

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

In the Matter of the Accusation Against:

Case No. 4394

JOHN WILLIAM KELLEY

1392 Arthur Avenue
Riverside, CA 92501

Pharmacy Technician Registration No.
TCH 10443

Respondent.

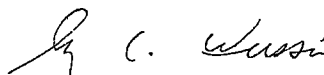
DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on May 8, 2013.

It is so ORDERED on April 8, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

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Attorney General of California
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8
9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

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12 In the Matter of the Accusation Against:

13 **JOHN WILLIAM KELLEY**
14 **4314 University Avenue #4**
Riverside, CA 92501

15 **Pharmacy Technician Registration No. TCH**
16 **10443**

17 Respondent.

Case No. 4394

OAH No. 2013010967

STIPULATED SURRENDER OF
LICENSE AND ORDER

18 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
19 proceeding that the following matters are true:

20 **PARTIES**

- 21 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
22 She brought this action solely in her official capacity and is represented in this matter by Kamala
23 D. Harris, Attorney General of the State of California, by Nicole R. Trama, Deputy Attorney
24 General.
- 25 2. John William Kelley (Respondent) is representing himself in this proceeding and has
26 chosen not to exercise his right to be represented by counsel.
- 27 3. On or about November 8, 1993, the Board of Pharmacy issued Pharmacy Technician
28 Registration No. TCH 10443 to John William Kelley (Respondent). The Pharmacy Technician

1 Registration was in full force and effect at all times relevant to the charges brought in Accusation
2 No. 4394 and expired on December 31, 2012.

3 **JURISDICTION**

4 4. Accusation No. 4394 was filed before the Board of Pharmacy (Board), Department of
5 Consumer Affairs, and is currently pending against Respondent. The Accusation and all other
6 statutorily required documents were properly served on Respondent on December 28, 2012.
7 Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation
8 No. 4394 is attached as Exhibit A and incorporated by reference.

9 **ADVISEMENT AND WAIVERS**

10 5. Respondent has carefully read, and understands the charges and allegations in
11 Accusation No. 4394. Respondent also has carefully read, and understands the effects of this
12 Stipulated Surrender of License and Order.

13 6. Respondent is fully aware of his legal rights in this matter, including the right to a
14 hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at
15 his own expense; the right to confront and cross-examine the witnesses against him; the right to
16 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
17 the attendance of witnesses and the production of documents; the right to reconsideration and
18 court review of an adverse decision; and all other rights accorded by the California
19 Administrative Procedure Act and other applicable laws.

20 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
21 every right set forth above.

22 **CULPABILITY**

23 8. Respondent admits the truth of each and every charge and allegation in Accusation
24 No. 4394, agrees that cause exists for discipline and hereby surrenders his Pharmacy Technician
25 Registration No. TCH 10443 for the Board's formal acceptance.

26 9. Respondent understands that by signing this stipulation he enables the Board to issue
27 an order accepting the surrender of his Pharmacy Technician Registration without further process.
28

1 CONTINGENCY

2 10. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent
3 understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may
4 communicate directly with the Board regarding this stipulation and surrender, without notice to or
5 participation by Respondent. By signing the stipulation, Respondent understands and agrees that
6 he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board
7 considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order,
8 the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this
9 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not
10 be disqualified from further action by having considered this matter.

11 11. The parties understand and agree that facsimile copies of this Stipulated Surrender of
12 License and Order, including facsimile signatures thereto, shall have the same force and effect as
13 the originals.

14 12. This Stipulated Surrender of License and Order is intended by the parties to be an
15 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
16 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
17 negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order
18 may not be altered, amended, modified, supplemented, or otherwise changed except by a writing
19 executed by an authorized representative of each of the parties.

20 13. In consideration of the foregoing admissions and stipulations, the parties agree that
21 the Board may, without further notice or formal proceeding, issue and enter the following Order:

22 ORDER

23 IT IS HEREBY ORDERED that Pharmacy Technician Registration No. TCH 10443, issued
24 to Respondent John William Kelley, is surrendered and accepted by the Board of Pharmacy.

25 1. The surrender of Respondent's Pharmacy Technician Registration and the acceptance
26 of the surrendered license by the Board shall constitute the imposition of discipline against
27 Respondent. This stipulation constitutes a record of the discipline and shall become a part of
28 Respondent's license history with the Board of Pharmacy.

1 2. Respondent shall lose all rights and privileges as a pharmacy technician in California
2 as of the effective date of the Board's Decision and Order.

3 3. Respondent shall cause to be delivered to the Board his pocket license and, if one was
4 issued, his wall certificate on or before the effective date of the Decision and Order.

5 4. If Respondent ever applies for licensure or petitions for reinstatement in the State of
6 California, the Board shall treat it as a new application for licensure. Respondent must comply
7 with all the laws, regulations and procedures for licensure in effect at the time the application or
8 petition is filed, and all of the charges and allegations contained in Accusation No. 4394 shall be
9 deemed to be true, correct and admitted by Respondent when the Board determines whether to
10 grant or deny the application or petition.

11 5. Respondent shall satisfy all requirements applicable to that license as of the date the
12 application is submitted to the Board, including, but not limited to certification by a nationally
13 recognized body prior to the issuance of a new license. Respondent is required to report this
14 surrender as disciplinary action.

15 6. Respondent shall pay the agency its costs of investigation and enforcement in the
16 amount of \$2,057.50 prior to issuance of a new or reinstated license.

17 7. If Respondent should ever apply or reapply for a new license or certification, or
18 petition for reinstatement of a license, by any other health care licensing agency in the State of
19 California, all of the charges and allegations contained in Accusation, No. 4394 shall be deemed
20 to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any
21 other proceeding seeking to deny or restrict licensure.

22 8. Respondent shall not apply for licensure or petition for reinstatement for three (3)
23 years from the effective date of the Decision and Order.

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ACCEPTANCE

I have carefully read the Stipulated Surrender of License and Order. I understand the stipulation and the effect it will have on my Pharmacy Technician Registration. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 2/28/13 John W. Kelley
JOHN WILLIAM KELLEY
Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated: 3/5/13

Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General
Nicole R. Trama
NICOLE R. TRAMA
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 4394

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
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3 NICOLE R. TRAMA
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13 **JOHN WILLIAM KELLEY**
1392 Arthur Avenue
14 Riverside, CA 92501
15 **Pharmacy Technician Registration No. TCH**
16 **10443**
17 Respondent.

Case No. 4394

A C C U S A T I O N

18
19 Complainant alleges:

20 **PARTIES**

- 21 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
22 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 23 2. On or about November 8, 1993, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 10443 to John William Kelley (Respondent). The Pharmacy
25 Technician Registration was in full force and effect at all times relevant to the charges brought
26 herein and will expire on December 31, 2012, 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 unless otherwise indicated.

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

5. Section 4300, subdivision (a) of the Code states "Every license issued may be suspended or revoked."

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STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

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

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,

1 and the board may inquire into the circumstances surrounding the commission of
2 the crime in order to fix the degree of discipline or to determine if the conviction is
substantially related to the qualifications, functions, and duties of the licensee in
question.

3 As used in this section, "license" includes "certificate," "permit,"
4 "authority," and "registration."

5 9. Section 4301 of the Code states:

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

9

10 (h) The administering to oneself, of any controlled substance, or the use of any
11 dangerous drug or of alcoholic beverages to the extent or in a manner as to be
12 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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14 (k) The conviction of more than one misdemeanor or any felony involving
15 the use, consumption, or self-administration of any dangerous drug or alcoholic
beverage, or any combination of those substances.

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17 (l) The conviction of a crime substantially related to the qualifications,
18 functions, and duties of a licensee under this chapter. The record of conviction of
19 a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
20 States Code regulating controlled substances or of a violation of the statutes of this
21 state regulating controlled substances or dangerous drugs shall be conclusive
22 evidence of unprofessional conduct. In all other cases, the record of conviction
23 shall be conclusive evidence only of the fact that the conviction occurred. The
24 board may inquire into the circumstances surrounding the commission of the
25 crime, in order to fix the degree of discipline or, in the case of a conviction not
26 involving controlled substances or dangerous drugs, to determine if the conviction
27 is of an offense substantially related to the qualifications, functions, and duties of a
28 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.

1 a. On or about November 30, 2011, in a criminal proceeding entitled *People of the State*
2 *of California v. John William Kelley*, Riverside Superior Court, case number RIM1116157,
3 Respondent was convicted on his plea of guilty to violating Vehicle Code section 23152(a),
4 driving under the influence, and Vehicle Code section 23152(b), driving with a blood alcohol
5 content of .08 percent or more, both misdemeanors. Respondent also admitted and the Court
6 found true an enhancement under Vehicle Code section 23578, for having a blood content of .15
7 percent or more.

8 b. The circumstances surrounding the conviction are that on or about August 30, 2011 at
9 approximately 6:05 p.m. an officer from the Riverside Police Department was dispatched to a hit
10 and run traffic collision in Riverside. The witness who reported the incident to police informed
11 the officer that while she was traveling southbound on Magnolia Avenue, she witnessed two
12 vehicles collide at the intersection of School Circle and Magnolia. After the collision, the witness
13 observed one of the vehicles leave the scene. The witness followed that vehicle and pointed it out
14 to the officer when the officer arrived. Respondent was identified as the driver of the vehicle that
15 fled the scene.

16 c. The officer observed that Respondent's vehicle sustained damage to its front end.
17 The officer instructed Respondent, who was sitting in the driver's seat, to get out of the vehicle.
18 The officer observed that Respondent had a difficult time walking and keeping his balance, that
19 Respondent had an odor of an alcoholic beverage on his breath, that Respondent's eyes were red
20 and watery, and that his speech was slurred. Respondent admitted to the officer that he consumed
21 two drinks. The officer administered Field Sobriety Tests, which Respondent failed. The officer
22 then placed Respondent under arrest for driving under the influence. Respondent's blood alcohol
23 content was .21 percent.

24 d. As a result of the conviction Respondent was ordered to serve 36 months summary
25 probation, required to serve 20 days in custody, ordered to pay all fines, fees and restitution,
26 required to enroll and complete the MADD course, the Desert Drug Court Program, and the nine
27 month First Offender DUI program.

28

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Use of Alcoholic Beverages in a Manner Dangerous & Injurious to Oneself & the Public)**

3 14. Respondent has subjected his license to disciplinary action under section 4301,
4 subdivision (h) of the Code in that on or about August 30, 2011, Respondent drove a vehicle
5 while under the influence of an alcoholic beverage, which posed a serious risk of injury and/or
6 death to himself and to the public, as detailed in paragraph 13, above, and which are incorporated
7 herein by reference.

8 **THIRD CAUSE FOR DISCIPLINE**

9 **(Multiple Convictions Involving the Use of Alcoholic Beverages)**

10 15. Respondent has subjected his license to disciplinary action under section 4301,
11 subdivision (k) of the Code in that on Respondent was convicted in two separate cases on charges
12 involving the consumption of alcoholic beverages. The circumstances are as follows:

13 a. Respondent was convicted in 1987 on his plea of guilty for driving under the
14 influence of alcohol. This conviction was disclosed on Respondent's application for licensure as
15 a pharmacy technician.

16 b. Respondent was convicted as of driving under the influence and driving with a blood
17 alcohol content of .08 percent or more, both misdemeanors, on November 30, 2011, as detailed in
18 paragraph 13, above, which is incorporated here by reference.

19 **DISCIPLINARY CONSIDERATIONS**

20 16. Pursuant to title 16, California Code of Regulations, section 1769(b)(2), to determine
21 the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that before
22 Respondent was licensed as a pharmacy technician, Respondent was convicted in 1991 on his
23 plea of guilty for felony reckless driving. This conviction was disclosed on Respondent's
24 application for licensure as a pharmacy technician.

25 17. Pursuant to title 16, California Code of Regulations, section 1769(b)(2), to determine
26 the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or
27 about December 18, 2004, the Board of Pharmacy issued a Letter of Admonishment to
28 Respondent for the following conduct: On or about October 23, 2003, in criminal proceedings

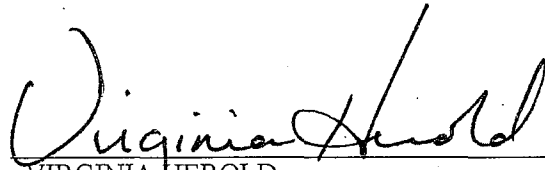
1 entitled *The People of the State of California v. John William Kelley*, in Riverside Superior Court,
2 case number RIM442875, Respondent pled guilty to violating Health and Safety Code section
3 11377(a), possession of a controlled substance, methamphetamine. The Court granted deferred
4 entry of judgment pursuant to Penal Code section 1000, and the case was dismissed on April 29,
5 2005.

6 **PRAYER**

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

- 9 1. Revoking or suspending Pharmacy Technician Registration Number TCH 10443,
10 issued to John William Kelley;
- 11 2. Ordering John William Kelley to pay the Board of Pharmacy the reasonable costs of
12 the investigation and enforcement of this case, pursuant to Business and Professions Code section
13 125.3;
- 14 3. Taking such other and further action as deemed necessary and proper.

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16
17 DATED: 12/14/12



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

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