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

11 In the Matter of the Accusation Against:

Case No. 5603

12 **LARRY LAMON KELLEY JR.**
13 **5116 W. Willis Street**
Fresno, CA 93722

A C C U S A T I O N

14 **Pharmacy Technician Registration No. TCH**
15 **144726**

16 Respondent.

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 ("Board"), Department of Consumer Affairs.
21 2. On or about December 3, 2014, the Board issued Pharmacy Technician Registration
22 Number TCH 144726 to Larry Lamon Kelley Jr. ("Respondent"). The pharmacy technician
23 registration was in full force and effect at all times relevant to the charges brought herein and will
24 expire on October 31, 2016, unless renewed.

25 **JURISDICTION/STATUTORY PROVISIONS**

- 26 3. This Accusation is brought before the Board under the authority of the following
27 laws. All section references are to the Business and Professions Code unless otherwise indicated.

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4. Section 4300 states, in pertinent part:

(a) Every license issued may be suspended or revoked.

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

(1) Suspending judgment.

(2) Placing him or her upon probation.

(3) Suspending his or her right to practice for a period not exceeding one year.

(4) Revoking his or her license.

(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper . . .

5. Section 4300.1 states:

The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall 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.

6. Section 4301 states, in pertinent part:

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.

....

(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 fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense

1 substantially related to the qualifications, functions, and duties of a licensee under this
2 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
3 contendere is deemed to be a conviction within the meaning of this provision. The
4 board may take action when the time for appeal has elapsed, or the judgment of
5 conviction has been affirmed on appeal or when an order granting probation is made
6 suspending the imposition of sentence, irrespective of a subsequent order under
7 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
8 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
9 dismissing the accusation, information, or indictment . . .

6 COST RECOVERY

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

11 FIRST CAUSE FOR DISCIPLINE

12 (Criminal Conviction)

13 8. Respondent is subject to disciplinary action pursuant to section 4301, subdivision (I),
14 in that on or about September 24, 2015, in the criminal proceeding entitled *People vs. Larry*
15 *Lamon Kelley Jr.* (Fresno County Super. Ct., Case No. F15903852), Respondent was convicted
16 on his plea of nolo contendere of violating Penal Code section 273d (infliction of corporal
17 punishment on a child), a felony, a crime substantially related to the qualifications, functions, and
18 duties of a pharmacy technician. On or about December 2, 2015, the imposition of Respondent's
19 sentence was suspended and Respondent was placed on probation for 3 years on terms and
20 conditions, including, among other things, that Respondent not have any unsupervised contact
21 with the victim and that Respondent complete 62 sessions of the Child Abuser Program. The
22 circumstances of the crime are set forth in paragraph 9 below.

23 9. On or about June 18, 2015, the 16 year old male victim went to his cousins' home
24 located in Fresno. Respondent and his brother and sister, D. and G., respectively, were at the
25 residence along with R. and her eight year old son, who were visiting Respondent. Respondent
26 saw the victim and the eight year old kissing, and told D. and G. Respondent got a tree branch
27 and gave it to G. G. told the victim to strip naked, then beat him repeatedly with the branch. The

28 ~~victim would not hold still, so Respondent and D. threw him onto the ground and held him down.~~

1 G. used an extension cord and whipped the victim repeatedly on his back, arms, buttocks, and
2 thighs as well as twice in the face. The victim was bleeding on his buttocks. The victim cried for
3 help and begged them to stop. The victim fought back and attempted to escape, but Respondent,
4 D. and G. refused to stop or allow the victim to leave. Respondent was subsequently arrested for
5 violating Penal Code sections 206 (torture), 236 (false imprisonment with violence), and 182,
6 subdivision (a)(1) (conspiracy to commit a crime), all felonies.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Acts Involving Moral Turpitude)**

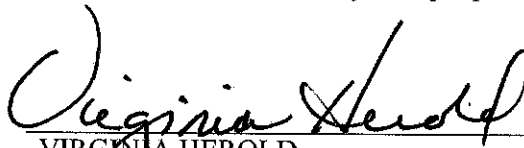
9 10. Respondent is subject to disciplinary action pursuant to section 4301, subdivision (f),
10 for unprofessional conduct, in that on or about June 18, 2015, Respondent committed an act
11 involving moral turpitude, as set forth above.

12 **PRAAYER**

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 144726,
16 issued to Larry Lamon Kelley Jr.;
- 17 2. Ordering Larry Lamon Kelley Jr. 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; and
- 20 3. Taking such other and further action as deemed necessary and proper.

21
22 DATED: 2/19/16


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

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28 SA2015106308