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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. 3896

11 **KENNETH KYLE CLAUSEN**
12 **16330 Victoria Drive**
Victorville, CA 92394
13 **Pharmacy Technician Registration No. TCH**
94452

A C C U S A T I O N

14 Respondent.

15
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, Department of Consumer Affairs.

21 2. On or about April 20, 2010, the Board of Pharmacy issued Pharmacy Technician
22 Registration Number TCH 94452 to Kenneth Kyle Clausen (Respondent). The Pharmacy
23 Technician Registration number was in full force and effect at all times relevant to the charges
24 brought herein and will expire on November 30, 2011, unless renewed.

25 **JURISDICTION**

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

STATUTORY PROVISIONS

1
2 4. Section 118(b) of the Code states:

3 "The suspension, expiration, or forfeiture by operation of law of a license issued by a
4 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by
5 order of a court of law, or its surrender without the written consent of the board, shall not, during
6 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
7 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
8 provided by law or to enter an order suspending or revoking the license or otherwise taking
9 disciplinary action against the licensee on any such ground."

10 5. Section 4300(a) of the Code states that "[e]very license issued may be suspended or
11 revoked."

12 6. Section 4301(j) of the Code states:

13 "The board shall take action against any holder of a license who is guilty of unprofessional
14 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
15 Unprofessional conduct shall include, [...] [t]he violation of any of the statutes of this state, or
16 any other state, or of the United States regulating controlled substances and dangerous drugs."

17 7. Section 4060 of the Code states:

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

1 **DRUG STATUTES**

2 8. Section 11350(a) of the California Health and Safety Code states:

3 “Except as otherwise provided in this division, every person who possesses (1) any
4 controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of
5 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or
6 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of
7 Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a
8 narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or
9 veterinarian licensed to practice in this state, shall be punished by imprisonment in the state
10 prison.”

11 9. Section 11351 of the California Health and Safety Code states:

12 “Except as otherwise provided in this division, every person who possesses for sale or
13 purchases for purposes of sale (1) any controlled substance specified in subdivision (b), (c), or (e)
14 of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054,
15 or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section
16 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic
17 drug, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal
18 Code for two, three, or four years.”

19 10. Section 11357(c) of the California Health and Safety Code states:

20 “Except as authorized by law, every person who possesses more than 28.5 grams of
21 marijuana, other than concentrated cannabis, shall be punished by imprisonment in the county jail
22 for a period of not more than six months or by a fine of not more than five hundred dollars
23 (\$500), or by both such fine and imprisonment.”

24 **COST RECOVERY**

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

1 **CONTROLLED SUBSTANCES/ DANGEROUS DRUGS**

2 12. Marijuana (Cannabis) is a Schedule I controlled substance as defined in Health and
3 Safety Code section 11054(d)(13), and is categorized as a controlled substance according to
4 section 4021.

5 13. OxyContin, a brand name formation of oxycodone hydrochloride, is a Schedule II
6 controlled substance as defined in Health and Safety Code section 11055(b)(1)(M), and is
7 categorized as a dangerous drug pursuant to section 4022.

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(Possession of Controlled Substances)**

10 14. Respondent is subject to disciplinary action under sections 4060, 4300, and 4301(j) of
11 the Code, for possessing the controlled substances marijuana and OxyContin, thereby violating
12 section 11350(a) of the Health and Safety Code.

13 15. On or about May 21, 2010, an officer with the Fontana Police Department witnessed
14 Respondent exchange a pill bottle with a male subject sitting in a parked car in a Racho
15 Cucamonga commercial complex parking lot. The officer detained Respondent at the scene.

16 16. Respondent admitted that he had sold 40 pills of OxyContin worth \$1070 to the male
17 subject. Respondent does not have a prescription for OxyContin.

18 17. Respondent admitted to having marijuana in his possession. Respondent does not
19 have a prescription for marijuana and obtained the marijuana from an unnamed male subject in
20 Victorville for selling the OxyContin.

21 **SECOND CAUSE FOR DISCIPLINE**

22 **(Illegal Sale of a Dangerous Drug)**

23 18. Respondent is subject to disciplinary action under sections 4060, 4300, and 4301(j) of
24 the Code, for possessing the controlled substance OxyContin for sale, and thereby violating
25 section 11351 of the Health and Safety Code.

26 19. Complainant refers to and by this reference incorporates the allegations set forth
27 above in paragraphs 15 and 16, inclusive, as though set forth fully.

28

1 **THIRD CAUSE FOR DISCIPLINE**

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

3 20. Respondent is subject to disciplinary action under sections 4060, 4300, and 4301(j) of
4 the Code, for possessing more than 28.5 grams of the controlled substance marijuana, thereby
5 violating section 11357(c) of the Health and Safety Code.

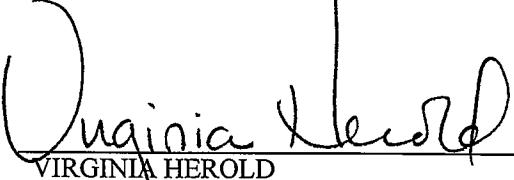
6 21. On or about November 9, 2009, a California Highway Patrol officer made a traffic
7 stop on a car in which Respondent was a passenger. The officer noticed the odor of marijuana in
8 the car and asked those in the vehicle about the presence of marijuana. Respondent admitted he
9 had marijuana in his possession without a valid prescription. The officer retrieved 36.2 grams of
10 marijuana in gross weight from Respondent.

11 **PRAYER FOR RELIEF**

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

- 14 1. Revoking or suspending Pharmacy Technician Registration Number TCH 94452,
15 issued to Kenneth Kyle Clausen;
- 16 2. Ordering Kenneth Kyle Clausen to pay the Board the reasonable costs of the
17 investigation and enforcement of this case, pursuant to section 125.3 of the Code;
- 18 3. Taking such other and further action as deemed necessary and proper.

19
20 DATED: 6/21/11

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

25 LA2011600240
26 6/1/2011
27 accusation.rtf