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

In the Matter of the Accusation Against:

DAVID KIM
1635 Neil Armstrong St., Apt. 211
Montebello, CA 90640

Original Pharmacy Technician Registration
No. TCH 145335

Respondent.

Case No. 5714

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about April 8, 2016, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 5714 against David Kim ("Respondent") before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about December 26, 2014, the Board of Pharmacy ("Board") issued Pharmacy Technician License No. TCH 145335 to Respondent. The Pharmacy Technician License was in

1 full force and effect at all times relevant to the charges brought in Accusation No. 5714 and will
2 expire on December 31, 2016, unless renewed.

3 3. On or about April 25, 2016; Respondent was served by Certified and First Class Mail
4 copies of Accusation No. 5714, the Statement to Respondent, Notice of Defense, Request for
5 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
6 Respondent's address of record which, pursuant to Business and Professions Code section 4100,
7 is required to be reported and maintained with the Board. Respondent's address of record was
8 and is:

9 1635 Neil Armstrong St., Apt. 211
10 Montebello, CA 90640.

11 4. Service of the Accusation was effective as a matter of law under the provisions of
12 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
13 124.

14 5. On or about May 31, 2016, the aforementioned documents were returned by the U.S.
15 Postal Service marked "Unclaimed." The address on the documents was the same as the address
16 on file with the Board. Respondent failed to maintain an updated address with the Board and the
17 Board has made attempts to serve the Respondent at the address on file. Respondent has not
18 made himself available for service and therefore, has not availed himself of his right to file a
19 notice of defense and appear at hearing.

20 6. Government Code section 11506(c) states, in pertinent part:

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

26 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
27 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
28 5714.

8. California Government Code section 11520(a) states, in pertinent part:

(a) If the respondent either fails to file a notice of defense . . . or to appear at

1 the hearing, the agency may take action based upon the respondent's express
2 admissions or upon other evidence and affidavits may be used as evidence without
3 any notice to respondent

4 9. Pursuant to its authority under Government Code section 11520, the Board finds
5 Respondent is in default. The Board will take action without further hearing and, based on the
6 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
7 taking official notice of all the investigatory reports, exhibits and statements contained therein on
8 file at the Board's offices regarding the allegations contained in Accusation No. 5714, finds that
9 the charges and allegations in Accusation No. 5714, are separately and severally, found to be true
10 and correct by clear and convincing evidence.

11 10. Taking official notice of its own internal records, pursuant to Business and
12 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
13 and Enforcement is \$1,545.00 as of June 9, 2016.

14 **DETERMINATION OF ISSUES**

15 1. Based on the foregoing findings of fact, Respondent David Kim has subjected his
16 Pharmacy Technician License No. TCH 145335 to discipline.

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

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

21 a. Respondent is subject to disciplinary action under section 4301, subdivision (h), on
22 the grounds of unprofessional conduct, in that Respondent used marijuana to an extent or in a
23 manner dangerous or injurious to himself or others. The circumstances include that on or about
24 May 30, 2015, Respondent drove a vehicle while under the influence of marijuana such that he
25 could not operate the vehicle safely. Respondent, while driving a gray Honda CRV, was stopped
26 at a Los Angeles Police Department sobriety checkpoint. An officer spoke with Respondent
27 through the open driver's window, and smelled the strong and distinct odor of marijuana coming
28 from inside the vehicle. The officer also noticed other objective symptoms of drug use, including
very pronounced reddening of the conjunctiva, a blank stare on his face, droopy eyelids and

1 lethargic speech. Respondent stated that he had smoked a "blunt" of marijuana at his cousin's
2 house prior to driving. The officer asked Respondent to exit the vehicle, Respondent fumbled
3 with the window switches and door handle before slowly stepping out with an unsteady gait.
4 Respondent submitted to a series of field sobriety tests, but was unable to satisfactorily complete
5 them. Officers collected a blood sample from Respondent at the check point, which later tested
6 positive for delta-9-Tetrahydrocannabinol (THC).

7 b. Respondent is subject to disciplinary action under section 4060 for possessing
8 marijuana, a schedule I controlled substance, without a prescription. The circumstances are that
9 on or about May 30, 2015, Respondent admitted to smoking a "blunt" of marijuana at his cousin's
10 house prior to driving his vehicle. Complainant refers to, and by this reference incorporates, the
11 allegations set forth above in paragraph 3, subparagraph (a) inclusive, as though set forth fully.

12 c. Respondent is subject to disciplinary action under section 4301, subdivision (j), for
13 violating laws of the State of California regulating controlled substances and dangerous drugs, by
14 violating Health and Safety Code section 11364, subdivision (a), for possessing a
15 methamphetamine pipe. The circumstances include that on or about September 1, 2015, an
16 officer from the Montebello Police Department was dispatched to investigate a suspicious vehicle
17 in accordance with an anonymous report of recent vehicle burglaries. When the officer arrived he
18 found an individual, later determined to be Respondent's acquaintance J.N., standing outside the
19 rear of the vehicle. While looking through the driver's side window, the officer found a glass
20 methamphetamine smoking pipe. While the officer continued to conduct his investigation,
21 Respondent arrived, had the keys to the vehicle on him and stated that the vehicle belonged to his
22 father. Respondent also admitted that the methamphetamine smoking pipe was his, a violation of
23 Health and Safety Code section 11364, subdivision (a).

24 d. Respondent is subject to discipline under section 4301, on the grounds of general
25 unprofessional conduct. The circumstances of this violation include that Respondent possessed
26 and used a schedule I controlled substance before driving his vehicle. The circumstances also
27 include that Respondent possessed drug paraphernalia used to smoke methamphetamine, a
28 schedule II controlled substance, and the methamphetamine smoking pipe was found in

1 Respondent's vehicle while Respondent had the keys to that vehicle. Complainant refers
2 to, and by this reference incorporates, the allegations set forth above in paragraph 3,
3 subparagraphs (a) through (c) inclusive, as though set forth fully.

4 **ORDER**

5 IT IS SO ORDERED that Pharmacy Technician License No. TCH 145335, heretofore
6 issued to Respondent David Kim, is revoked.

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

11
12 This Decision shall become effective at 5:00 p.m. on September 9, 2016.

13 It is so ORDERED on August 10, 2016.

14
15 BOARD OF PHARMACY
16 DEPARTMENT OF CONSUMER AFFAIRS
17 STATE OF CALIFORNIA

18 

19
20 By _____

Amy Gutierrez, Pharm.D.
Board President

21
22
23 52125347.DOC
24 DOJ Matter ID:LA2016500080

25 Attachment:
26 Exhibit A: Accusation
27
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Exhibit A

Accusation

(DAVID KIM)

1 KAMALA D. HARRIS
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 ZACHARY T. FANSELOW
Deputy Attorney General
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300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2562
6 Facsimile: (213) 897-2804
Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 5714

11 **DAVID KIM**
12 1635 Neil Armstrong St., Apt. 211
Montebello, CA 90640

ACCUSATION

13 Original Pharmacy Technician Registration No.
14 TCH 145335

15 Respondent.

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21 Complainant alleges:

22 **PARTIES**

- 23 1. Virginia Herold ("Complainant") brings this Accusation solely in her official capacity
24 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs ("Board").
25 2. On or about December 26, 2014, the Board of Pharmacy issued Original Pharmacy
26 Technician Registration No. TCH 145335 to David Kim ("Respondent"). The Original Pharmacy
27 Technician Registration was in full force and effect at all times relevant to the charges brought
28 herein and will expire on December 31, 2016, unless renewed.

1 JURISDICTION

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

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

6 5. Section 4300.1 states:

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

12 STATUTORY PROVISIONS

13 6. Section 4022 states

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

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

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

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

23 7. Section 4060 states, in pertinent part:

24 "No person shall possess any controlled substance, except that furnished to a person upon
25 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
26 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
27 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
28 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,

1 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
2 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply
3 to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
4 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
5 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
6 labeled with the name and address of the supplier or producer."

7 8. Section 4301 states:

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

11

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

17

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

20 **REGULATORY PROVISION**

21 9. California Code of Regulations, title 16, section 1770, states:

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

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1 COST RECOVERY

2 10. Section 125.3 states, in pertinent part, that the Board may request the administrative
3 law judge to direct a licentiate found to have committed a violation or violations of the licensing
4 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
5 case.

6 CONTROLLED SUBSTANCES AND DANGEROUS DRUGS

7 11. Marijuana is a hallucinogenic Schedule I controlled substance as defined in Health and
8 Safety Code section 11054, subdivision (d)(13), and a dangerous drug pursuant to Business and
9 Professions Code section 4022.

10 12. Methamphetamine is a Schedule II controlled substance as defined in Health and
11 Safety Code section 11055, subdivision (d)(2), and is categorized as a dangerous drug pursuant to
12 Business and Professions Code section 4022.

13 FIRST CAUSE FOR DISCIPLINE

14 (Dangerous Use of Drugs)

15 13. Respondent is subject to disciplinary action under section 4301, subdivision (h), on the
16 grounds of unprofessional conduct, in that Respondent used marijuana to an extent or in a manner
17 dangerous or injurious to himself or others, as follows:

18 a. On or about May 30, 2015, Respondent drove a vehicle while under the influence of
19 marijuana such that he could not operate the vehicle safely. Respondent, while driving a gray
20 Honda CRV, was stopped at a Los Angeles Police Department sobriety checkpoint. An officer
21 spoke with Respondent through the open driver's window, and smelled the strong and distinct
22 odor of marijuana coming from inside the vehicle. The officer also noticed other objective
23 symptoms of drug use, including very pronounced reddening of the conjunctiva, a blank stare on
24 his face, droopy eyelids and lethargic speech. Respondent stated that he had smoked a "blunt" of
25 marijuana at his cousin's house prior to driving. The officer asked Respondent to exit the vehicle,
26 Respondent fumbled with the window switches and door handle before slowly stepping out with
27 an unsteady gait. Respondent submitted to a series of field sobriety tests, but was unable to
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1 satisfactorily complete them. Officers collected a blood sample from Respondent at the check
2 point, which later tested positive for delta-9-Tetrahydrocannabinol (THC).

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Possession of a Controlled Substance)**

5 14. Respondent is subject to disciplinary action under section 4060 for possessing
6 marijuana, a schedule I controlled substance, without a prescription. The circumstances are that
7 on or about May 30, 2015, Respondent admitted to smoking a "blunt" of marijuana at his cousin's
8 house prior to driving his vehicle. Complainant refers to, and by this reference incorporates, the
9 allegations set forth above in paragraph 13, subparagraph (a) inclusive, as though set forth fully.

10 **THIRD CAUSE FOR DISCIPLINE**

11 **(Possession of Drug Paraphernalia)**

12 15. Respondent is subject to disciplinary action under section 4301, subdivision (j), for
13 violating laws of the State of California regulating controlled substances and dangerous drugs, by
14 violating Health and Safety Code section 11364, subdivision (a), for possessing a
15 methamphetamine pipe, as follows:

16 a. On or about September 1, 2015, an officer from the Montebello Police Department
17 was dispatched to investigate a suspicious vehicle in accordance with an anonymous report of
18 recent vehicle burglaries. When the officer arrived he found an individual, later determined to be
19 Respondent's acquaintance J.N., standing outside the rear of the vehicle. While looking through
20 the driver's side window, the officer found a glass methamphetamine smoking pipe. While the
21 officer continued to conduct his investigation, Respondent arrived, had the keys to the vehicle on
22 him and stated that the vehicle belonged to his father. Respondent also admitted that the
23 methamphetamine smoking pipe was his, a violation of Health and Safety Code section 11364,
24 subdivision (a).

25 **FOURTH CAUSE FOR DISCIPLINE**

26 **(Unprofessional Conduct)**

27 16. Respondent is subject to discipline under section 4301, on the grounds of general
28 unprofessional conduct, as follows:

1 a. Respondent possessed and used a schedule I controlled substance before driving his
2 vehicle. Complainant refers to, and by this reference incorporates, the allegations set forth above
3 in paragraphs 13 through 14, inclusive, as though set forth fully.

4 b. Respondent possessed drug paraphernalia used to smoke methamphetamine, a
5 schedule II controlled substance, and the methamphetamine smoking pipe was found in
6 Respondent's vehicle while Respondent had the keys to that vehicle. Complainant refers to, and
7 by this reference incorporates, the allegations set forth above in paragraph 15, subparagraph (a)
8 inclusive, as though set forth fully.

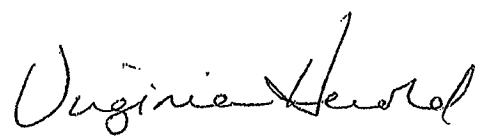
9 PRAYER

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 Original Pharmacy Technician Registration number TCH
13 145335, issued to David Kim;
- 14 2. Ordering David Kim to pay the Board of Pharmacy the reasonable costs of the
15 investigation and enforcement of this case, pursuant to Business and Professions Code section
16 125.3; and,
- 17 3. Taking such other and further action as deemed necessary and proper.

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DATED: 4/8/16



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

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