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

11 In the Matter of the Petition to Revoke
12 Probation Against:

Case No. 3841

13 **ROBERT GARLIN KERLEY**
14 1561 W. Median Circle
Porterville, California 93257

PETITION TO REVOKE PROBATION

15 Pharmacist License No. RPH 26099

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

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

21 **License History**

22 2. On or about July 15, 1969, the Board of Pharmacy issued Original Pharmacist
23 License Number RPH 26099 to Robert Garlin Kerley (Respondent). The Pharmacist License
24 expired on April 30, 2010, and has not been renewed.

25 **Prior Discipline**

26 3. In a disciplinary action entitled *In the Matter of the Accusation Against: Robert*
27 *Kerley*, Case No. 3110, the Board of Pharmacy issued a decision, effective May 27, 2009,
28 revoking Respondent's Original Pharmacist License Number RPH 26099. Revocation was stayed

1 and Respondent was placed on probation for a period of three (3) years subject to certain terms
2 and conditions. A copy of the Board's Decision and Order is attached hereto, marked Exhibit A,
3 and incorporated herein by this reference.

4 STATUTORY PROVISIONS

5 4. Under Business and Professions Code (Code) section 4300, the Board may discipline
6 any license for any reason provided in the Pharmacy Law (Bus. & Prof. Code, §4000, et seq.).

7 5. Code section 118, subdivision (b), provides, in pertinent part, that the expiration of a
8 license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the
9 period within which the license may be renewed, restored, reissued, or reinstated.

10 6. Under Code section 4402, subdivision (a), a pharmacist license may be renewed any
11 time within three years following its expiration.

12 PETITION TO REVOKE PROBATION

13 7. Grounds exist for revoking the probation and reimposing the order of revocation of
14 Respondent's Pharmacist License Number RPH 26099. Condition 26 of the Board's Decision
15 and Order states:

16 If respondent violates any condition of probation in any respect, the
17 board, after giving respondent notice and an opportunity to be heard, may
18 revoke probation and carry out the disciplinary order that was stayed. If a
19 petition to revoke probation or an accusation is filed against respondent
20 during probation, the board shall have continuing jurisdiction, and the period
21 of probation shall be extended until the petition to revoke probation or
22 accusation is heard and decided.

23 8. Respondent has violated the probation program as more particularly set forth in the
24 following paragraphs:

25 FIRST CAUSE TO REVOKE PROBATION

26 (Failure to Report Quarterly to the Board)

27 9. At all times after the effective date of Respondent's probation, Condition 4 stated:

28 Respondent shall report to the board quarterly. The report shall be
made either in person or in writing, as directed. Respondent shall state under
penalty of perjury whether he has complied with all the terms and conditions
of probation. If respondent fails to make the final probation report as
directed, probation shall be extended automatically until such time as
respondent makes the final report and the board accepts it.

1 10. Respondent's probation is subject to revocation because he failed to comply with
2 Probation Condition 4, referenced above. The facts and circumstances regarding this violation
3 are that Respondent failed to submit the required quarterly reports as follows:

4 Report Period	Due	Received/Not Received
5 July – September 2009	October 10, 2009	Not received
6 October – December 2009	January 10, 2010	Not Received
7 January – March 2010	April 10, 2010	Not Received
8 April – June 2010	July 10, 2010	Not Received
9 July – September 2010	October 10, 2010	Not Received

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Failure to Appear for Interview)**

12 11. At all times after the effective date of Respondent's probation, Condition 5 stated:

13 On receipt of reasonable notice, respondent shall appear in person for
14 interviews with the board on request at a location to be determined by the
Board.

15 12. Respondent's probation is subject to revocation because he failed to comply with
16 Probation Condition 5, referenced above. The facts and circumstances regarding this violation
17 are:

18 a. Respondent was notified to appear for an in-person interview with the Board on
19 December 3, 2009; he was excused pursuant to his physician's certification that Respondent was
20 medically unable to appear.

21 b. Respondent failed to submit to the Board by January 19, 2010, additional
22 information regarding his medical condition.

23 **THIRD CAUSE FOR DISCIPLINE**

24 **(Failure to Submit Cost Recovery Payments)**

25 13. At all times after the effective date of Respondent's probation, Condition 11 stated:

26 Respondent shall pay to the board its costs of investigation and
27 prosecution in the amount of \$2,000. Respondent may apply to the board for
28 permission to pay those costs in installments. The board will determine
whether a payment schedule is necessary so that respondent will be

1 financially able to pay the costs. The filing of bankruptcy shall not relieve
2 respondent of the responsibility to reimburse the costs.

3 14. Respondent's probation is subject to revocation because he failed to comply with
4 Probation Condition 11, referenced above. The facts and circumstances regarding this violation
5 are that Respondent failed to pay any portion of the cost recovery in the amount of \$2,000.

6 **THIRD CAUSE FOR DISCIPLINE**

7 **(Failure to Pay Probation Monitoring Costs)**

8 15. At all times after the effective date of Respondent's probation, Condition 12 stated:

9 Respondent shall pay the costs associated with probation monitoring as
10 determined by the board each year of probation. Such costs shall be payable
11 to the board at the end of each year of probation.

12 16. Respondent's probation is subject to revocation because he failed to comply with
13 Probation Condition 12, referenced above. The facts and circumstances regarding this violation
14 are that Respondent failed to pay any portion of the probation monitoring costs in the amount of
15 \$25.50 as of December 31, 2009, as determined by the Board.

16 **FOURTH CAUSE FOR DISCIPLINE**

17 **(Failure to Maintain an Active Pharmacist License)**

18 17. At all times after the effective date of Respondent's probation, Condition 13 stated:

19 Respondent shall, at all times, while on probation – including any
20 period during which suspension or probation is tolled – maintain an active,
21 current license with the board. If respondent's license expires or is cancelled
22 by operation of law or otherwise, respondent's license, on renewal or
23 reapplication, shall be subject to all of the conditions of this probation not
24 previously satisfied.

25 18. Respondent's probation is subject to revocation because he failed to comply with
26 Probation Condition 13, referenced above. The facts and circumstances regarding this violation
27 are that Respondent's Pharmacy License Number RPH 26099 expired on April 30, 2010, and,
28 thus, is not active and current.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Failure to Enroll and Participate in Pharmacist Recovery Program)**

3 19. At all times after the effective date of Respondent's probation, Condition 14 stated:

4 Within 30 days of the effective date of this decision, respondent shall
5 contact the Pharmacist Recovery Program (PRP) for evaluation and shall
6 successfully participate in and complete the treatment contract and any
7 subsequent addendums as recommended and provided by the PRP and as
8 approved by the board. Respondent shall bear the costs of PRP participation.

9 20. Respondent's probation is subject to revocation because he failed to comply with
10 Probation Condition 14, referenced above. The facts and circumstances regarding this violation
11 are that Respondent, within 30 days of the effective date of his probation or at any time, failed to
12 enroll and participate in the Pharmacist Recovery Program.

13 **SIXTH CAUSE FOR DISCIPLINE**

14 **(Failure to Comply with Conditions of Probation)**

15 21. At all times after the effect date of Respondent's probation, Condition 27 stated:

16 If respondent fails to satisfy any condition of probation the board shall
17 have continuing jurisdiction over respondent, and probation shall
18 automatically be extended until all conditions have been satisfied or the
19 board has taken other action as deemed appropriate to treat the failure as a
20 violation of probation, to terminate probation, and to impose the penalty that
21 was stayed.

22 22. Respondent's probation is subject to revocation because he failed to comply with
23 Probation Condition 27, referenced above. The facts and circumstances regarding this violation
24 are that Respondent failed to comply with the Board's probation program, as more particularly set
25 forth in paragraphs 10, 12, 14, 16, 18, and 20, above.

26 **PRAYER**

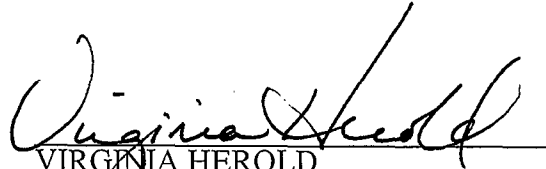
27 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
28 and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking the probation that was granted by the Board of Pharmacy in Case No. 3110
and imposing the disciplinary order that was stayed thereby revoking Pharmacy License No. RPH
26099 issued to Robert Garlin Kerley;

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2. Revoking or suspending Pharmacy License No. RPH 26099 issued to Robert Garlin Kerley; and
3. Taking such other and further action as deemed necessary and proper.

Dated: 11/17/10


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

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