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

In the Matter of the Accusation Against:

**KEELY MARIE NEEDHAM
18008 Clouds Rest Rd.
Soulsbyville, CA 95372**

**Pharmacy Technician Registration No.
TCH 83252**

Respondent.

Case No. 4697

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about September 19, 2013, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4697 against Keely Marie Needham (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)
2. On or about May 1, 2008, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. 83252 to Respondent. The Pharmacy Technician Registration expired on October 31, 2011, and has not been renewed.

1 3. On or about October 15, 2013, Respondent was served by Certified and First Class
2 Mail copies of Accusation No. 4697, Statement to Respondent, Notice of Defense, Request for
3 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 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:

7 18008 Clouds Rest Rd.
8 Soulsbyville, CA 95372.

9 4. Service of the Accusation was effective as a matter of law under the provisions of
10 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
11 124.

12 5. On or about October 22, 2013, the aforementioned Certified and First Class Mail
13 documents were returned by the U.S. Postal Service marked "Unable to forward." The address on
14 the documents was the same as the address on file with the Board. Respondent failed to maintain
15 an updated address with the Board and the Board has made attempts to serve the Respondent at
16 the address on file. Respondent has not made herself available for service and therefore, has not
17 availed herself of her right to file a notice of defense and appear at hearing.

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

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

24 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
25 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 4697.

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

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

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1 i. On April 28, 2011, a Clovis Police Department officer arrested Respondent and
2 her fiancé as they exited a Target store. The officer recovered merchandise valued at
3 approximately \$445.35 from Respondent. Respondent stated to the officer that while in the store,
4 she selected items to steal, placed them in her purse, and then went into the women's restroom
5 where she used her fiancé's pocket knife to cut open packages and remove security tags. After
6 removing all of the security tags, Respondent concealed the items in her purse, and she and her
7 fiancé exited the store. Respondent admitted that she and her fiancé intended to sell the stolen
8 merchandise, and that she and her fiancé were willing participants in the crime.

9 c. Respondent violated California Business and Professions Code sections 4060 and
10 4301(j) in that on April 19, 2011, Respondent possessed a controlled substance (heroin) in
11 violation of California Health and Safety Code section 11364. The circumstances are as follows:

12 d. On or about May 6, 2011, in *People v. Keely Marie Needham*, Superior Court of
13 California, County of Tuolumne, case no. CRF35238, Respondent pled guilty to: (1) a felony
14 charge of possession of a controlled substance (a violation of California Health and Safety Code
15 section 11350(a)); (2) a misdemeanor charge of possession of a smoking device (a violation of
16 Health and Safety Code section 11364); and (3) a misdemeanor charge of being under the
17 influence of a controlled substance (a violation of Health and Safety Code section 11550(a)). The
18 court granted a deferred entry of judgment, and the case was dismissed upon completion of the
19 deferred entry of judgment on December 17, 2012. The facts and circumstances are as follows:

20 i. On April 19, 2011, two Tuolumne County Sherriff deputies conducted a traffic
21 stop of a vehicle in which Respondent was a passenger. While interacting with the driver and
22 Respondent, one of the deputies believed both were under the influence of a controlled substance
23 based upon their slow speech and movements, and constricted pupils. After the driver gave the
24 deputy permission to search the vehicle, the deputy discovered two pieces of foil with burn marks
25 and residue on the passenger side floor board, and one piece of foil inside Respondent's purse.
26 The deputy also discovered a plastic bag with what appeared to be a piece of tar heroin on it next
27 to a toot straw with brown residue under the passenger front seat. One of the deputies placed the
28 driver, Respondent, and the other two passengers in handcuffs. After the deputy placed

1 Respondent in handcuffs, Respondent admitted that she used Methadone on April 18, 2011.
2 While changing handcuffs on Respondent, one of the deputies discovered five pieces of crumpled
3 foil in Respondent's hands; one of these pieces of foil had a small amount of a dark brown
4 substance consistent with the appearance of heroin. The deputies arrested Respondent and
5 transported her to jail. At the jail, Respondent was searched by another deputy who discovered a
6 piece of foil in Respondent's underwear and a toot straw, with brown residue, in Respondent's
7 bra. One of the deputies weighed and tested the suspected heroin. The substance weighed 0.4
8 grams and tested positive for heroin.

9 ORDER

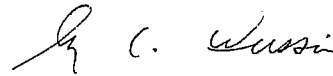
10 IT IS SO ORDERED that Pharmacy Technician Registration No. 83252, heretofore issued
11 to Respondent Keely Marie Needham, is revoked.

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

16 This Decision shall become effective on February 18, 2014.

17 It is so ORDERED ON January 17, 2014.

18 BOARD OF PHARMACY
19 DEPARTMENT OF CONSUMER AFFAIRS
20 STATE OF CALIFORNIA

21 

22 By _____
23 STAN C. WEISSER
24 Board President

25 11222046.DOC
26 SA2013111722

27 Attachment:
28 Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 PHILLIP L. ARTHUR
Deputy Attorney General
4 State Bar No. 238339
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 322-0032
Facsimile: (916) 327-8643
7 E-mail: Phillip.Arthur@doj.ca.gov
Attorneys for Complainant
8

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

11 In the Matter of the Accusation Against:	Case No. 4697
12 KEELY MARIE NEEDHAM	ACCUSATION
13 18008 Clouds Rest Rd.	
14 Soulsbyville, CA 95372	
15 Pharmacy Technician Registration No.	
16 83252	
17 Respondent.	

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 May 1, 2008, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number 83252 to Keely Marie Needham (Respondent). The Pharmacy Technician
25 Registration expired on October 31, 2011, and has not been renewed.
- 26 ///
- 27 ///
- 28 ///

1 **JURISDICTION**

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

5 4. Section 4300 of the Code states, in pertinent part:

6 "(a) Every license issued may be suspended or revoked. . . ."

7 5. Section 4300.1 of the Code states:

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

13 **STATUTORY PROVISIONS**

14 6. Section 475 of the Code states, in pertinent part:

15 "(a) Notwithstanding any other provisions of this code, the provisions of this division shall
16 govern the denial of licenses on the grounds of:

17 "...

18 "(2) Conviction of a crime.

19 "(3) Commission of any act involving dishonesty, fraud or deceit with the intent to
20 substantially benefit himself or another, or substantially injure another.

21 "(4) Commission of any act which, if done by a licentiate of the business or profession in
22 question, would be grounds for suspension or revocation of license.

23 (b) Notwithstanding any other provisions of this code, the provisions of this division shall
24 govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2)
25 of subdivision (a). . . ."

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

5 8. Section 492 of the Code states:

6 “Notwithstanding any other provision of law, successful completion of any diversion
7 program under the Penal Code, or successful completion of an alcohol and drug problem
8 assessment program under Article 5 (commencing with Section 23249.50) of Chapter 12 of
9 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2
10 (commencing with Section 500) of this code, or any initiative act referred to in that division, from
11 taking disciplinary action against a licensee or from denying a license for professional
12 misconduct, notwithstanding that evidence of that misconduct may be recorded in a record
13 pertaining to an arrest.

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

17 9. Section 4022 of the Code states, in pertinent part:

18 "Dangerous drug" or "dangerous device" means any drug or device unsafe for self use in
19 humans or animals. . . .”

20 10. Section 4060 of the Code states, in pertinent part:

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

1 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
2 nurse midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
3 labeled with the name and address of the supplier or producer. . . .”

4 11. Section 4301 of the Code states, in pertinent part:

5 "The board shall take action against any holder of a license who is guilty of unprofessional
6 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

7 Unprofessional conduct shall include, but is not limited to, any of the following:

8 "(a) Gross immorality.

9 "...

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

13 "...

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

19 "...

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

22 "...

23 "(l) The conviction of a crime substantially related to the qualifications, functions, and
24 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
25 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
26 substances or of a violation of the statutes of this state regulating controlled substances or
27 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
28 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

1 The board may inquire into the circumstances surrounding the commission of the crime, in order
2 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
3 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
4 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
5 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
6 of this provision. The board may take action when the time for appeal has elapsed, or the
7 judgment of conviction has been affirmed on appeal or when an order granting probation is made
8 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
9 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
10 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
11 indictment.

12 "...

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

17 (p) Actions or conduct that would have warranted denial of a license. . . ."

18 REGULATION

19 12. California Code of Regulations, title 16, section 1770, states:

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

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COST RECOVERY

13. Section 125.3 of the Code states, 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.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct—Conviction of a Crime Substantially Related to Qualifications, Functions, and Duties of Licensee)

14. Respondent is subject to disciplinary action under sections 475, 490, and 4301(l) of the Code in that Respondent has been convicted of a crime that is substantially related to her qualifications, functions, and duties as a pharmacy technician. The facts and circumstances of this conviction are as follows:

15. On or about May 27, 2011, in *People v. Keely Marie Needham*, Superior Court of California, County of Fresno, case no. F11902809, Respondent pled nolo contendere to a misdemeanor charge of second degree commercial burglary (a violation of Penal Code sections 459 and 560). The facts and circumstances of this conviction are as follows:

a. On April 28, 2011, a Clovis Police Department officer received a report from a Target Loss Prevention Officer that Respondent and her fiancé were stealing merchandise from the store. Once the officer arrived at the store, he arrested Respondent and her fiancé as they exited the store. The officer recovered merchandise valued at approximately \$445.35 from Respondent. Respondent stated to the officer that while in the store, she selected items to steal, placed them in her purse, and then went into the women’s restroom where she used her fiancé’s pocket knife to cut open packages and remove security tags. After removing all of the security tags, Respondent concealed the items in her purse, and she and her fiancé exited the store. Respondent admitted that she and her fiancé intended to sell the stolen merchandise, and that she and her fiancé were willing participants in the crime.

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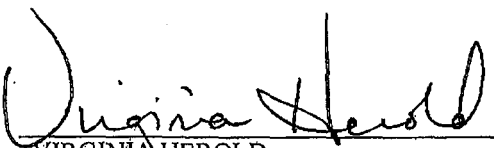
1 Respondent in handcuffs, Respondent admitted that she used Methadone on April 18, 2011.
2 While changing handcuffs on Respondent, one of the deputies discovered five pieces of crumpled
3 foil in Respondent's hands; one of these pieces of foil had a small amount of a dark brown
4 substance consistent with the appearance of heroin. The deputies arrested Respondent and
5 transported her to jail. At the jail, Respondent was searched by another deputy who discovered a
6 piece of foil in Respondent's underwear and a toot straw, with brown residue, in Respondent's
7 bra. One of the deputies weighed and tested the suspected heroin. The substance weighed 0.4
8 grams and tested positive for heroin.

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 Pharmacy Technician Registration Number 83252, issued to
13 Keely Marie Needham.;
- 14 2. Ordering Keely Marie Needham to pay the Board of Pharmacy the reasonable costs
15 of the investigation and enforcement of this case, pursuant to Business and Professions Code
16 section 125.3;
- 17 3. Taking such other and further action as deemed necessary and proper.

18
19
20 DATED: 9/19/13


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

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