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

11 In the Matter of the Accusation Against:

Case No. 5436

12 **JENNIFER CRYSTAL TIBBITTS a.k.a.**
13 **JENNIFER KIPPING**
107 Rey Ct.
14 Santa Cruz, CA 95062

FIRST AMENDED ACCUSATION

15 **Pharmacy Technician Registration No. TCH**
16 **85806**

Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Virginia Herold (Complainant) brings this First Amended Accusation solely in her
21 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer
22 Affairs.

23 2. On or about August 29, 2008, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 85806 to Jennifer Crystal Tibbitts a.k.a. Jennifer Kipping
25 (Respondent). The Pharmacy Technician Registration was in full force and effect at all times
26 relevant to the charges brought herein and will expire on June 30, 2016, unless renewed.

27 ///

28 ///

1 **JURISDICTION**

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

5 4. Section 4011 of the Code provides that the Board shall administer and enforce both
6 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
7 Act [Health & Safety Code, § 11000 et seq.].

8 5. Section 4300.1 of the Code states:

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

14 **STATUTORY AND REGULATORY PROVISIONS**

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

19 7. Section 4060 of the Code provides, in pertinent part:

20 "No person shall possess any controlled substance, except that furnished to a person upon
21 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
22 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
23 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
24 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
25 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
26 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
27 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
28 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified

1 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
2 labeled with the name and address of the supplier or producer.

3 ...”

4 8. Section 4301 of the Code provides, in pertinent part:

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

8 ...

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

12 ...

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

15 ...

16 “(l) The conviction of a crime substantially related to the qualifications, functions, and
17 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
18 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
19 substances or of a violation of the statutes of this state regulating controlled substances or
20 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
21 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
22 The board may inquire into the circumstances surrounding the commission of the crime, in order
23 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
24 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
25 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
26 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
27 of this provision. The board may take action when the time for appeal has elapsed, or the
28 judgment of conviction has been affirmed on appeal or when an order granting probation is made

1 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
2 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
3 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
4 indictment.

5 ...

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

10 ...”

11 9. Health and Safety Code section 11173, subdivision (a) provides that no person shall
12 obtain or attempt to obtain controlled substances, or procure or attempt to procure the
13 administration of or prescription for controlled substances (1) by fraud, deceit, misrepresentation,
14 or subterfuge; or (2) by the concealment of a material fact.

15 10. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess
16 any controlled substance listed in Schedule II (Health and Safety Code section 11055,
17 subdivisions (b) or (c)) or any narcotic drug listed in Schedules III-V, absent a valid prescription.

18 11. California Code of Regulations, title 16, section 1770 states:

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

25 **Controlled Substances/Dangerous Drugs**

26 12. Xanax is the brand name of Alprazolam, a Schedule IV controlled substance as
27 designated by Health and Safety Code section 11057, subdivision (d)(1) and a dangerous drug as
28 designated by section 4022 of the Code.

1 13. Norco, Vicodin, Vicodin ES, Lortab, and Lorcet are among the brand names for
2 compounds of varying dosages of Acetaminophen (aka APAP) and Hydrocodone, a Schedule III
3 controlled substance as designated by Health and Safety Code section 11056, subdivision (e)(4)
4 and a dangerous drug as designated by section 4022 of the Code. The varying compounds are
5 also known generically as Hydrocodone with APAP. These are all narcotic drugs.

6 14. Soma is the brand name of Carisoprodol, a Schedule IV controlled substance as
7 designated by Code of Federal Regulations, title 21, section 1308.14, subdivision (c)(6) and a
8 dangerous drug as designated by section 4022 of the Code.

9 15. Lyrica is the brand name of Pregabalin, a Schedule V controlled substance as
10 designated by Code of Federal Regulations, title 21, section 1308.15, subdivision (e)(3) and a
11 dangerous drug as designated by section 4022 of the Code.

12 **COSTS**

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

19 **FACTUAL BACKGROUND**

20 17. Between approximately October 2013 and June 2014, Respondent was employed as a
21 pharmacy technician at a Target store in Hollister, California. During that time period,
22 Respondent diverted the following controlled substances in the following amounts from the store:

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Drug	Strength	Quantity (tablets or capsules)
Xanax	0.25 mg	851
	0.5 mg	254
	2 mg	415
Soma	350 mg	584
Hydrocodone	5/325 mg	11
	10/325 mg	2,828
Lyrica	150 mg	137
	200 mg	90

18. On or about August 6, 2015, in a criminal proceeding entitled *People v. Jennifer Kipping*, in San Benito County Superior Court, Case No. CR-14-01068, based on the conduct described in paragraph 17, above, Respondent was convicted on her plea of nolo contendere of violating Penal Code section 487, subdivision (a) (grand theft by embezzlement), a misdemeanor. Imposition of sentence was suspended and Respondent was placed on three years court probation.

FIRST CAUSE FOR DISCIPLINE

(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, and/or Corruption)

19. Respondent is subject to disciplinary action under section 4301, subdivisions (f) and (o) of the Code in that Respondent committed an act involving moral turpitude, dishonesty, fraud, deceit, and/or corruption when she diverted controlled substances from the pharmacy where she was employed. The circumstances of Respondent's conduct are set forth above in paragraph 17.

SECOND CAUSE FOR DISCIPLINE

(Illegal Possession of Controlled Substances)

20. Respondent is subject to disciplinary action under section 4301, subdivisions (j) and/or (o) and/or section 4060 of the Code, and/or Health and Safety Code section 11350, in that

1 Respondent possessed, conspired to possess, and/or assisted in or abetted possession of
2 controlled substances without a prescription. The circumstances of Respondent's conduct are set
3 forth above in paragraph 17.

4 **THIRD CAUSE FOR DISCIPLINE**

5 **(Obtaining Controlled Substances by Fraud, Deceit, or Subterfuge)**

6 21. Respondent is subject to disciplinary action under section 4301, subdivisions (j)
7 and/or (o) of the Code, and/or Health and Safety Code section 11173, subdivision (a), in that
8 Respondent obtained, conspired to obtain, and/or assisted in or abetted the obtaining of controlled
9 substances by fraud, deceit, misrepresentation, and/or subterfuge, and/or by the concealment of a
10 material fact. The circumstances of Respondent's conduct are set forth above in paragraph 17.

11 **FOURTH CAUSE FOR DISCIPLINE**

12 **(Conviction of a Crime Substantially Related to the Qualifications, Functions, and Duties of**
13 **a Pharmacy Technician)**

14 22. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision
15 (l) of the Code, and California Code of Regulations, title 16, section 1770, in that Respondent was
16 convicted of a crime substantially related to the qualifications, functions, and duties of a
17 pharmacy technician. The circumstances of Respondent's conviction are set forth above in
18 paragraph 18.

19 **FIFTH CAUSE FOR DISCIPLINE**

20 **(Unprofessional Conduct)**

21 23. Respondent is subject to disciplinary action under section 4301 of the Code in that
22 Respondent engaged in unprofessional conduct. The circumstances of Respondent's conduct are
23 set forth above in paragraph 17.

24 **PRAYER**

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

27 1. Revoking or suspending Pharmacy Technician Registration Number TCH 85806
28 issued to Jennifer Crystal Tibbitts a.k.a. Jennifer Kipping;

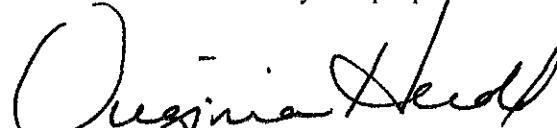
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2. Ordering Jennifer Crystal Tibbitts a.k.a. Jennifer Kipping to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED:

10/30/15



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

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13 **JENNIFER KIPPING**
14 **1241 Crestview Drive**
Hollister, CA 95023

ACCUSATION

15 **Pharmacy Technician Registration No. TCH**
16 **85806**

Respondent.

18 Complainant alleges:

19 **PARTIES**

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21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
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24 (Respondent). The Pharmacy Technician Registration was in full force and effect at all times
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8 5. Section 4300.1 of the Code states:

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STATUTORY PROVISIONS

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25 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
26 labeled with the name and address of the supplier or producer.

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Lyrica	150 mg	137
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FIRST CAUSE FOR DISCIPLINE

(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, and/or Corruption)

16. Respondent is subject to disciplinary action under section 4301, subdivisions (f) and (o) of the Code in that Respondent committed an act involving moral turpitude, dishonesty, fraud, deceit, and/or corruption when she diverted controlled substances from the pharmacy where she was employed. The circumstances of Respondent's conduct are set forth above in paragraph 15.

SECOND CAUSE FOR DISCIPLINE

(Illegal Possession of Controlled Substances)

17. Respondent is subject to disciplinary action under section 4301, subdivisions (j) and/or (o) and/or section 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent possessed, conspired to possess, and/or assisted in or abetted possession of controlled substances without a prescription. The circumstances of Respondent's conduct are set forth above in paragraph 15.

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THIRD CAUSE FOR DISCIPLINE

(Obtaining Controlled Substances by Fraud, Deceit, or Subterfuge)

18. Respondent is subject to disciplinary action under section 4301, subdivisions (j) and/or (o) of the Code, and/or Health and Safety Code section 11173, subdivision (a), in that Respondent obtained, conspired to obtain, and/or assisted in or abetted the obtaining of controlled substances by fraud, deceit, misrepresentation, and/or subterfuge, and/or by the concealment of a material fact. The circumstances of Respondent's conduct are set forth above in paragraph 15.

FOURTH CAUSE FOR DISCIPLINE

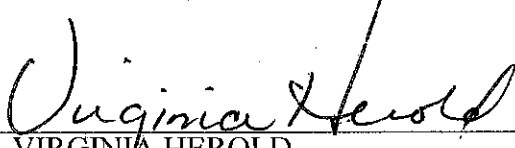
(Unprofessional Conduct)

19. Respondent is subject to disciplinary action under section 4301 of the Code in that Respondent engaged in unprofessional conduct. The circumstances of Respondent's conduct are set forth above in paragraph 15.

PRAYER

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

- 1. Revoking or suspending Pharmacy Technician Registration Number TCH 85806 issued to Jennifer Crystal Tibbitts a.k.a. Jennifer Kipping;
- 2. Ordering Jennifer Crystal Tibbitts a.k.a. Jennifer Kipping 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: 9/4/15 

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

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