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7

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

11 In the Matter of the Accusation Against:

Case No. 5340

12 **RENE MICHELLE FRANKS**
5620 Willow View Dr.
13 Camarillo, CA 93012

A C C U S A T I O N

14 Pharmacy Technician Registration No.
TCH 122763

15 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 (Board).
21 2. On or about July 31, 2012, the Board issued Pharmacy Technician Registration No.
22 TCH 122763 to Rene Michelle Franks (Respondent). The Pharmacy Technician Registration
23 expired on July 31, 2014, and has not been renewed.

24 **JURISDICTION**

- 25 3. This Accusation is brought before the Board under the authority of the following
26 laws. All section references are to the Business and Professions Code (Code) unless otherwise
27 indicated.
28 4. Section 118, subdivision (b), of the Code provides that the suspension, expiration,

1 surrender, cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
2 disciplinary action during the period within which the license may be renewed, restored, reissued
3 or reinstated.

4 5. Section 4011 of the Code provides that "[t]he board shall administer and enforce this
5 chapter [Pharmacy Law, (Business and Professions Code, Sec 4000 et seq.)] and the Uniform
6 Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and
7 Safety Code). "

8 6. Section 4300, subdivision (a), of the Code states, in pertinent part, that "[e]very
9 license issued may be suspended or revoked."

10 7. Section 4300.1 of the Code states, in pertinent part:

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

16 STATUTORY PROVISIONS

17 8. Section 490 of the Code states, in pertinent part:

18 "(a) In addition to any other action that a board is permitted to take against a licensee, a
19 board may suspend or revoke a license on the ground that the licensee has been convicted of a
20 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
21 or profession for which the license was issued.

22 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
23 discipline a licensee for conviction of a crime that is independent of the authority granted under
24 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
25 of the business or profession for which the licensee's license was issued.

26 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
27 conviction following a plea of nolo contendere. Any action that a board is permitted to take
28 following the establishment of a conviction may be taken when the time for appeal has elapsed,

1 or the judgment of conviction has been affirmed on appeal, or when an order granting probation
2 is made suspending the imposition of sentence, irrespective of a subsequent order under the
3 provisions of Section 1203.4 of the Penal Code.

4 "(d) The Legislature hereby finds and declares that the application of this section has been
5 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th
6 554, and that the holding in that case has placed a significant number of statutes and regulations
7 in question, resulting in potential harm to the consumers of California from licensees who have
8 been convicted of crimes. Therefore, the Legislature finds and declares that this section
9 establishes an independent basis for a board to impose discipline upon a licensee, and that the
10 amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session do not
11 constitute a change to, but rather are declaratory of, existing law."

12 9. Section 492 of the Code states, in pertinent part:

13 "Notwithstanding any other provision of law, successful completion of any diversion
14 program under the Penal Code, or successful completion of an alcohol and drug problem
15 assessment program under Article 5 (commencing with Section 23249.50) of Chapter 12 of
16 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2
17 (commencing with Section 500) of this code, or any initiative act referred to in that division, from
18 taking disciplinary action against a licensee or from denying a license for professional
19 misconduct, notwithstanding that evidence of that misconduct may be recorded in a record
20 pertaining to an arrest."

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

24 10. Section 4060 of the Code states, in pertinent part:

25 "No person shall possess any controlled substance, except that furnished to a person upon
26 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic
27 doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
28 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a

1 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
2 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
3 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
4 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
5 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
6 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
7 labeled with the name and address of the supplier or producer.”

8 11. Section 4301 of the Code states, in pertinent part:

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

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

16

17 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous
18 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
19 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
20 to the extent that the use impairs the ability of the person to conduct with safety to the public the
21 practice authorized by the license.

22

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

25 "(k) The conviction of more than one misdemeanor or any felony involving the use,
26 consumption, or self-administration of any dangerous drug or alcoholic beverage, or any
27 combination of those substances.

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

18

19 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
20 violation of or conspiring to violate any provision or term of this chapter or of the applicable
21 federal and state laws and regulations governing pharmacy, including regulations established by
22 the board or by any other state or federal regulatory agency.

23 "(p) Actions or conduct that would have warranted denial of a license. . . ."

24 REGULATORY PROVISION

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

26 "For the purpose of denial, suspension, or revocation of a personal or facility license
27 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
28 crime or act shall be considered substantially related to the qualifications, functions or duties of a

1 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
2 licensee or registrant to perform the functions authorized by his license or registration in a
3 manner consistent with the public health, safety, or welfare."

4 **COST RECOVERY**

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

9 **CONTROLLED SUBSTANCE / DANGEROUS DRUG**

10 14. Amphetamine is a Scheduled II controlled substance pursuant to Health and Safety
11 Code section 11055, subdivision (d)(1), and a dangerous drug pursuant to section 4022 of the
12 Code.

13 15. Benzodiazepine is a Schedule IV controlled substance pursuant to Health and Safety
14 Code section 11057, subdivision (d), and a dangerous drug pursuant to section 4022 of the Code.

15
16 16. Clonazepam, also known as Klonopin, is a Schedule IV controlled substance pursuant
17 to Health and Safety Code section 11057, subdivision (d)(7), and a dangerous drug pursuant to
18 section 4022 of the Code.

19 17. Dilaudid is a trade name for Hydromorphone and an Opium derivative. It a Schedule
20 II Controlled Substance pursuant to Health and Safety Code section 11055, subdivision (b)(1),
21 and a dangerous drug pursuant section 4022 of the Code.

22 18. Enalapril is a dangerous drugs pursuant to section 4022 of the Code.

23 19. Gabapentin, a generic name for Neurontin, is a dangerous drug pursuant to section
24 4022 of the Code.

25 20. Heroin, a semisynthetic drug derived from morphine, is a Schedule I controlled
26 substance pursuant to Health and Safety Code section 11054, subdivision (c)(11).

27 21. Marijuana, hashish and tetrahydrocannabinols (concentrated marijuana) are
28 hallucinogenic Schedule I controlled substances under State and federal law. (§11054, subds.

1 (d)(13) and (20); 21 U.S.C. § 812.) Marijuana is also a dangerous drug as defined in Business
2 and Professions Code section 4022. Possession of a controlled substance is illegal under federal
3 law (21 U.S.C. § 844), and the Pharmacy Law (Bus. & Prof. Code, § 4000 et seq.) prohibits a
4 person from possessing any controlled substance without a valid prescription. (Bus. & Prof.
5 Code, § 4060.)

6 22. Methadone, a synthetic opiate, is a Schedule II controlled substance pursuant to
7 Health and Safety Code section 11055, subdivision (c)(14), and a dangerous drug pursuant to
8 section 4022 of the Code.

9 23. Methamphetamine is a Schedule II controlled substance pursuant to Health and
10 Safety Code section 11055, subdivision (d)(2), and a dangerous drug pursuant section 4022 of the
11 Code.

12 24. Methylenedioxymethamphetamine (MDMA), having the street name of "ecstasy," is
13 a Schedule I controlled substance pursuant to Health and Safety Code sections 11054, subdivision
14 (d), and 11401 [the Analog Act].

15 25. Opiates are Schedule I controlled substances pursuant to Health and Safety Code
16 section 11054, subdivisions (a) and (b), and a dangerous drug pursuant to section 4022 of the
17 Code.

18 26. Suboxone, the brand name of buprenorphine and naloxone, is a Schedule IV
19 controlled substance pursuant to Health and Safety Code section 11058, subdivision (d), and a
20 dangerous drug pursuant to section 4022 of the Code.

21 27. Toprol, a brand name for metoprolol, is a dangerous drug pursuant to section 4022 of
22 the Code.

23 28. Vicodin is the trade names for the narcotic substance hydrocodone or
24 dihydrocodeinone with the non-narcotic substance acetaminophen. It is a Schedule III controlled
25 substance pursuant to Health and Safety Code section 11056, subdivision (e)(4), and a dangerous
26 drug pursuant to section 4022 of the Code.

27 29. Xanax, a brand name for alprazolam, is a Schedule IV controlled substance pursuant
28 to Health and Safety Code section 11057, subdivision (d)(1), and a dangerous drug pursuant to

1 section 4022 of the Code.

2 **FIRST CAUSE FOR DISCIPLINE**

3 **(Convictions of Substantially Related Crimes)**

4 30. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision
5 (l), in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent
6 was convicted of crimes substantially related to qualifications, functions, or duties of a licensee or
7 registrant which to a substantial degree evidence her present or potential unfitness to perform the
8 functions authorized by her license or registration in a manner consistent with the public health,
9 safety, or welfare, as follow:

10 a. On or about May 7, 2014, after pleading guilty, Respondent was convicted of one
11 misdemeanor count of violating Health and Safety Code section 11550, subdivision (a) [under the
12 influence of a controlled substance, to wit, cocaine/opiates/methamphetamine/PCP, or a
13 combination thereof] in the criminal proceeding entitled *The People of the State of California v.*
14 *Rene Franks* (Super. Ct. Ventura County, 2014, No. 2014005112). On or about July 7, 2014, the
15 Court terminated the Deferred Entry of Judgment, placed Respondent on 36 months Proposition
16 36 probation, and ordered her to attend a drug program and an AIDS class.

17 b. The circumstances underlying the conviction are that on or about February 17, 2014,
18 Ventura County Sheriff's Department officers contacted Respondent in a vehicle and observed
19 that she was showing signs and symptoms of being under the influence of a controlled substance.
20 Respondent admitted to using methamphetamine. An officer found a glass pipe with a white
21 residue in Respondent's purse. Respondent's blood test revealed presence of methamphetamine
22 and amphetamine.

23 c. On or about May 7, 2014, after pleading guilty, Respondent was convicted of one
24 misdemeanor count of violating Health and Safety Code section 11550, subdivision (a) [under the
25 influence of a controlled substance, to wit, cocaine/opiates/methamphetamine/PCP, or a
26 combination thereof] in the criminal proceeding entitled *The People of the State of California v.*
27 *Rene Franks* (Super. Ct. Ventura County, 2014, No. 2014006750). On or about July 7, 2014, the
28 Court terminated the Deferred Entry of Judgment, placed Respondent on 36 months Proposition

1 36 probation, and ordered her to attend a drug program and an AIDS class.

2 d. The circumstances underlying the conviction are that on or about March 3, 2014,
3 Respondent dropped her friend off at a Ventura County jail and fell asleep in its lobby. An
4 officer contacted Respondent and observed that she was showing signs and symptoms of being
5 under the influence of a controlled substance. Respondent requested the officer to get her cellular
6 phone from her vehicle, and informed the officer that syringes containing Heroin and “balloons of
7 Heroin” were in her vehicle. Subsequently, the officer recovered four syringes containing
8 Heroin, two spoons, a pill crusher, a glass pipe, a small weight scale with Heroin residue, a bottle
9 containing one Xanax tablet, methamphetamine, Heroin, and marijuana, and another bottle
10 containing tablets of Suboxone, Gabapentin, Methadone, Torprol, Vicodin, and Enalapril, all
11 without valid prescriptions. Respondent subsequently tested positive for opiates,
12 benzodiazepines, methamphetamine, MDMA (Ecstasy), and amphetamines.

13 e. On or about June 16, 2014, after pleading guilty, Respondent was convicted of one
14 felony count of violating Health and Safety Code section 11350, subdivision (a) [possession of a
15 controlled substance] in the criminal proceeding entitled *The People of the State of California v.*
16 *Rene Michelle Franks* (Super. Ct. Ventura County, 2014, No. 2014016105). The Court placed
17 Respondent on 36 months formal Proposition 36 probation, ordered her to register as a narcotic
18 offender, and ordered her to enroll in a drug program and an AIDS class. On or about November
19 6, 2014, the Court ordered the felony count reduced to a misdemeanor count.

20 f. The circumstances underlying the conviction are that on or about May 25, 2014,
21 Ventura County Sheriff’s Department officers conducted a probation compliance check at
22 Respondent’s boyfriend’s residence. An officer contacted Respondent when she answered the
23 door. The officer found two spoons with Heroin residue and Respondent admitted that she was
24 trying to scrape enough Heroin together to get a “hit.” Another officer found a syringe containing
25 Heroin that Respondent admitted was hers.

26 g. On or about May 27, 2015, after pleading guilty, Respondent was convicted of one
27 lesser misdemeanor count of violating Health and Safety Code section 11350, subdivision (a)
28 [possession of a controlled substance] in the criminal proceeding entitled *The People of the State*

1 *of California v. Rene Michelle Franks* (Super. Ct. Ventura County, 2015, No. 2014030767). The
2 Court sentenced Respondent to 34 days in jail, placed her on 36 months probation with terms and
3 conditions, and ordered her to pay fines.

4 h. The circumstances underlying the conviction are that on or about October 6, 2014,
5 Ventura County Sheriff's Department officers responded to Respondent being under the influence
6 at a Wendy's Restaurant's restroom. When Respondent exited the restroom, an officer searched
7 her and found two empty syringes, a syringe containing Heroin, a spoon with burned residue, and
8 a container with six tablets: Dilaudid and Clonazepam, without valid prescriptions. Respondent
9 showed signs and symptoms of a person under the influence of a controlled substance.
10 Respondent subsequently tested positive of Methamphetamine and Opiates.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Multiple Convictions Involving Use of Dangerous Drugs)**

13 31. Respondent is subject to disciplinary action under section 4301, subdivision (k), on
14 the grounds of unprofessional conduct, in that on or about May 7, 2014, Respondent has two
15 separate convictions, misdemeanor or felony, involving the use, consumption, or self-
16 administration of any dangerous drugs. Complainant refers to and by this reference incorporates
17 the allegations set for above paragraph 30, subparagraphs b and d, inclusive, as though set forth
18 fully.

19 **THIRD CAUSE FOR DISCIPLINE**

20 **(Unlawful Possession of Controlled Substances / Dangerous Drugs)**

21 32. Respondent is subject to disciplinary action under section 4301, subdivision (j), on
22 the grounds of unprofessional conduct, for violating Code section 4060, in that Respondent
23 possessed multiple controlled substances and / or dangerous drugs without valid prescriptions, as
24 follows:

25 a. On or about May 10, 2014, a Ventura County Sheriff's Department officer checked a
26 parked vehicle in a parking lot that belong to Respondent. The officer found two syringes
27 containing Heroin, a torn package containing Heroin and a glass ball pipe with white residue in
28 Respondent's vehicle. Respondent was subsequently arrested for possession of a controlled

1 substance without a valid prescription and drug paraphernalia.

2 b. On or about March 3, 2014, May 25, 2014 and October 6, 2014, Respondent
3 possessed multiple controlled substances and / or dangerous drugs without valid prescriptions.
4 Complainant refers to and by this reference incorporates the allegations set for above paragraph
5 30, subparagraphs d, f, and h, inclusive, as though set forth fully.

6 **FOURTH CAUSE FOR DISCIPLINE**

7 **(Dangerous Use of Controlled Substances / Dangerous Drugs)**

8 33. Respondent is subject to disciplinary action under Code section 4301, subdivision (h),
9 on the grounds of unprofessional conduct, for violating Code section 4060, in that Respondent
10 administered to herself controlled substances to the extent or in a manner as to be dangerous or
11 injurious to herself or others, as follows:

12 a. On or about July 2, 2014, Ventura County Sheriff's Department officers observed
13 Respondent lying on the ground in a shopping center parking lot. Respondent showed signs and
14 symptoms of a person under the influence of a controlled substance. Respondent admitted to
15 taking Heroin that morning with Methamphetamine. Respondent further admitted to injecting
16 Heroin. Respondent subsequently tested positive of opiates, benzodiazepines, Amphetamine, and
17 MDMA (Ecstasy).

18 b. On or about September 23, 2014, Ventura County Sheriff's Department officers
19 responded to a call of a suspicious vehicle at a gas station with two occupants inside with its
20 engine running. An officer contacted and woke Respondent. Respondent was showing signs and
21 symptoms of a person under the influence of a controlled substance. A subsequent blood test
22 revealed presence of opiates.

23 c. On or about February 17, 2014 and March 3, 2014, Respondent engaged in the
24 conduct described in paragraph 30, subparagraphs b and d.

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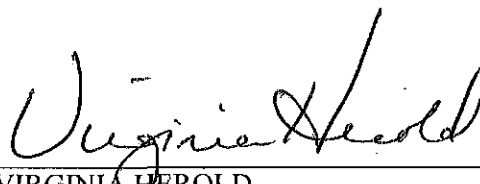
PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration No. TCH 122763, issued to Respondent;
2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3 of the Code; and
3. Taking such other and further action as deemed necessary and proper.

DATED: _____

7/13/15



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

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