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

11 In the Matter of the Accusation Against:

Case No. 3957

12 **CAROLYN JOOHYUN KIM**
13 **6921 San Pedro Circle**
14 **Buena Park, CA 90620**

ACCUSATION

15 **Pharmacy Technician Registration**
No. TCH 98945

16 Respondent.

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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 February 11, 2010, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 89845 to Carolyn JooHyun Kim (Respondent). The Pharmacy
25 Technician Registration was in full force and effect at all times relevant to the charges brought
26 herein and will expire on May 31, 2011, unless renewed.

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

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9. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

10. Section 4301 of the Code states:

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:

....

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

....

(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.

....

(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

1 fix the degree of discipline or, in the case of a conviction not involving controlled
2 substances or dangerous drugs, to determine if the conviction is of an offense
3 substantially related to the qualifications, functions, and duties of a licensee under this
4 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
5 contendere is deemed to be a conviction within the meaning of this provision. The
6 board may take action when the time for appeal has elapsed, or the judgment of
7 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
9 Section 1203.4 of the Penal code allowing the person to withdraw his or her plea of
10 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
11 dismissing the accusation, information or indictment.

12 ...

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

18 11. Title 16, California Code of Regulations, section 1769, states:

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20 (b) When considering the suspension or revocation of a facility or a personal
21 license on the ground that the licensee or the registrant has been convicted of a crime,
22 the board, in evaluating the rehabilitation of such person and his present eligibility for
23 a license will consider the following criteria:

24 (1) Nature and severity of the act(s) or offense(s).

25 (2) Total criminal record.

26 (3) The time that has elapsed since commission of the act(s) or offense(s).

27 (4) Whether the licensee has complied with all terms of parole, probation,
28 restitution or any other sanctions lawfully imposed against the licensee.

(5) Evidence, if any, of rehabilitation submitted by the licensee.

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

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

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1 COST RECOVERY

2 13. Section 125.3 of the Code states, in pertinent part, that the Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.
6

7 DRUGS

8 14. Ecstasy, or 4-methylenedioxymethamphetamine, also known as MDMA, is a
9 Schedule I controlled substance, and a stimulant with hallucinogenic properties.
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11 FIRST CAUSE FOR DISCIPLINE

12 (August 25, 2010 Criminal Conviction for Sale of a Controlled Substance – Ecstasy – on
13 April 28, 2010

14 15. Respondent is subject to disciplinary action under sections 490 and 4301(1) of the
15 Code in that he was convicted of a crime that is substantially related to the qualifications, duties
16 and functions of a pharmacy technician. The circumstances are as follows:

17 16. On or about June 15, 2005, in a criminal proceeding entitled *The People of the State*
18 *of California v. Carolyn Joohyun Kim*, in the Orange County Superior Court, Newport Beach
19 Facility, Case No. 10HF0692, Respondent was convicted on her plea of guilty for violating
20 Health and Safety Code section 11378 (Possession for Sale of a Controlled Substance - Ecstasy),
21 a felony.

22 17. As a result of the above conviction, Respondent was ordered to serve 120 days in the
23 Orange County Jail, with 3 days credit for time served, violate no laws, pay various fees and
24 fines, register pursuant to Health and Safety Code section 11590, submit to DNA testing, use no
25 unauthorized drugs. Respondent was also placed on probation for three years, ordered to
26 cooperate with probation officer, not associate with persons known to use or sell illegal drugs or
27 parolees and convicted felons, not own, use or possess any type of dangerous weapon, and to
28 submit to search and seizure.

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1 18. The circumstances surrounding Respondent's arrest are that on or about April 28,
2 2010, Laguna Police Department officers, working with Drug Enforcement Administration
3 agents, and through a confidential informant, negotiated with Respondent the sale of
4 approximately 2,000 Ecstasy pills for the amount of \$5,200. Once Respondent and the
5 confidential informant finalized the transaction, officers moved in to arrest Respondent.
6 Respondent was arrested and transported to the Orange County Jail for booking.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Unprofessional Conduct – Violation of Statutes Regulating Controlled Substances)**

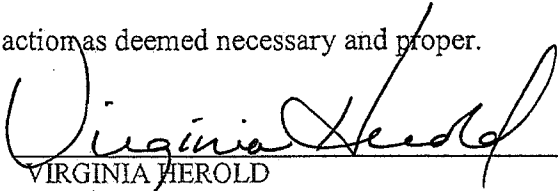
9 19. Respondent is subject to disciplinary action under section 4301(j) of the Code in that
10 she was violated statutes of this state regulating controlled substances and dangerous drugs, as
11 described in paragraphs 14 through 17, above and incorporated here by reference.

12 **PRAYER**

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

- 15 1. Revoking or suspending Pharmacy Technician Registration Number TCH 89845,
16 issued to Carolyn JooHyun Kim;
- 17 2. Ordering Carolyn JooHyun Kim to pay the Board of Pharmacy the reasonable costs
18 of the investigation and enforcement of this case, pursuant to Business and Professions Code
19 section 125.3;
- 20 3. Taking such other and further action as deemed necessary and proper.

21 DATED: 6/2/11

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

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