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BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **ERIN ANNE KIRKSEY** 9208 9th Ave. Hesperia, CA 92345 **Pharmacy Technician Registration No. TCH 65835** Respondent.	Case No. 5815 **A C C U S A T I O N**

Complainant alleges:

PARTIES

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

2. On or about February 9, 2006, the Board of Pharmacy issued Pharmacy Technician Registration Number TCH 65835 to Erin Anne Kirksey ("Respondent"). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2017, unless renewed.

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JURISDICTION

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

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

5. Section 4300.1 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 4059 of the Code states, in pertinent part, that a person may not furnish any dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

7. 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:
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> ...
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> (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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> ...
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> (h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.
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> (j) The violation of any of the statutes of this state, or any other state, or of the United States regulating controlled substances and dangerous drugs.
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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.

...

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

COST RECOVERY

8. 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.

DANGEROUS DRUGS

9. Section 4022 of the Code states

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

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

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

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

10. "Quetiapine" is a generic name for "Seroquel" and is a dangerous drug pursuant to Business and Professions Code section 4022. Quetiapine is an atypical antipsychotic approved for the treatment of schizophrenia, bipolar disorder, and along with an antidepressant to treat major depressive disorder.

FACTUAL BACKGROUND

11. On and before May 29, 2015, Respondent was employed as a pharmacy technician at CVS/Pharmacy ("Pharmacy") in Big Bear Lake, CA. Respondent was employed at the Pharmacy for approximately two-and-a-half years.

12. On or about May 29, 2015, the Pharmacy Corporate Loss Prevention Department identified a potential loss of dangerous drugs and controlled substances and conducted interviews of their employees.

13. During the investigation, Respondent's admitted diverting seven (7) tablets of 100 mg quetiapine for her own personal use. Respondent claims she had a prescription at another pharmacy that had run out of refills, and that her prescriber previously denied refilling the prescription. Respondent further admits she "took the medication to help with my mental stability." "I felt like my mental health depended on taking the medication and I didn't thrust [sp] myself without it." Respondent admits consuming one tablet "almost every day."

14. On or about June 1, 2015, Respondent's employment with Pharmacy was terminated.

15. On or about June 3, 2015, the San Bernardino County Sheriff's Department in Big Bear Lake was called to make an incident report.

16. Respondent was charged with a misdemeanor violation of Penal Code section 484 [theft] but as part of a negotiated plea, on or about August 19, 2015, she was allowed to enter a plea of nolo contendere to an infraction violation of Penal Code section 415(2) [disturbing the peace] in the criminal proceeding entitled *People of the State of California v. Erin Kirksey* (Super. Ct. San Bernardino Count, 2015, No. MSB1503198).

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FIRST CAUSE FOR DISCIPLINE

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

17. Respondent is subject to disciplinary action under section 4301, subdivision (f), in that Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption with the intent to substantially benefit herself, or substantially injure another in that on in that on or about May 29, 2015, Respondent admitted the repeated theft of dangerous drugs from her employer.

a. Complainant refers to, and by reference incorporates, the allegations set forth above in paragraphs 11 through 16, inclusive, as though set forth fully.

SECOND CAUSE FOR DISCIPLINE

(Unlawful Possession of a Dangerous Drug)

18. Respondent is subject to disciplinary action under Code section 4301, subdivisions (j) and (o), on the grounds of unprofessional conduct, for violating Code section 4059, in that on or before May 29, 2015, Respondent stole and possessed a dangerous drug, quetiapine, without a valid prescription.

a. Complainant refers to, and by reference incorporates, the allegations set forth above in paragraphs 11 through 16, inclusive, as though set forth fully.

THIRD CAUSE FOR DISCIPLINE

(Dangerous Use of Dangerous Drug)

19. Respondent is subject to disciplinary action under section 4301, subdivision (h), on the grounds of unprofessional conduct in that Respondent admittedly used a dangerous drug, to the extent or in a manner as to be dangerous or injurious to oneself in that on or before May 29, 2015, Respondent admitted consuming quetiapine, for which Respondent did not have a valid prescription.

a. Complainant refers to, and by reference incorporates, the allegations set forth above in paragraphs 11 through 16, inclusive, as though set forth fully.

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FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct / Violation of Licensing Chapter)

20. Respondent is subject to disciplinary action under section 4301, subdivision (o), in that Respondent committed acts of unprofessional conduct and violated provisions of the licensing chapter. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 11 through 16, inclusive, as though set forth fully.

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 65835, issued to Erin Anne Kirksey;

2. Ordering Erin Anne Kirksey 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; and,

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

DATED: 6/10/16

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

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