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

12 In the Matter of the Accusation Against:

Case No. 4606

13 **ROOP SINGH KANG**
14 **222 Day Lilly Lane**
15 **Patterson, CA 95363**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

16 **Pharmacy Technician Registration**
17 **No. TCH 110684**

Respondent.

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20 **FINDINGS OF FACT**

21 1. On or about August 14, 2013, Complainant Virginia Herold ("Complainant"), in her
22 official capacity as the Executive Officer of the Board of Pharmacy ("Board"), Department of
23 Consumer Affairs, filed Accusation No. 4606 against Roop Singh Kang ("Respondent"). A copy
24 of the Accusation attached hereto, marked Exhibit A, and incorporated herein by reference.

25 2. On or about February 16, 2011, the Board issued Pharmacy Technician Registration
26 No. TCH 110684 to Respondent. The Pharmacy Technician Registration was in full force and
27 effect at all times relevant to the charges brought in Accusation No. 4606 and will expire on
28 October 31, 2014, unless renewed.

1 3. On or about August 22, 2013, Respondent was served by Certified and First Class
2 Mail copies of the Accusation No. 4606, Statement to Respondent, Notice of Defense, Request
3 for Discovery, and Discovery Statutes (Gov. Code, §§ 11507.5, 11507.6, 11507.7) at
4 Respondent's address of record which, pursuant to Business and Professions Code section 4100,
5 is required to be reported and maintained with the Board. Respondent's address of record was
6 and is: 222 Day Lilly Lane, Patterson, CA, 95363.

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 Business & Professions Code section 124.

9 5. None of the aforementioned documents were returned by the U.S. Postal Service.

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

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

16 7. Respondent failed to file a Notice of Defense within fifteen (15) days after service
17 upon him of the Accusation, and therefore waived his right to a hearing on the merits of
18 Accusation No. 4606.

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
23 respondent.

24 9. Pursuant to its authority under Government Code section 11520, the Board finds
25 Respondent is in default. The Board will take action without further hearing and, based on the
26 relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,
27 as well as taking official notice of all the investigatory reports, exhibits and statements contained
28 therein on file at the Board's offices regarding the allegations contained in Accusation No. 4606.

 10. The Board finds that the charges and allegations in Accusation No. 4606, are
separately and severally, found to be true and correct by clear and convincing evidence.

11. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement is \$1,062.50 as of September 16, 2013.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Roop Singh Kang ("Respondent") has subjected his Pharmacy Technician Registration No. TCH 110684 to discipline.

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

3. The Board is authorized to revoke Respondent's Pharmacy Technician Registration based upon the following violations alleged in the Accusation which are supported by the evidence contained in the Default Decision Evidence Packet in this case.:

a. Respondent violated Business and Professions Code ("Code") sections 4300, 4301, subdivision (I), and 490, subdivisions (a), (b), and (c), in that on or about December 11, 2012, he was convicted of a crime substantially related to the qualifications, functions, and duties of a Pharmacy Technician.

b. Respondent violated Code sections 4300 and 4301, subdivision (j), in that on or about December 11, 2012, he possessed Marijuana and transported it for sale in violation of Code section 4060 and Health and Safety Code sections 11059 and 11060.

c. Respondent violated Code sections 4300 and 4301, subdivision (h), in that on or about December 11, 2012, Respondent admittedly self-administered Marijuana in an unknown amount to the extent or in a manner as to be dangerous or injurious to himself, and to any other person or to the public, or to the extent that the use impaired his ability to conduct with safety to the public the practice of a Pharmacy Technician.

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Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

It is so ORDERED ON November 6, 2013.

By Stan C. Weiss
STAN C. WEISSER
Board President

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
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Case No. 4606

12 **ROOP SINGH KANG**
13 **222 Day Lilly Lane**
Patterson, CA 95363

A C C U S A T I O N

14 **Pharmacy Technician Registration No. TCH 110684**

15 Respondent.

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 ("Board"), Department of Consumer Affairs.
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22 2. On or about February 16, 2011, the Board issued Pharmacy Technician Registration
23 Number TCH 110684 to Roop Singh Kang ("Respondent"). The Pharmacy Technician
24 Registration was in full force and effect at all times relevant to the charges brought herein and
25 will expire on October 31, 2014, unless renewed.

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JURISDICTION

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

4. Section 4300 of the Code provides, in pertinent part, that every license issued by the Board may be suspended or revoked, default taken, suspend judgment, place on probation, suspend right to practice for up to one year, revoke license, other take other disciplinary action against licensee as the Board in its discretion deems appropriate.

5. Section 4300.1, of the Code 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 4301 of the Code states, in pertinent part:

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:

(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.

(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

1 plea of nolo contendere is deemed to be a conviction within the meaning of this
2 provision. The board may take action when the time for appeal has elapsed, or the
3 judgment of conviction has been affirmed on appeal or when an order granting
4 probation is made suspending the imposition of sentence, irrespective of a
5 subsequent order under Section 1203.4 of the Penal Code allowing the person to
6 withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
7 the verdict of guilty, or dismissing the accusation, information, or indictment.

8 7. Code section 4022 Code states

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

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

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

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

19 8. Section 4060 of the Code states:

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

Nothing in this section authorizes a certified nurse-midwife, a nurse
practitioner, a physician assistant, or a naturopathic doctor, to order his or her own
stock of dangerous drugs and devices.

9. Section 490 of the Code states, in pertinent part:

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

(b) Notwithstanding any other provision of law, a board may exercise any
authority to discipline a licensee for conviction of a crime that is independent of
the authority granted under subdivision (a) only if the crime is substantially related

1 to the qualifications, functions, or duties of the business or profession for which
2 the licensee's license was issued.

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

10 10. Health and Safety Code section 11359 states, in pertinent part:

11 Every person who possesses for sale any marijuana, except as otherwise
12 provided by law, shall be punished by imprisonment pursuant to subdivision (h) of
13 Section 1170 of the Penal Code.

14 11. Health and Safety Code section 11360 states, in pertinent part:

15 (a) Except as otherwise provided by this section or as authorized by law,
16 every person who transports, imports into this state, sells, furnishes, administers, or
17 gives away, or offers to transport, import into this state, sell, furnish, administer, or
18 give away, or attempts to import into this state or transport any marijuana shall be
19 punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal
20 Code for a period of two, three or four years.

21 DRUG

22 12. **Marijuana** is a Schedule I controlled substance as designated by Health and Safety
23 Code section 11054, subdivision (d)(13), and a dangerous drug within the meaning of Code
24 section 4022.

25 COST RECOVERY

26 13. Section 125.3 of the Code states, in pertinent part, that the Board may request the
27 administrative law judge to direct a licensee found to have committed a violation or violations of
28 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Conviction of Crime)

14 Respondent is subject to disciplinary action under Code sections 4300, 4301,
subdivision (l), and 490, subdivisions (a), (b), and (c), in that on or about December 11, 2012,
Respondent was convicted on his plea of nolo contendere to violating Health and Safety Code

1 section 11360, subdivision (a), [transporting Marijuana for sale], a felony. Said crime is
2 substantially related to the qualifications, duties and functions of a Pharmacy Technician.

3 a. The underlying circumstances are as follows: On or about February 22, 2012, a
4 Modesto Police Department officer conducted a traffic stop on Respondent's vehicle. Upon
5 contact with Respondent's vehicle, the officer could smell a strong odor of Marijuana coming
6 from inside the vehicle. Respondent was sitting in the passenger seat and his friend was driving
7 the vehicle. Respondent was too high and intoxicated to drive his vehicle. Respondent falsely
8 told the officer that there was nothing illegal in his vehicle; he consented to a search of the
9 vehicle by the officer. The officer observed a Louis Vuiton duffle bag on the floorboard at
10 Respondent's feet; it contained a plastic grocery bag of "Purple Kush"¹ Marijuana and two digital
11 scales. After being Mirandized, Respondent admitted he had purchased the Marijuana and was
12 out trying to sell it for approximately \$200.00 per ounce. He claimed to have a medical
13 Marijuana card and was advised by the officer that the card did not allow the sale and
14 transportation of Marijuana for profit. Respondent was arrested and transported to the County
15 Jail. The Marijuana was weighed resulting in 13.4 ounces gross weight. Respondent was
16 arrested and charged with violating Health and Safety Code sections 11359 and 11360,
17 subdivision (a), possession of marijuana for sale and transportation of marijuana for sale,
18 respectively.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Violation of Statutes Regulating Controlled Substances)**

21 15. Respondent is subject to disciplinary action under Code sections 4300 and 4301,
22 subdivision (j), in that on or about December 11, 2012, Respondent possessed Marijuana and
23 transported it for sale in violation of Code section 4060 and Health and Safety Code sections
24 11059 and 11060, subdivision (a). The underlying circumstances are set forth in paragraph 14.a,
25 above, incorporated herein by reference.

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27 _____
28 ¹ Purple Kush is a strain of Marijuana and is said to have medicinal qualities.

