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

11 In the Matter of the Accusation Against:

Case No. 5016

12 **KELLY JEAN KENNEDY**
2925 Huron Court
Santa Rosa, CA 95403

A C C U S A T I O N

13 **Pharmacy Technician License No. TCH 33678**

14 Respondent.

15
16 Complainant alleges:

17 PARTIES

18 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
19 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

20 2. On or about June 30, 2000, the Board of Pharmacy issued Pharmacy Technician
21 License No. TCH 33678 to Kelly Jean Kennedy (Respondent). The License was in force at all
22 times relevant to the charges herein and will expire on February 29, 2016, unless renewed.

23
24 JURISDICTION

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

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

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

8 10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
9 administrative law judge to direct a licentiate found to have committed a violation of the licensing
10 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

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12 FIRST CAUSE FOR DISCIPLINE

13 (Conviction of Substantially Related Crime(s))

14 11. Respondent is subject to discipline under section 4301(l) and/or section 490 of the
15 Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of
16 substantially related crime(s), in that on or about March 27, 2013, in the criminal case *People v.*
17 *Kelly Jean Kennedy*, Case No. 13-70968 in Mendocino County Superior Court, Respondent was
18 convicted of violating Vehicle Code section 23152(b) (Driving with Blood Alcohol of 0.08% or
19 Higher), a misdemeanor, with an admitted special allegation of having a blood alcohol level of
20 0.15% or higher pursuant to Vehicle Code section 23578. The conviction was entered as follows:

21 a. On or about November 9, 2012, at about 7:00 p.m., California Highway Patrol
22 officer(s) in the Ukiah, CA area observed a silver Nissan sedan stopped in a left-hand turn lane
23 about 4 feet over the crosswalk, partially in the intersection, with its headlights off despite it being
24 dark. The officer(s) stopped the vehicle, which was slow to respond to instructions and had some
25 trouble parking in a parking stall, and contacted the driver (Respondent). The officer(s) detected
26 the smell of alcohol coming from the vehicle, and observed other symptoms of Respondent’s gait
27 and demeanor that raised the suspicion of alcohol use. The officer(s) administered Field Sobriety
28 Tests (FSTs) to Respondent, which she was not able to perform correctly.

1 a. On or about February 11, 2013, at about 11:00 p.m., Ukiah Police Department
2 officer(s) observed Respondent driving a vehicle that was weaving within the lane, drove into the
3 bicycle lane, and then failed to stop at the limit line at a stop sign. The officer(s) stopped the
4 vehicle and contacted Respondent. The officer(s) detected the smell of alcohol coming from the
5 vehicle, and observed other symptoms that raised the suspicion of alcohol use. The officer(s)
6 were advised by dispatch that Respondent's driving privilege was suspended or revoked. She
7 admitted that she knew her license was suspended or revoked. Respondent also told the officer(s)
8 that she had a drinking problem and/or was an alcoholic.

9 b. On or about June 25, 2013, in *People v. Kelly Jean Kennedy*, Case No. 13-
10 72906 in Mendocino County Superior Court, Respondent was charged with violating (1) Vehicle
11 Code section 23152, subdivision (a) (Driving Under the Influence of Alcohol/Drug), a
12 misdemeanor; (2) Vehicle Code section 23152, subdivision (b) (Driving With Blood Alcohol of
13 0.08% or Higher), a misdemeanor, with a first special allegation that she had been previously
14 convicted of violating Vehicle Code section 23152, subdivision (b), a misdemeanor on March 27,
15 2013, based on conduct occurring on November 9, 2012; and (3) Vehicle Code section 14601.5,
16 subdivision (a) (Driving When Privilege Suspended or Revoked), a misdemeanor.

17 c. On or about March 27, 2013, Respondent entered a plea of nolo contendere as
18 to Count 2 (violation of Vehicle Code section 23152, subdivision (b)) with an admission to the
19 special allegation of a prior conviction and a stipulated blood alcohol level of 0.10, and Count 3
20 (violation of Vehicle Code section 14601.5, subdivision (a)). Imposition of judgment was
21 suspended and Respondent was placed on Summary Probation for sixty (60) months (five years),
22 on terms and conditions including 10 days in county jail (suspended for Respondent to complete
23 26 weeks in an outpatient treatment program), completion of an 18-month Multiple Offender DUI
24 Program, use of an Interlock Ignition Device for two (2) years, community service of 131 hours
25 (in lieu of payment of fine), and payment of other restitution amounts, fines and fees.

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1 FOURTH CAUSE FOR DISCIPLINE

2 (Dangerous or Injurious Use of Alcohol)

3 14. Respondent is subject to discipline under section 4301(h) of the Code, in that as
4 described in paragraph 13, Respondent used alcohol in a dangerous or injurious manner.

5
6 FIFTH CAUSE FOR DISCIPLINE

7 (Conviction of Alcohol or Drug-Involved Crimes)

8 15. Respondent is subject to discipline under section 4301(k) of the Code, in that, as
9 described in paragraphs 11 and 13 above, Respondent was convicted of more than one
10 misdemeanor involving the use or consumption of an alcoholic beverage or a dangerous drug.

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12 SIXTH CAUSE FOR DISCIPLINE

13 (Unprofessional Conduct)

14 16. Respondent is subject to discipline under section 4301 of the Code in that, as
15 described in paragraphs 11-15 above, Respondent engaged in unprofessional conduct.

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22 PRAYER

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

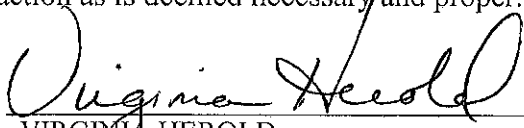
25 1. Revoking or suspending Pharmacy Technician License Number TCH 33678, issued to
26 Kelly Jean Kennedy (Respondent);

27 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
28 enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 5/17/14



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

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