]; Penal Code Section 496(a)[receiving
2 stolen property (mail, driver's license, social security card, etc)]; Penal Code Section
3 496(a)[receiving stolen property (mail)]; Penal Code Section 496(a)[receiving stolen property
4 (credit card)]; Penal Code Section 496(a)[receiving stolen property (debit card)]; and Penal Code
5 Section 530.5 [identity theft] in the criminal proceeding entitled *The People of the State of*
6 *California v. Sandra Lynn Lukes* (Super. Ct. Los Angeles County, 2012, No. KA099480). The
7 court placed Respondent on three years formal probation. The court sentenced Respondent to
8 serve 365 days in jail, register as a narcotic offender, and pay fines, fees, and restitution.

9 b. The circumstances surrounding the conviction are that on or about September 2,
10 2012, Los Angeles Sheriff Deputies pulled Respondent's vehicle over for a traffic enforcement
11 stop. The Deputy asked Respondent for her driver's license. Respondent stated it was in her purse
12 which was inside the trunk of her vehicle. The Deputy searched Respondent's purse and found a
13 small plastic bindle containing methamphetamine. The Deputy also found debit and credit cards
14 from unknown individuals in Respondent's wallet in addition to documents and mail belonging to
15 and addressed to various names inside her purse.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Unlawful Possession of a Controlled Substance)**

18 15. Respondent is subject to disciplinary action under section 4301, subdivisions (j) and
19 (o), for violating statutes of this state regulating controlled substances and dangerous drugs.
20 Complainant refers to, and by this reference incorporates, the allegations set forth above in
21 paragraph 14, as through set forth fully.

22 **THIRD CAUSE FOR DISCIPLINE**

23 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

24 16. Respondent is subject to disciplinary action under sections 4300 and 4301,
25 subdivision (f), on the grounds of unprofessional conduct as Respondent committed an act
26 involving moral turpitude, dishonesty, fraud, deceit and corruption, whether the act was
27 committed in the course of relations as a licensee or otherwise, and whether the act is a felony or
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1 misdemeanor or not. Complainant refers to, and by this reference incorporates, the allegations set
2 forth above in paragraph 14 as though set forth fully.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Violation of Pharmacy Act)**

5 17. Respondent is subject to disciplinary action under section 4301, subdivision (o), on
6 the grounds of unprofessional conduct, in that Respondent was convicted of a crime and
7 committed an act that was in violation of the Pharmacy Act. Complainant refers to, and by this
8 reference incorporates, the allegations set forth above in paragraphs 14 through 16, inclusive, as
9 though set forth fully.

10 **DISCIPLINE CONSIDERATIONS**

11 18. To determine the degree of discipline, if any, to be imposed on Respondent,
12 Complainant alleges the following:

13 a. On or about August 20, 2010, after Respondent pled guilty, Respondent was
14 convicted of one misdemeanor count of violating Penal Code Section 484(a) [petty theft] in the
15 criminal proceeding entitled *The People of the State of California v. Sandra Lynn Lukes* (Super.
16 Ct. Los Angeles, 2010, Case No. OJB07182). The court placed Respondent on two (2) years of
17 probation, sentenced Respondent to one day in jail, and ordered Respondent to pay fines and
18 restitution.

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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 26727, issued to Sandra Lynn Lukes and cancelled;
2. Ordering Sandra Lynn Lukes to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3 of the Code; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 5/9/14



VIRGINIA K. HEROLD
Executive Officer
California State Board of Pharmacy
State of California
Complainant

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