

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 CHAR SACHSON
Deputy Attorney General
4 State Bar No. 161032
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5558
6 Facsimile: (415) 703-5480
Attorneys for Complainant

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

10 In the Matter of the Accusation Against:

Case No. 4365

11 **MARY S. FERNANDEZ**
12 **3577 Kelsey Knolls**
13 **Santa Rosa, CA 95403**

ACCUSATION

14 **Pharmacy Technician License No. TCH**
15 **29486**

Respondent.

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 May 28, 1999, the Board of Pharmacy issued Pharmacy Technician
22 License Number TCH 29486 to Mary S. Fernandez (Respondent). The Pharmacy Technician
23 License was in full force and effect at all times relevant to the charges brought herein and will
24 expire on November 30, 2012, 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.

1 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
2 to the extent that the use impairs the ability of the person to conduct with safety to the public the
3 practice authorized by the license.

4 ...

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

7 ...

8 "(l) The conviction of a crime substantially related to the qualifications, functions, and
9 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
10 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
11 substances or of a violation of the statutes of this state regulating controlled substances or
12 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
13 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
14 The board may inquire into the circumstances surrounding the commission of the crime, in order
15 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
16 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
17 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
18 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
19 of this provision. The board may take action when the time for appeal has elapsed, or the
20 judgment of conviction has been affirmed on appeal or when an order granting probation is made
21 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
22 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
23 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
24 indictment.

25 ...

26 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
27 violation of or conspiring to violate any provision or term of this chapter or of the applicable
28

1 federal and state laws and regulations governing pharmacy, including regulations established by
2 the board or by any other state or federal regulatory agency.

3 . . . "

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

8 7. California Code of Regulations, title 16, section 1770, states:

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

15 8. Section 4022 of the Code states:

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

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

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

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

25 9. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
26 controlled substance, except that furnished upon a valid prescription/drug order.

27 10. Health and Safety Code section 11377, in pertinent part, makes it unlawful to possess
28 any controlled substance in Schedule II, subdivision (d), without a prescription.

1 real easy to get now! You're not going to live through this!" Respondent got into her
2 car, and as she sped off, she yelled "You're a dead bitch!"

3 e. On or about August 20, 2010, Respondent was again seen within 100 feet of K.C.'s
4 home, in violation of a court order.

5 FIRST CAUSE FOR DISCIPLINE

6 (CRIMINAL CONVICTION)

7 15. Respondent is subject to disciplinary action under sections 4301(l), 4301(o), and/or
8 490, and California Code of Regulations, title 16, section 1770, in that on or about April 8, 2011,
9 in a criminal proceeding entitled *The People of the State of California v. Mary Sonoma*
10 *Fernandez* in Sonoma County Superior Court, Case Number SCR-578861, Respondent was
11 convicted of violating Penal Code section 422 (making criminal threats), a felony. Respondent
12 was sentenced to serve four months jail time, 36 months formal probation, and ordered to pay
13 fines and fees in the amount of \$1,802.00. The circumstances of the conviction are that
14 Respondent violated a protective order several times, as described above in paragraph 14.

15 SECOND CAUSE FOR DISCIPLINE

16 (USE OF CONTROLLED SUBSTANCE)

17 16. Respondent is subject to disciplinary action under section 4301(h), in that on or about
18 March 1, 2010, her urine sample tested positive for methamphetamine and amphetamine (a
19 metabolite of methamphetamine).

20 THIRD CAUSE FOR DISCIPLINE

21 (USE OF CONTROLLED SUBSTANCE)

22 17. Respondent is subject to disciplinary action under sections 4301(j), 4301(o), 4060,
23 and Health and Safety Code section 11377, in that on or about March 1, 2010, her urine sample
24 tested positive for methamphetamine and amphetamine (a metabolite of methamphetamine).

25 FOURTH CAUSE FOR DISCIPLINE

26 (UNPROFESSIONAL CONDUCT)

27 18. Respondent is subject to disciplinary action under sections 4301(f) and/or 4301(o) in
28 that she acted unprofessionally, and/or committed acts involving moral turpitude. The

1 circumstances are described above in paragraph 14.

2 PRAYER

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

5 1. Revoking or suspending Pharmacy Technician Registration Number TCH 29486,
6 issued to Mary S. Fernandez;

7 2. Ordering Mary S. Fernandez to pay the Board of Pharmacy the reasonable costs of
8 the investigation and enforcement of this case, pursuant to Business and Professions Code section
9 125.3;

10 ///

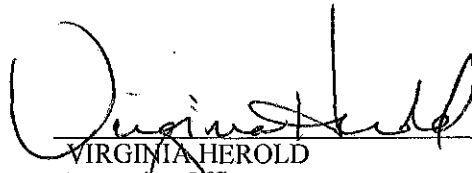
11 3. Taking such other and further action as deemed necessary and proper.

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DATED: 11/2/12



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

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