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

In the Matter of the Accusation Against:

KEVIN W. BEAN
113 San Leandro Street
Anaheim, CA 92807

Pharmacy Technician License No. TCH
44950

Respondent.

Case No. 3416

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about February 22, 2010, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 3416 against Kevin Bean (Respondent) before the Board of Pharmacy.
2. On or about October 22, 2002, the Board of Pharmacy (Board) issued Pharmacy Technician License No. TCH 44950 to Respondent. The License was in full force and effect at all times relevant to the charges brought herein, and will expire on December 31, 2011 if not renewed.
3. On or about February 26, 2010, Mona S. Sebastian, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation No. 3416, a Statement to Respondent, two copies of a form Notice of Defense, a Request for Discovery, and copies of Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of

1 record with the Board: 113 San Leandro Street, Anaheim, CA 92807. Copies of the Accusation
2 are attached as exhibit A, and are incorporated herein by reference.

3 4. Service of the Accusation was effective as a matter of law under the provisions of
4 Government Code section 11505, subdivision (c).

5 5. Government Code section 11506 states, in pertinent part:

6 (c) The respondent shall be entitled to a hearing on the merits if the respondent files a
7 notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation
8 not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's
9 right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

10 6. Respondent failed to file a Notice of Defense within 15 days after service upon him
11 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
12 3416.

13 7. California Government Code section 11520 states, in pertinent part:

14 (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the
15 agency may take action based upon the respondent's express admissions or upon other evidence
16 and affidavits may be used as evidence without any notice to respondent.

17 8. Pursuant to its authority under Government Code section 11520, the Board finds
18 Respondent is in default. The Board will take action without further hearing and, based on the
19 evidence on file herein, finds that the allegations in Accusation No. 3416 are true.

20 9. The total costs for investigation and enforcement in connection with the Accusation
21 are \$2,711.25 as of March 24, 2010.

22 DETERMINATION OF ISSUES

23 1. Based on the foregoing findings of fact, Respondent Kevin Bean has subjected his
24 Pharmacy Technician License No. TCH 44950 to discipline.

25 2. A copy of the Accusation is attached.

26 3. The agency has jurisdiction to adjudicate this case by default.

27 4. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
28 License based upon the following violations alleged in the Accusation:

- 1 a. Business and Professions Code sections 4301(f), (j), (l), (o) and 490 - criminal theft
2 conviction;
- 3 b. Business and Professions Code sections 4301(f), (j), (l), (o) and 490 - violation of
4 Penal Code section 148(l), resisting arrest conviction;
- 5 c. Business and Professions Code sections 4301 (f), (h), (j), (l), (o), and 490 - violation
6 of Health & Safety Code Section 11350(a), criminal conviction for possession of drugs – 3
7 convictions;
- 8 d. Business and Professions Code sections 4301 (f), (h), (j), (l), (o), and 490 - violation
9 of Vehicle Code Section 23152 (a), criminal conviction for DUI;
- 10 g. Business and Professions Code sections 4301 (f), (h), (j), (l), (o), and 490 - criminal
11 conviction for drunk in public; and
- 12 h. Business and Professions Code section 4301 (k) - multiple misdemeanor convictions
13 for drug/alcohol related acts.

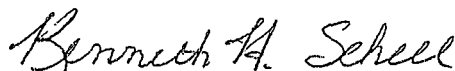
14 ORDER

15 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 44950, heretofore
16 issued to Respondent Kevin W. Bean, is revoked.

17 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
18 written motion requesting that the Decision be vacated and stating the grounds relied on within
19 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
20 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

21 This Decision shall become effective on June 23, 2010.

22 It is so ORDERED May 24, 2010.

23 

24 KENNETH H. SCHELL, BOARD PRESIDENT
25 FOR THE BOARD OF PHARMACY
26 DEPARTMENT OF CONSUMER AFFAIRS

27 Attachment: Exhibit A: Accusation No. 3416

28

Exhibit A
Accusation No. 3416

1 EDMUND G. BROWN JR.
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2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
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Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 3416

13 **KEVIN W. BEAN**
14 **113 San Leandro Street**
Anaheim, CA 92807
15 **Pharmacy Technician Registration No. TCH**
44950

ACCUSATION

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Virginia K. Herold (Complainant) brings this Accusation solely in her official
21 capacity as the Executive Officer of the Board of Pharmacy.

22 2. On or about December 22, 2002, the Board of Pharmacy (Board) issued Pharmacy
23 Technician Registration Number TCH 44950 to Kevin W. Bean (Respondent). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought
25 herein and will expire on December 31, 2011, unless renewed.

26 **JURISDICTION**

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

1 4. Section 118, subdivision (b), of the Code provides that the
2 suspension/expiration/surrender/cancellation of a license shall not deprive the Board of
3 jurisdiction to proceed with a disciplinary action during the period within which the license may
4 be renewed, restored, reissued or reinstated.

5 STATUTORY PROVISIONS

6 5. Section 4022 of the Code states

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

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

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

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

16 6. Section 4059 of the Code states, in pertinent part, that a person may not furnish any
17 dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,
18 veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any
19 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist,
20 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

21 7. Section 4060 of the Code states:

22 "No person shall possess any controlled substance, except that furnished to a person upon
23 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
24 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
25 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
26 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
27 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
28 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not

1 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
2 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
3 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
4 labeled with the name and address of the supplier or producer.

5 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a
6 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs
7 and devices."

8 8. Section 4300 of the Code states:

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

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

13 "(1) Suspending judgment.

14 "(2) Placing him or her upon probation.

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

16 "(4) Revoking his or her license.

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

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20 "(c) The proceedings under this article shall be conducted in accordance with Chapter 5
21 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board
22 shall have all the powers granted therein. The action shall be final, except that the propriety of
23 the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of
24 Civil Procedure."

25 9. Section 4301 of the Code states:

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

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"(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.

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

....

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

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

"(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 substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made

1 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
2 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
3 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
4 indictment.

5

6 "(o) Violating or attempting to violate, directly or indirectly, . . . any provision or term of
7 this chapter or of the applicable federal and state laws and regulations governing pharmacy,
8 including regulations established by the board or by any other state or federal regulatory agency.

9 10. Section 480 states, in pertinent part:

10 "(a) A board may deny a license regulated by this code on the grounds that the applicant has
11 one of the following:

12 "(1) Been convicted of a crime. A conviction within the meaning of this section
13 means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

14 Any action which a board is permitted to take following the establishment of a
15 conviction may be taken when the time for appeal has elapsed, or the judgment of
16 conviction has been affirmed on appeal, or when an order granting probation is made
17 suspending the imposition of sentence, irrespective of a subsequent order under the
18 provisions of Section 1203.4 of the Penal Code.

19

20 "(3) Done any act which if done by a licentiate of the business or profession in
21 question, would be grounds for suspension or revocation of license.

22 "The board may deny a license pursuant to this subdivision only if the crime or
23 act is substantially related to the qualifications, functions or duties of the business or
24 profession for which application is made.

25

26 "(c) A board may deny a license regulated by this code on the ground that the applicant
27 knowingly made a false statement of fact required to be revealed in the application for such
28 license."

1 11. Section 482 of the Code states:

2 "Each board under the provisions of this code shall develop criteria to evaluate the
3 rehabilitation of a person when:

4 "(a) Considering the denial of a license by the board under Section 480; or

5 "(b) Considering suspension or revocation of a license under Section 490.

6 "Each board shall take into account all competent evidence of rehabilitation furnished by
7 the applicant or licensee."

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

12 13. Section 493 of the Code states:

13 "Notwithstanding any other provision of law, in a proceeding conducted by a board within
14 the department pursuant to law to deny an application for a license or to suspend or revoke a
15 license or otherwise take disciplinary action against a person who holds a license, upon the
16 ground that the applicant or the licensee has been convicted of a crime substantially related to the
17 qualifications, functions, and duties of the licensee in question, the record of conviction of the
18 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
19 and the board may inquire into the circumstances surrounding the commission of the crime in
20 order to fix the degree of discipline or to determine if the conviction is substantially related to the
21 qualifications, functions, and duties of the licensee in question.

22 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
23 'registration.'"

24 14. California Code of Regulations, title 16, section 1769 sets forth the Criteria for
25 Rehabilitation as follow:

26 (a) When considering the denial of a facility or personal license under Section 480 of the
27 Business and Professions Code, the board, in evaluating the rehabilitation of the applicant and his
28 present eligibility for licensing or registration, will consider the following criteria:

1 (1) The nature and severity of the act(s) or offense(s) under consideration as grounds for
2 denial.

3 (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under
4 consideration as grounds for denial under Section 480 of the Business and Professions Code.

5 (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in
6 subdivision (1) or (2).

7 (4) Whether the applicant has complied with any terms of parole, probation, restitution or
8 any other sanctions lawfully imposed against the applicant.

9 (5) Evidence, if any, of rehabilitation submitted by the applicant.

10 (b) When considering the suspension or revocation of a facility or a personal license on the
11 ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating
12 the rehabilitation of such person and his present eligibility for a license will consider the
13 following criteria:

14 (1) Nature and severity of the act(s) or offense(s).

15 (2) Total criminal record.

16 (3) The time that has elapsed since commission of the act(s) or offense(s).

17 (4) Whether the licensee has complied with all terms of parole, probation, restitution or any
18 other sanctions lawfully imposed against the licensee.

19 (5) Evidence, if any, of rehabilitation submitted by the licensee.

20 15. California Code of Regulations, title 16, section 1770, entitled Substantial
21 Relationship Criteria, states as follows:

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

28

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

5 17. Health and Safety Code section 11350 provides:

6 (a) Except as otherwise provided in this division, every person who possesses (1) any
7 controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of
8 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or
9 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section
10 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic
11 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian
12 licensed to practice in this state, shall be punished by imprisonment in the state prison.

13 DRUGS DEFINED

14 18. Lorcet, Norco, Vicodin, the brand name for Hydrocodone and acetaminophen, is a
15 Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4),
16 and is a dangerous drug pursuant to Code section 4022. Lorcet is used to treat pain.

17 FIRST CAUSE FOR DISCIPLINE

18 (January 19, 2000-Criminal Theft Conviction for Arrest on December 11, 1999)

19 19. Respondent is subject to disciplinary action under section 4301 (f), (j), (l), (o), and
20 490, in that on January 19, 2000, Respondent pled guilty to a violation of Penal Code section
21 484(a), petty theft, a misdemeanor, for taking property from Robinson-May Company, in *People*
22 *of the State of California v. Kevin William Bean*, Orange County Superior Court Case No.
23 BR00NM00621, as a result he was sentenced to pay fines and restitution and placed on three
24 years criminal probation.

25 SECOND CAUSE FOR DISCIPLINE

26 (January 10, 2006-Resisting Arrest Conviction for Arrest on November 4, 2005)

27 20. Respondent is subject to disciplinary action under section 4301 (f), (j), (l), (o), and
28 490, in that on January 10, 2006, Respondent pled guilty to a violation of Penal Code section

1 148(a)(1), for resisting arrest or obstructing a peace officer, when Respondent was ordered by a
2 Garden Grove Police Officer to stop his car and to step out, but Respondent sped off and evaded
3 the police. *In People of the State of California v. Kevin William Bean*, Orange County Superior
4 West Justice Center, Court Case No. 06WM00115; Respondent pled guilty on January 10, 2006
5 to resisting arrest/obstruction and was sentenced to pay fines and restitution and placed on three
6 years criminal probation.

7 THIRD CAUSE FOR DISCIPLINE

8 (September 20, 2006-Criminal Conviction for Possession of Drugs on June 23, 2006)

9 21. Respondent is subject to disciplinary action under section 4301 (f), (h), (j), (l), (o),
10 and 490, in that on September 20, 2006, Respondent pled guilty to a violation of Health & Safety
11 Code Section 11350(a), possession of controlled substances for possession of Vicodin and
12 Codeine. *In People of the State of California v. Kevin William Bean*, Orange County Superior
13 North Justice Center, Court Case No. 06NF2688, as a result Respondent's prior probation was
14 revoked and Respondent was order to serve 94 days in jail, and he was terminated from his drug
15 treatment program pursuant to Penal Code section 1210, and his criminal probation was extended.

16 FOURTH CAUSE FOR DISCIPLINE

17 (December 8, 2008-Criminal Conviction for Possession of Drugs on May 20, 2007)

18 22. Respondent is subject to disciplinary action under section 4301 (f), (h), (j), (l), (o),
19 and 490, in that on May 20, 2007, Respondent pled guilty to a violation of Health & Safety Code
20 Section 11364, possession for sale of controlled substance, an opium pipe. *In People of the State*
21 *of California v. Kevin William Bean*, Orange County Superior North Justice Center, Court Case
22 No. 07NM08963, as a result this case was consolidated with Case No. 06NF2688 for purposes of
23 sentencing.

24 FIFTH CAUSE FOR DISCIPLINE

25 (December 8, 2008-Criminal Conviction for Possession of Drugs on November 16, 2007)

26 23. Respondent is subject to disciplinary action under section 4301 (f), (h), (j), (l), (o),
27 and 490, in that on November 16, 2007, Respondent pled guilty to a violation of Health & Safety
28 Code Section 11350, possession for sale of controlled substance, Ethax, and for unlawful

1 possession of controlled substances without a valid prescription. *In People of the State of*
2 *California v. Kevin William Bean*, Orange County Superior North Justice Center, Court Case No.
3 07NF4475, as a result Respondent's prior probation was revoked and Respondent was order to
4 serve one year in jail, and his criminal probation was extended.

5 SIXTH CAUSE FOR DISCIPLINE

6 (December 8, 2008-Criminal Conviction for DUI on November 1, 2008)

7 24. Respondent is subject to disciplinary action under section 4301 (f), (h), (j), (l), (o),
8 and 490, in that on December 8, 2008, Respondent pled guilty to a violation of Vehicle Code
9 Section 23152(a), driving under the influence of alcohol or drugs, *In People of the State of*
10 *California v. Kevin William Bean*, Orange County Superior North Justice Center, Court Case No.
11 08NM14972, as a result Respondent was placed on three years probation, ordered to pay fines
12 and attend the first offender program.

13 SEVENTH CAUSE FOR DISCIPLINE

14 (Criminal Conviction for Drunk in Public October 27, 2009)

15 25. Respondent is subject to disciplinary action under section 4301 (f), (h), (j), (l), (o),
16 and 490, in that on October 27, 2009, Respondent was arrested by the Anaheim Police
17 Department early in the morning, unconscious behind the wheel of his vehicle, while he was still
18 on probation for his prior December 8, 2008 DUI conviction.

19 EIGHTH CAUSE FOR DISCIPLINE

20 (Multiple Misdemeanor Convictions for Drug/Alcohol Related Acts)

21 26. Respondent is subject to disciplinary action under section 4301 (k), as set forth in
22 causes for discipline two, three, four, five, six and seven, all of which arose out of multiple
23 misdemeanor convictions related to self administration of drugs and/or alcohol by Respondent.

24 PRAYER

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

27 1. Revoking or suspending Pharmacy Technician Registration Number TCH 44950,
28 issued to Kevin W. Bean;

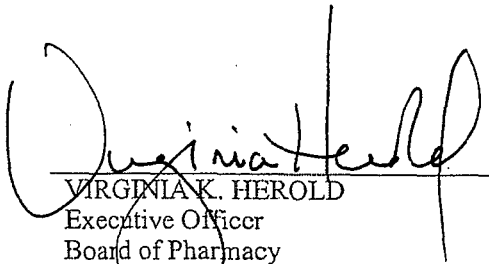
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2. Ordering Kevin W. Bean to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED:

2/22/10



VIRGINIA K. HEROLD
Executive Officer
Board of Pharmacy
State of California
Complainant

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accusation.rtf