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

In the Matter of the Accusation Against:

Case No. 3976

JESSIE RHIANNON McKIE
6382 Sylvan Drive
Simi Valley, CA 93063
Pharmacy Technician License No. TCH 58289

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

Respondent.

FINDINGS OF FACT

1. On or about March 27, 2013, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 3976 against Jessie Rhiannon McKie (Respondent) before the Board of Pharmacy. (A copy of the Accusation is attached hereto as Exhibit A.)

2. On or about February 24, 2005, the Board of Pharmacy (Board) issued Pharmacy Technician License No. TCH 58289 to Respondent. The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought in Accusation No. 3976. It expired on May 31, 2012, and has not been renewed.

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1 3. On or about April 9, 2013, Respondent was served by both Certified and First Class
2 Mail with copies of Accusation No. 3976, Statement to Respondent, Notice of Defense, Request
3 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
4 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
5 section 4100, is required to be reported and maintained with the Board. Respondent's address of
6 record was and is: 6382 Sylvan Drive, Simi Valley, CA 93063.

7 4. Service of the Accusation was effective as a matter of law under the provisions of
8 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
9 124.

10 5. On or about April 16, 2013, the Domestic Return Receipt for the certified mailing
11 was returned signed and dated by the U.S. Postal Service, indicating successful delivery to
12 Respondent's address of record.

13 6. Government Code section 11506 states, in pertinent part:

14 (c) The respondent shall be entitled to a hearing on the merits if the respondent
15 files a notice of defense, and the notice shall be deemed a specific denial of all parts
16 of the accusation not expressly admitted. Failure to file a notice of defense shall
constitute a waiver of respondent's right to a hearing, but the agency in its discretion
may nevertheless grant a hearing.

17 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
18 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 3976.

19 8. California Government Code section 11520 states, in pertinent part:

20 (a) If the respondent either fails to file a notice of defense or to appear at the
21 hearing, the agency may take action based upon the respondent's express admissions
22 or upon other evidence and affidavits may be used as evidence without any notice to
respondent.

23 9. Pursuant to its authority under Government Code section 11520, the Board finds
24 Respondent is in default. The Board will take action without further hearing and, based on the
25 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
26 taking official notice of all the investigatory reports, exhibits and statements contained therein on
27 file at the Board's offices regarding the allegations contained in Accusation No. 3976, finds that
28

1 the charges and allegations in Accusation No. 3976, are separately and severally, found to be true
2 and correct by clear and convincing evidence.

3 10. Taking official notice of its own internal records, pursuant to Business and
4 Professions Code section 125.3, it is hereby determined that the reasonable costs for investigation
5 and enforcement is \$6,477.50 as of October 17, 2013.

6 DETERMINATION OF ISSUES

7 1. Based on the foregoing findings of fact, Respondent Jessie Rhiannon McKie has
8 subjected her Pharmacy Technician License No. TCH 58289 to discipline.

9 2. The agency has jurisdiction to adjudicate this case by default.

10 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
11 License based upon the following violations of the Business & Professions Code alleged in the
12 Accusation which are supported by the evidence contained in the Default Decision Evidence
13 Packet in this case:

14 a. § 4301, subdivision (l), and 490, in conjunction with Calif. Code of Regulations, title
15 16, § 1770, (conviction of a substantially related crime);

16 b. § 4301, subdivision (h), (use of a controlled substance without a valid prescription);

17 c. § 4060 and § 4301, subdivision (o), (possession of a controlled substance);

18 d. § 4301, subdivision (j), (violation of drug statutes); and

19 e. § 4301, subdivision (f), (acts involving moral turpitude, dishonesty, fraud, deceit,,
20 and/ or corruption).

21 ORDER

22 IT IS SO ORDERED that Pharmacy Technician License No. TCH 58289, heretofore issued
23 to Respondent Jessie Rhiannon McKie, is revoked.

24 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
25 written motion requesting that the Decision be vacated and stating the grounds relied on within
26 seven (7) days after service of the Decision on Respondent. The agency in its discretion may

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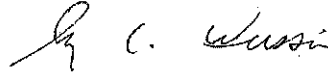
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vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on April 7, 2014.

It is so ORDERED ON March 6, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By 
STAN C. WEISSER
Board President

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
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2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 TERRENCE M. MASON
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7 *Attorneys for Complainant*

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

10
11 In the Matter of the Accusation Against: Case No. 3976

12 **JESSIE RHIANNON McKIE**
6382 Sylvan Drive
13 Simi Valley, CA 93063

14 Pharmacy Technician License No. TCH 58289
15 Respondent.

ACCUSATION

16
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about February 24, 2005, the Board of Pharmacy (Board) issued Pharmacy
22 Technician License No. TCH 58289 to Jessie Rhiannon McKie (Respondent). The Pharmacy
23 Technician License was in full force and effect at all times relevant to the charges brought herein.
24 The license expired on May 31, 2012, and has not been renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board, under the authority of the following
27 laws. All section references are to the Business and Professions Code unless otherwise indicated.

28 ///

STATUTORY PROVISIONS

1
2 4. Section 118, subdivision (b), provides, in pertinent part, that suspension, expiration,
3 surrender, or cancellation of a license shall not deprive the Board jurisdiction to proceed with a
4 disciplinary action during the period within which the license may be renewed, restored, reissued
5 or reinstated.

6 5. Section 490 provides, in pertinent part:

7 "(a) In addition to any other action that a board is permitted to take against a licensee, a
8 board may suspend or revoke a license on the ground that the licensee has been convicted of a
9 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
10 or profession for which the license was issued.

11 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
12 discipline a licensee for conviction of a crime that is independent of the authority granted under
13 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
14 of the business or profession for which the licensee's license was issued.

15 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
16 conviction following a plea of nolo contendere. Any action that a board is permitted to take
17 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
18 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
19 made suspending the imposition of sentence, irrespective of a subsequent order under the
20 provisions of Section 1203.4 of the Penal Code."

21 6. Section 492 provides, in pertinent part:

22 "Notwithstanding any other provision of law, successful completion of any diversion
23 program under the Penal Code, or successful completion of an alcohol and drug problem
24 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of
25 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2
26 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that
27 division, from taking disciplinary action against a licensee or from denying a license for
28 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a

1 record pertaining to an arrest.

2 "This section shall not be construed to apply to any drug diversion program operated by any
3 agency established under Division 2 (commencing with Section 500) of this code, or any
4 initiative act referred to in that diversion."

5 7. Section 4060 provides, in pertinent part:

6 "No person shall possess any controlled substance, except that furnished to a person upon
7 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
8 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
9 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
10 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
11 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
12 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052."

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

15 9. Section 4301 provides, in pertinent part:

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

19

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

23

24 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous
25 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
26 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
27 to the extent that the use impairs the ability of the person to conduct with safety to the public the
28 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.

....
"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."

REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1770, provides, in pertinent part:

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

7 DRUG STATUTES

8 11. Health and Safety Code section 11350, subdivision (a), provides, in pertinent part:

9 "Except as otherwise provided in this division, every person who possess (1) any controlled
10 substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section 11054,
11 specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in
12 subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2)
13 any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon
14 the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in
15 this state, shall be punished by imprisonment in the state prison."

16 12. Health and Safety Code section 11377, subdivision (a), provides in pertinent part:

17 "Except as authorized by law and as otherwise provided in subdivision (b) or Section
18 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the
19 Business and Professions Code, every person who possesses any controlled substance which is
20 (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in
21 subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d),
22 (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2)
23 or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section
24 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to
25 practice in this state, shall be punished by imprisonment in a county jail for a period of not more
26 than one year or in the state prison."

27 COST RECOVERY

28 13. Section 125.3 provides, in pertinent part, that the Board may request the

1 administrative law judge to direct a licentiate found to have committed a violation or violations of
2 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
3 enforcement of the case.

4 **CONTROLLED SUBSTANCES- DANGEROUS DRUGS**

5 14. Methadone, a synthetic opiate, is a Schedule II controlled substance as designated by
6 Health & Safety Code section 11055(c)(14) and a dangerous drug according to Business &
7 Professions Code section 4022.

8 15. Methamphetamine, a (CNS) central nervous system stimulant, is a Schedule II
9 controlled substance as designated by Health & Safety Code section 11055, subdivision (d)(2),
10 and is categorized as a dangerous drug pursuant to Business & Professions Code section 4022.

11 16. "Soma," a brand name for carisoprodol, is a dangerous drug according to Business &
12 Professions Code section 4022. Its indicated use is as an adjunct to rest, physical therapy and
13 other measures for acute painful musculoskeletal conditions.

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Conviction of Substantially-Related Crimes)**

16 17. Respondent is subject to disciplinary action under sections 4301, subdivision (I) and
17 490, in conjunction with California Code of Regulations, title 16, section 1770, in that
18 Respondent has been convicted of a crime substantially related to the qualifications, functions or
19 duties of a pharmacy technician, as follows:

20 a. On or about September 27, 2011, Respondent was convicted of one misdemeanor
21 count of violating Vehicle Code section 23152, subdivision (a) [driving under the influence of
22 alcohol and/or drugs], in the criminal proceeding entitled *The People of the State of California v.*
23 *Jessie Rhiannon Mokie* (Ventura County Superior Court Case No. 2010032568). The
24 circumstances surrounding the conviction are that on or about September 10, 2010, a Ventura
25 County Sheriff's Deputy observed Respondent driving very slowly and on the wrong side of the
26 road. Respondent displayed objective signs of intoxication as well as impairment while
27 performing field sobriety tests. A search of her vehicle revealed several cans of beer, an open
28 bottle of vodka, numerous pills, a prescription bottle with Respondent's name on it for "Soma,"

1 and a methamphetamine pipe containing burnt residue. Respondent admitted that she had taken
2 two "Soma" tablet about one hour prior to her contact with the officer and that she was also
3 taking 10 mgs. of methadone three times a day.

4 b. On or about April, 08, 2003, Respondent was convicted of one misdemeanor count of
5 violating Penal Code 484, subdivision (a) [petty theft], in the criminal proceeding entitled *The*
6 *People of the State of California v. Jessie Rhiannon Mckie* (Ventura County Superior Court Case
7 No. 2003009167). The circumstances surrounding the conviction are that on or about March 10,
8 2003, Respondent willfully, unlawfully, stole, took, and carried away merchandise from Basix &
9 Casuals clothing store in Simi Valley, California.

10 SECOND CAUSE FOR DISCIPLINE

11 (Use of a Controlled Substance without a Valid Prescription)

12 18. Respondent is subject to disciplinary action under section 4301, subdivisions (h), on
13 the grounds of unprofessional conduct, in that on or about September 10, 2010 and November 22,
14 2010, Respondent used a controlled substance without a valid prescription. Complainant refers to
15 and by this reference incorporates the allegations set forth above in paragraph 17, subparagraph
16 (a), and paragraph 19, subparagraph (a) below, inclusive, as though set forth fully.

17 THIRD CAUSE OF DISCIPLINE

18 (Possession of a Controlled Substance)

19 19. Respondent is subject to disciplinary action under sections 4060 and 4301,
20 subdivision (o), on the grounds of unprofessional conduct, in that on or about September 10, 2010
21 and November 22, 2010, Respondent was found to be in possession of a controlled substance
22 without a valid prescription as follows:

23 a. On or about December 7, 2010, after pleading *guilty*, Respondent was convicted of
24 one felony count of violating Health and Safety Code section 11377, subdivision (a) [possession
25 of a controlled substance], in the criminal proceeding entitled *The People of the State of*
26 *California v. Jessie Rhiannon Mckie* (Ventura County Superior Court Case No. 2010041773).
27 The Court placed Respondent on a Deferred Entry of Judgment for 24 months. The circumstances
28 surrounding the conviction are that on or about November 22, 2010, Ventura County Sheriff's

1 Deputies were dispatched to a motel parking lot in Thousand Oaks, California regarding a
2 domestic dispute in a vehicle. When the deputies arrived on the scene they observed Respondent
3 attempting to hide something next to the driver's seat. The vehicle was searched, and the
4 deputies found a baggie containing methamphetamine. Respondent displayed objective systems
5 of being under the influence of drugs. Respondent admitted that she was taking "Soma and
6 methadone" and that she had previously used "speed" (methamphetamine). A subsequent test of
7 her urine tested positive for methamphetamine

8 **FOURTH CAUSE FOR DISCIPLINE**

9 **(Violating Drug Statutes)**

10 20. Respondent is subject to disciplinary action under section 4301, subdivision (j) and
11 for violating Health and Safety Code sections 11350 and 11377, in that Respondent was found to
12 be in possession and/or under the influence of, a controlled substance without a valid prescription.
13 Complainant refers to and by this reference incorporates the allegations set forth above in
14 paragraphs 17, subparagraph (a), and 19, subparagraph (a), inclusive, as though set forth fully.

15 **FIFTH CAUSE FOR DISCIPLINE**

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

18 21. Respondent is subject to disciplinary action under section 4301, subdivision (f), in
19 that Respondent committed acts and was convicted of a crime involving a dishonest act on or
20 about April 08, 2003. Complainant refers to and by this reference incorporates the allegations set
21 forth above in paragraph 17, subparagraph (b), inclusive, as though set forth fully.

22 **PRAYER**

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

- 25 1. Revoking or suspending Pharmacy Technician License No. TCH 58289, issued to
26 Jessie Rhiannon McKie;
- 27 2. Ordering Jessie Rhiannon McKie to pay the Board the reasonable costs of the
28 investigation and enforcement of this case, pursuant to Business and Professions Code section

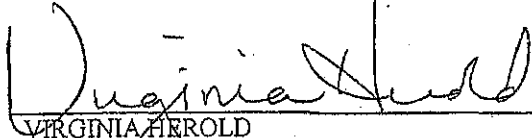
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125.3; and

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

DATED:

3/27/13



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

LA2011500908
(rev.2/5/13)