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

10 In the Matter of the Accusation Against:

Case No. 5714

11 **DAVID KIM**  
12 1635 Neil Armstrong St., Apt. 211  
Montebello, CA 90640

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

13 Original Pharmacy Technician Registration No.  
14 TCH 145335

15 Respondent.

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17  
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19  
20  
21 Complainant alleges:

22 **PARTIES**

23 1. Virginia Herold ("Complainant") brings this Accusation solely in her official capacity  
24 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs ("Board").

25 2. On or about December 26, 2014, the Board of Pharmacy issued Original Pharmacy  
26 Technician Registration No. TCH 145335 to David Kim ("Respondent"). The Original Pharmacy  
27 Technician Registration was in full force and effect at all times relevant to the charges brought  
28 herein and will expire on December 31, 2016, unless renewed.

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 unless otherwise indicated.

4 4. Section 4300 provides, in pertinent part, that every license issued by the Board is  
5 subject to discipline, including suspension or revocation.

6 5. Section 4300.1 states:

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

12 STATUTORY PROVISIONS

13 6. Section 4022 states

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

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

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

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

23 7. Section 4060 states, in pertinent part:

24 "No person shall possess any controlled substance, except that furnished to a person upon  
25 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor  
26 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified  
27 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a  
28 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,

1 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of  
2 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply  
3 to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,  
4 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified  
5 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly  
6 labeled with the name and address of the supplier or producer."

7 8. Section 4301 states:

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

11 ....

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

17 ....

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

20 **REGULATORY PROVISION**

21 9. 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 **COST RECOVERY**

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

6 **CONTROLLED SUBSTANCES AND DANGEROUS DRUGS**

7 11. Marijuana is a hallucinogenic Schedule I controlled substance as defined in Health and  
8 Safety Code section 11054, subdivision (d)(13), and a dangerous drug pursuant to Business and  
9 Professions Code section 4022.

10 12. Methamphetamine is a Schedule II controlled substance as defined in Health and  
11 Safety Code section 11055, subdivision (d)(2), and is categorized as a dangerous drug pursuant to  
12 Business and Professions Code section 4022.

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(Dangerous Use of Drugs)**

15 13. Respondent is subject to disciplinary action under section 4301, subdivision (h), on the  
16 grounds of unprofessional conduct, in that Respondent used marijuana to an extent or in a manner  
17 dangerous or injurious to himself or others, as follows:

18 a. On or about May 30, 2015, Respondent drove a vehicle while under the influence of  
19 marijuana such that he could not operate the vehicle safely. Respondent, while driving a gray  
20 Honda CRV, was stopped at a Los Angeles Police Department sobriety checkpoint. An officer  
21 spoke with Respondent through the open driver's window, and smelled the strong and distinct  
22 odor of marijuana coming from inside the vehicle. The officer also noticed other objective  
23 symptoms of drug use, including very pronounced reddening of the conjunctiva, a blank stare on  
24 his face, droopy eyelids and lethargic speech. Respondent stated that he had smoked a "blunt" of  
25 marijuana at his cousin's house prior to driving. The officer asked Respondent to exit the vehicle,  
26 Respondent fumbled with the window switches and door handle before slowly stepping out with  
27 an unsteady gait. Respondent submitted to a series of field sobriety tests, but was unable to  
28

1 satisfactorily complete them. Officers collected a blood sample from Respondent at the check  
2 point, which later tested positive for delta-9-Tetrahydrocannabinol (THC).

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Possession of a Controlled Substance)**

5 14. Respondent is subject to disciplinary action under section 4060 for possessing  
6 marijuana, a schedule I controlled substance, without a prescription. The circumstances are that  
7 on or about May 30, 2015, Respondent admitted to smoking a "blunt" of marijuana at his cousin's  
8 house prior to driving his vehicle. Complainant refers to, and by this reference incorporates, the  
9 allegations set forth above in paragraph 13, subparagraph (a) inclusive, as though set forth fully.

10 **THIRD CAUSE FOR DISCIPLINE**

11 **(Possession of Drug Paraphernalia)**

12 15. Respondent is subject to disciplinary action under section 4301, subdivision (j), for  
13 violating laws of the State of California regulating controlled substances and dangerous drugs, by  
14 violating Health and Safety Code section 11364, subdivision (a), for possessing a  
15 methamphetamine pipe, as follows:

16 a. On or about September 1, 2015, an officer from the Montebello Police Department  
17 was dispatched to investigate a suspicious vehicle in accordance with an anonymous report of  
18 recent vehicle burglaries. When the officer arrived he found an individual, later determined to be  
19 Respondent's acquaintance J.N., standing outside the rear of the vehicle. While looking through  
20 the driver's side window, the officer found a glass methamphetamine smoking pipe. While the  
21 officer continued to conduct his investigation, Respondent arrived, had the keys to the vehicle on  
22 him and stated that the vehicle belonged to his father. Respondent also admitted that the  
23 methamphetamine smoking pipe was his, a violation of Health and Safety Code section 11364,  
24 subdivision (a).

25 **FOURTH CAUSE FOR DISCIPLINE**

26 **(Unprofessional Conduct)**

27 16. Respondent is subject to discipline under section 4301, on the grounds of general  
28 unprofessional conduct, as follows:

1 a. Respondent possessed and used a schedule I controlled substance before driving his  
2 vehicle. Complainant refers to, and by this reference incorporates, the allegations set forth above  
3 in paragraphs 13 through 14, inclusive, as though set forth fully.

4 b. Respondent possessed drug paraphernalia used to smoke methamphetamine, a  
5 schedule II controlled substance, and the methamphetamine smoking pipe was found in  
6 Respondent's vehicle while Respondent had the keys to that vehicle. Complainant refers to, and  
7 by this reference incorporates, the allegations set forth above in paragraph 15, subparagraph (a)  
8 inclusive, as though set forth fully.

9 **PRAYER**

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

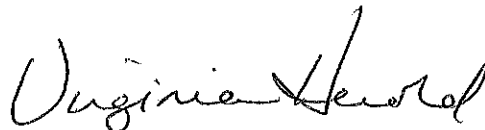
12 1. Revoking or suspending Original Pharmacy Technician Registration number TCH  
13 145335, issued to David Kim;

14 2. Ordering David Kim to pay the Board of Pharmacy the reasonable costs of the  
15 investigation and enforcement of this case, pursuant to Business and Professions Code section  
16 125.3; and,

17 3. Taking such other and further action as deemed necessary and proper.  
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20  
21 DATED: \_\_\_\_\_

4/8/16



22 VIRGINIA HEROLD  
23 Executive Officer  
24 Board of Pharmacy  
25 Department of Consumer Affairs  
26 State of California  
27 Complainant

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