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

12 In the Matter of the Accusation Against:

Case No. 4700

13 **BRIAN MATTHEW HUDSON**
14 **711 West Lincoln #15**
Escondido, CA 92026

A C C U S A T I O N

15 **Pharmacy Technician Registration No. 115444**

16 Respondent.

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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.

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(l) 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.

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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

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

6 COST RECOVERY

7 11. Section 125.3 of the Code provides, in pertinent part, that the Board may request
8 the administrative law judge to direct a licentiate found to have committed a violation or
9 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
10 and enforcement of the case, with failure of the licentiate to comply subjecting the license to not
11 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs
12 may be included in a stipulated settlement.

13 FIRST CAUSE FOR DISCIPLINE

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

15 12. Respondent subjected his registration to discipline under Code sections 490 and
16 4301, subdivision (l) in that Respondent was convicted of a crime that is substantially related to
17 the qualifications, functions, and duties of a registered pharmacy technician. The circumstances
18 are as follows:

19 a. On March 27, 2013, in a criminal proceeding entitled *The People of the*
20 *State of California vs. Brian M. Hudson*, in San Diego County Superior Court, North County
21 Division, North County Regional Center Case Number SCN309789, Respondent was convicted
22 on his plea of guilty to violating Penal Code (PC) sections 664 and 288, subdivisions (a) and
23 (b)(1), attempted oral copulation by a person over 21 years old with a minor under 18 years old,
24 a felony. On January 9, 2013, when the charge for violation of PC sections 664 and 288,
25 subdivisions (a) and (b)(2) was added, a felony charge for violation of PC section 288.2,
26 subdivision (a), harmful matter sent with intent of seduction of minor, was dismissed. Charges
27 for violation of PC sections 288.3, subdivision (a), contact of minor with intent to commit a
28 sexual act, and 288.4, subdivision (b), attending an arranged illicit meeting with a minor,
felonies, were dismissed pursuant to a plea bargain.

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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DATED: 12/6/13 Virginia Herold
VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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