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8 Executive Officer, Board of Pharmacy,
State of California*

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

12 In the Matter of the Accusation Against:

Case No. 5269

13 **MICHAEL JOHN KYGER**
14 **1686 Landmark Way**
15 **Beaumont, CA 92223**

A C C U S A T I O N

16 **Pharmacy Technician Registration No. TCH**
134738

17 Respondent.

18
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 August 30, 2013, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 134738 to Michael John Kyger (Respondent). The Pharmacy
25 Technician Registration was in full force and effect at all times relevant to the charges brought
26 herein and expired on November 30, 2014.

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1 **JURISDICTION**

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

5 4. Section 4300, subdivision (a) of the Code states that "Every license may be revoked
6 or suspended."

7 5. Section 4300.1 of the Code states:

8 The expiration, cancellation, forfeiture, or suspension of a board-
9 issued license by operation of law or by order or decision of the
10 board or a court of law, the placement of a license on a retired
11 status, or the voluntary surrender of a license by a licensee shall
12 not deprive the board of jurisdiction to commence or proceed with
any investigation of, or action or disciplinary proceeding against,
the licensee or to render a decision suspending or revoking the
license.

13 **STATUTORY PROVISIONS**

14 6. Section 4301 of the Code states:

15 The board shall take action against any holder of a license who is
16 guilty of unprofessional conduct or whose license has been
17 procured by fraud or misrepresentation or issued by mistake.
Unprofessional conduct shall include, but is not limited to, any of
the following:

18

19 (i) Except as otherwise authorized by law, knowingly selling,
20 furnishing, giving away, or administering or offering to sell,
furnish, give away, or administer any controlled substance to an
addict.

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

23

24 7. Section 11752.1, subsection (j), of the Health and Safety Code states:

25 "Drug abuser" means anyone who has a problem related to the
26 consumption of illicit, illegal, legal, or prescription drugs or over-
the-counter medications in a manner other than prescribed, whether
27 or not it is of a periodic or continuing nature. This definition
includes, but is not limited to, persons referred to as "drug addicts."
28 The drug-consumption-related problems of these persons may be
evidenced by substantial impairment to the person's physical,
mental, or social well-being, which impairment adversely affects
his or her abilities to function in the community.

1 **DRUG**

2 8. MDMA is a Schedule II controlled substance as designated by Health and Safety
3 Code section 11055, subsection (d)(2), and a dangerous drug pursuant to Code section 4022.

4 **COST RECOVERY**

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

9 **FIRST CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct – Furnishing a Controlled Substance to an Addict)**

11 10. Respondent is subject to disciplinary action under section 4301 in that Respondent
12 was unlawfully in possession of Methylenedioxymethamphetamine (MDMA) on January 26,
13 2014. The circumstances are as follows:

14 11. On or about January 26, 2014, a Palm Springs police officer stopped and spoke to
15 Respondent and his boyfriend, JL, at the Desert Lodge motel in Palm Springs, California. During
16 this conversation, the police officer learned that both Respondent and JL were staying in the same
17 room at the hotel and that JL was on felony probation out of Riverside County Superior Court.
18 The officer conducted a probation compliance search of the room in accordance with JL's
19 probationary terms. JL had previously plead guilty and was currently on felony probation for the
20 offense of possession of MDMA at the time of this incident.

21 12. The officer searched the room and found a laptop computer bag without any
22 identifying information. The officer found a black plastic case in an outer zipper pocket of the
23 bag, which contained a clear plastic baggie that further contained a white crystalline substance,
24 which the officer suspected might be MDMA. The officer then placed the these items back in the
25 outside zipper pocket of the laptop computer bag and walked back outside of the hotel room to
26 ask both Respondent and JL to whom the laptop computer bag belonged to.

27 13. Respondent immediately stated that the computer laptop bag and its contents
28 belonged to him. The officer removed the black case from the computer laptop bag and

1 Respondent stated that the case also belonged to him. When the officer removed the clear plastic
2 baggie with the white powdery substance from the black plastic case, Respondent then stated that
3 the baggie was not his and that someone must have placed it there without his knowledge.

4 14. Respondent was placed under arrest for violating Health and Safety Code section
5 11377, subsection (a), unlawful possession of a controlled substance. At the station, the officer
6 tested the white powdery substance and it presumptively tested positive for MDMA. The baggie
7 weighed 0.5 grams.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Unprofessional Conduct – Possession of a Controlled Substance)**

10 15. Respondent is subject to disciplinary action under section 4301, subsection (i), in that
11 Respondent furnished MDMA to JL, an addict, on January 26, 2014. The circumstances are set
12 forth in paragraphs 11 through 14, which are incorporated herein by this reference, and as
13 follows:

14 a. Respondent's boyfriend, JL, is a drug abuser to whom Respondent furnished or
15 otherwise made MDMA available.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Unprofessional Conduct – Possession of a Controlled Substance)**

18 16. Respondent is subject to disciplinary action under section 4301, subsection (J), in
19 that Respondent unlawfully possessed MDMA on January 26, 2014. The circumstances are set
20 forth in paragraphs 11 through 14, which are incorporated herein by this reference, and as
21 follows:

22 a. Respondent was in possession of MDMA, a dangerous drug, on January 26, 2014.

23 b. Respondent was in possession of MDMA, in violation of Health and Safety Code
24 section 11377, subsection (a), on January 26, 2014.

25 c. Respondent was in possession of MDMA, in violation of United States Code section
26 841, subsection (a), on January 26, 2014.

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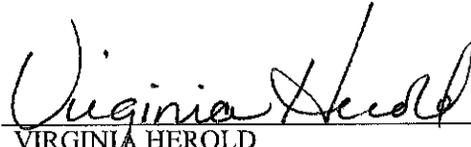
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PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 134738, issued to Michael John Kyger;
2. Ordering Michael John Kyger to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: 5/21/15


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

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