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9	BEFORE THE		
10	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS		
11	STATE OF CA	LIFORNIA	
12	In the Matter of the Accusation Against:	Case No. 4700	
13	BRIAN MATTHEW HUDSON	ACCUSATION	
14	711 West Lincoln #15 Escondido, CA 92026		
15	Pharmacy Technician Registration No. 115444		
16	Respondent.		
17			
18	Complainant alleges:		
19	PARTIES		
20	1. Virginia Herold (Complainant) brings this Accusation solely in her official		
21	capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.		
22	2. On October 10, 2011, the Board of Pharmacy issued Pharmacy Technician		
23	Registration Number 115444 to Brian Matthew Hudson (Respondent). The Pharmacy		
24	Technician Registration expired on November 30, 2012, and has not been renewed.		
25	JURISDICTION		
26	3. This Accusation is brought before the Board of Pharmacy (Board), Department of		
27	Consumer Affairs, under the authority of the following laws. All section references are to the		
28	Business and Professions Code (Code) unless otherwise indicated.		
	1	Accusation	

4. Section 4300, subdivision (a), of the Code states that every license issued may be suspended or revoked.

## 5. Section 4300.1 of the Code states:

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

## STATUTORY PROVISIONS

6. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

#### 7. Section 493 of the Code states:

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

As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'

## 8. Section 4301 of the Code states:

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

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

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(1) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

# **REGULATORY PROVISIONS**

- 9. California Code of Regulations, title 16, section 1769, states:
- (b) When considering the suspension or revocation of a facility or a personal license on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:
  - (1) Nature and severity of the act(s) or offense(s).
  - (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
  - (5) Evidence, if any, of rehabilitation submitted by the licensee.
- 10. California Code of Regulations, title 16, section 1770, states:

For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the

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Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare.

#### COST RECOVERY

11. Section 125.3 of the Code provides, 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, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

# FIRST CAUSE FOR DISCIPLINE

(Mar. 27, 2013 Conviction for Attempted Oral Copulation With a Minor On Sep. 5, 2012)

- 12. Respondent subjected his registration to discipline under Code sections 490 and 4301, subdivision (1) in that Respondent was convicted of a crime that is substantially related to the qualifications, functions, and duties of a registered pharmacy technician. The circumstances are as follows:
- a. On March 27, 2013, in a criminal proceeding entitled *The People of the* State of California vs. Brian M. Hudson, in San Diego County Superior Court, North County Division, North County Regional Center Case Number SCN309789, Respondent was convicted on his plea of guilty to violating Penal Code (PC) sections 664 and 288, subdivisions (a) and (b)(1), attempted oral copulation by a person over 21 years old with a minor under 18 years old, a felony. On January 9, 2013, when the charge for violation of PC sections 664 and 288, subdivisions (a) and (b)(2) was added, a felony charge for violation of PC section 288.2, subdivision (a), harmful matter sent with intent of seduction of minor, was dismissed. Charges for violation of PC sections 288.3, subdivision (a), contact of minor with intent to commit a sexual act, and 288.4, subdivision (b), attending an arranged illicit meeting with a minor, felonies, were dismissed pursuant to a plea bargain.

- b. As a result of the conviction, on May 9, 2013, Respondent was sentenced to 252 days commitment with the San Diego County Sheriff, with credit for 126 days actually served and 126 days pursuant to PC section 4019. Respondent was granted three years formal probation subject to alcohol, drug, and sex and violence conditions. Respondent was ordered to pay fees, fines, penalty assessments, restitution, and the cost of probation. Respondent was also ordered to register as a sex offender and attend and successfully complete a cognitive behavior therapy counseling program.
- c. The facts that led to the conviction are that on September 5, 2012, Respondent placed an advertisement on a website, soliciting a sexual encounter with a female. Over the course of several electronic mail exchanges, Respondent instructed an alleged 14-year old victim to meet him and engage in oral copulation. Respondent arranged a meeting along El Norte Parkway in Escondido, California. Respondent was arrested when he showed up at the designated location at the agreed meeting time. Respondent was thereafter transported to the Vista Detention Facility.

## SECOND CAUSE FOR DISCIPLINE

#### (Unprofessional Conduct – Gross Immorality)

13. Respondent subjected his registration to discipline under Code section 4301, subdivision (a) in that on September 5, 2012, he arranged a meeting with a person he believed to be a minor with the intent of engaging in lewd and lascivious behavior and attempted to meet with the minor for the purpose of committing sexual offenses with a minor, as detailed in paragraph 12, above.

## THIRD CAUSE FOR DISCIPLINE

# (Unprofessional Conduct – Commission of Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, and Corruption)

14. Respondent subjected his registration to discipline under Code section 4301, subdivision (f) in that prior to his attempted rendezvous with a minor on September 5, 2012, knowing his recipient was a minor, he distributed harmful matter with the intent of seducing the

1	minor and purpose of arousing, appealing to and gratifying the lust, passions, and sexual desires	
2	of Respondent and of the minor, as detailed in paragraph 12, above.	
3	PRAYER	
4	WHEREFORE, Complainant requests that a hearing be held on the matters herein	
5	alleged, and that following the hearing, the Board of Pharmacy issue a decision:	
6	1. Revoking or suspending Pharmacy Technician Registration Number 115444,	
7	issued to Brian Matthew Hudson;	
8	2. Ordering Brian Matthew Hudson to pay the Board of Pharmacy the reasonable	
9	costs of the investigation and enforcement of this case, pursuant to Business and Professions	
10	Code section 125.3;	
11	3. Taking such other and further action as deemed necessary and proper.	
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15	DATED: 12/6/13 Unginia Heeld	
16	VIRGINIA HEROLD Executive Officer Board of Pharmacy Department of Consumer Affairs	
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18	State of California  Complainant	
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