

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

In the Matter of the Accusation Against:

DIANNA M. KIM
759 8TH Ave
San Diego, CA 92101

Case No. 3434

OAH No. 2010091113

Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as its Decision in the above-entitled matter.

This decision shall become effective on April 27, 2011.

IT IS SO ORDERED March 28, 2011.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STANLEY WEISSER
Board President

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

In the Matter of the Accusation Against:

DIANNA MIKYUNG KIM,

Respondent.

Case No. 3434

OAH No. 2010091113

PROPOSED DECISION

The hearing on the above-captioned matter took place on November 18, 2010, before Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings. Complainant was represented by Susan Melton Wilson, Deputy Attorney General. Respondent appeared and represented herself. Evidence was received, the case was argued, and the matter was submitted for decision on the hearing date.

During the hearing, Complainant moved to amend the First Amended Accusation, which motion was granted. Therefore, on page 7, line 14, the word "incompetent" was amended to read "competent" and on line 15, the word "but" was added in place of the word "and."

After the case was submitted for decision, Respondent sent a letter to the ALJ, which was received on November 19, 2010. That letter is hereby identified as Exhibit B. Because the ALJ was concerned that Complainant's counsel had not read the letter, he ordered the record re-opened, said order issuing on December 13, 2010. Ms. Wilson was given until December 20, 2010 to respond to the letter.

On December 20, 2010, Ms. Wilson did make a response, entitled "Hearsay Objection By Complainant to Document Submitted By Respondent Post-Hearing," which is marked as Exhibit 16. While Complainant objected to Respondent's letter, she did acknowledge that it could be received as "administrative hearsay." Therefore, Exhibit B will be received for those purposes, and to the extent it constitutes Respondent's argument of the case.

The matter was deemed submitted for decision again on December 20, 2010.

The Administrative Law Judge (ALJ) hereby makes his factual findings, legal conclusions, and orders.

FACTUAL FINDINGS

The Parties

1. Complainant Virginia Herold filed the Accusation in the above-captioned matter while acting in her official capacity as Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

2. Respondent Diane Mikyung Kim is licensed by the Board as a Registered Pharmacist, holding license number RPH 54036. She has been so licensed since October 2002. There is no prior record of discipline.

Respondent's Criminal Record

3. Respondent has suffered two convictions, one in 2004, and one in 2005. Her first conviction was entered against her on November 3, 2004, in the Superior Court of California, County of Orange, in case number 04WM11036. In that case, Respondent was convicted, on her plea of guilty, of misdemeanor trespassing in violation of Penal Code section 602, subdivision (o).

4. The facts and circumstances of the 2004 conviction are that Respondent was seen by police to be driving in the parking lot of a psychiatric facility, described as a "lock down" type of facility. She had previously been told by the facility staff that she was not to come there, and the arresting officer had warned her on an earlier occasion not to go to the facility.

5. The court fined Respondent \$50, plus penalty assessments and restitution fines, totaling \$272.50, which she paid the day of her hearing.

6. The second conviction was for a misdemeanor violation of Penal Code section 476a, subdivision (a), attempting to pass a worthless check. That conviction was also entered in the Orange County Superior Court, in case number 05NM09244, on September 5, 2005.¹

¹ In the Accusation, it is alleged that Respondent was convicted of misdemeanor burglary in violation of Penal Code section 459, and the court docket indicates that Respondent pled guilty to that crime. However, the docket thereafter shows that that plea was set aside by the court, nunc pro tunc, and that charge (set out in count 2 of the criminal complaint) was dismissed. At the same time, the People's dismissal of count 1, the bad check charge, was also set aside nunc pro tunc, and a plea of guilty entered on that charge by the court. (Ex. 10, at p. 2 of 9 of the docket report.) Those nunc pro tunc orders were made in October 2006.

7. Respondent's second conviction was the result of her attempt to pay a bill at a hotel in Anaheim, California, with a worthless check, and her previous use of worthless checks to pay for lodging at another hotel. Specifically, in August 2005 Respondent stayed at a Radisson Hotel on two different nights, each time paying for her room, in advance, with a bad check. When the hotel manager later learned that the checks were not good, he told Respondent she could no longer stay at the hotel. Respondent took the position with the manager that it was the hotel's fault for allowing her to stay. She then walked across the street to another hotel, the Coast Hotel, and gave that hotel a bad check so she could stay there on the evening of August 23, 2005. Just after she obtained a room at the Coast Hotel, an employee of the Radisson called staff there and warned them of Kim's empty bank account. After police were summoned, they learned that Respondent was already overdrawn by \$3,000 and that her bank was no longer accepting Respondent's checks. Respondent told police that her aunt and uncle put money in the account for her, but that they must not have done so for awhile. It was reasonably clear, however, that she knew there was no money in her account.

8. In the second matter, imposition of sentence was suspended, and Respondent placed on three years informal probation, on various terms and conditions, including that she serve 20 days in custody, with credit for 15 days. She was required to make restitution and to pay various fines, penalties, and fees, and ordered not to have a checking account. Other terms and conditions, standard to probation grants were also imposed.

9. (A) Respondent has had other contact with law enforcement since her second conviction. In 2009 Respondent was arrested for making false bomb report to an official, in violation of Penal Code section 148.1, subdivision (a), after admitting to police that she had called the Los Angeles Police Department in June 2009, and claimed that a chemical terrorist attack would be made on the Glendale Galleria, a large shopping mall.

(B) After her arrest, Respondent was incarcerated, and the Superior Court ordered that she undergo a mental competence evaluation. In March 2010, the court found she was competent to stand trial, but the People moved to dismiss the case in the interests of justice.

(C) In May 2008, Respondent was detained because she was found on property owned by the Walt Disney Corporation, even though she had been repeatedly told she was not welcome there. However, no prosecution resulted from her actions.

10. In February 2006, the Superior Court revoked the probation that it granted in the 2005 case involving the bad checks, because Respondent had not made restitution. At a hearing held on July 24, 2006, Respondent admitted she had violated probation, which was reinstated, on terms and conditions. The probation was

again revoked, in August 2007, for failure to pay fees and restitution. However, at a hearing held on January 15, 2009; the court permanently stayed payment of the fees and restitution due to Respondent's inability to work. The record does not reveal the current status of her probation.

Respondent's Mental Health Problems

11. In November 2009, Complainant filed a petition to obtain a psychiatric examination of Respondent, pursuant to section 820 of the Business and Professions Code.² That petition was granted, and in April 2010, Respondent was ordered to undergo a psychiatric examination. Dr. Timothy Botello, a psychiatrist who is Medical Director of the University of Southern California Institute of Psychiatry, Law and Behavioral Science (USC Institute), was appointed to examine Respondent.

12. The filing of the Petition was triggered by bizarre e-mails sent to the Board by Respondent, which indicated that she was suffering from some sort of mental illness. For example, on July 20, 2009, she sent the Board a rambling and disjointed e-mail, apparently in response to an e-mail from the Board that pertained to renewal of her license. A few excerpts from the message follow, to illustrate its tenor:

I have experiences U.S. medical doctors stalking me without a reason. They seem to have a beautiful mind. Many times I reported to the Hemet Superior Court, LAPD, and Scripps Hospital in San Diego [list of persons omitted].

They come inside my shelter (New Image Emergency Shelter) had have relationships with the securities (sic) and staff. All of them, if I am sleeping, use illegal drugs & prescription drugs and beat me, rape me, eat me (inside and outside of my body), cut my body (inside and outside my body), and cut my hair. . . .

U.S. doctors and their friends (including pharmacists) have personal feelings toward me yet they can not express themselves in these manner. These are illegal activities and I would like them to stop immediately. The can not stop, then, U.S. Medical Board and U.S. Pharmacy Board must stop them.

This is not a joke children are playing. If they can not accept the reality, they are criminals. This is a federal offense

² All further statutory references are to the Business and Professions Code unless otherwise noted.

and they will be locked up for a long time. Their addiction to drugs, alcohol, and sex is not relevant to this case.

I would like your cooperation.

...

P.S. . . . They are targeting him [her brother, who she claims is a newscaster in Los Angeles] as well as David Ono (KABC Eyewitness News Anchor).³ I see thirty cars chasing me and my younger brother Rob. This is Koreatown conspiracy?

(Ex. 6, Declaration of Coyne; the excerpt is found at page 1 of Exhibit A to that declaration. The original was typed entirely in upper case.)

13. (A) The July 20, 2010 e-mail to the Board was not the only communication that raised concerns among Board staff. Respondent had also sent an e-mail to Pfizer, the large pharmaceutical manufacture. That e-mail, also part of Exhibit A to Ms. Coyne's declaration, rambles on about the pharmacist's licensing examination, how she suffered constant verbal abuse, her desire to become a real estate agent because "they" stole her house and all its contents from her, and how she needs help from Pfizer.

(B) Other examples of less-than-coherent e-mails to the Board are found as exhibits to Ms. Coyne's declaration, such as one written to the Board regarding the mental health examination ordered by the Superior Court, claiming that medical or psychiatric staff had some personal motive against her, because someone knew someone who had gone to high school with Respondent. (See e-mail dated October 18, 2010, p. 2 thereof.)

(C) Even a lay person reading the e-mails would have serious concerns about Respondent's mental health, and her ability to practice one of the healing arts, where one miscue by the licensee could lead to serious bodily harm. Board staff, considering the communications in the context of Respondent's behavior that led to her convictions and other contacts with law enforcement, plainly had reason for concern.

14. In compliance with the Board's order, Respondent was examined by Dr. Botello and his colleague Philip C. O'Donnell, M.J., Ph.D., a Senior Fellow in

³ There is no way to verify if the sportscaster she identifies as her brother—Rob Fukuzaki—is actually her brother, but in Dr. Botello's report, it is stated that she has one sibling, a 39-year-old brother named David Kim. Dr. Botello also reports that Respondent was apparently infatuated with Mr. Ono, based on posts she had made to an internet article. (Ex. 8, p. 3-4.)

Forensic Psychology at the USC Institute. Dr. O'Donnell's supervisor, Shoba Sreenivasan, Ph.D., a Clinical Professor of Psychiatry at the USC Institute was also involved with the evaluation of Respondent.

15. Respondent cooperated in the process, going to the USC Institute on May 13 and 21, 2010. She underwent approximately four and one-half hours of interviews and testing. She met with Dr. Botello and Dr. O'Donnell.

16. Dr. Botello and Dr. O'Donnell agreed that Respondent appears to suffer from a serious psychotic illness, most likely Schizophrenia, Paranoid Type. Critical to this proceeding, the two mental health professionals agreed that she is unable to practice safely as a result of her psychotic delusions, which involve paranoid and persecutory themes. Further, her history of bizarre and erratic behavior, her denial of mental problems, and her lack of connection to mental health services further support the opinion that she is unable to practice safely.

17. Dr. Botello and his colleagues were of the opinion that Respondent did not then pose an imminent danger to herself or others, but her mental illness did place her at an elevated risk of harming herself or others, compared to other women of her age. Further, they were of the opinion that she requires psychiatric treatment including antipsychotic medication management and psychotherapeutic interventions. However, there was a low prospect of her obtaining such help in light of her "persistent denial of mental problems." (Ex. 5, at p.3 of Botello declaration, line 10.)

18. Dr. Botello's report expands on the opinions cited above. He points out that Respondent was guarded in all of her communications with Dr. Botello and the others who assessed her, refusing to provide personal information that might provide further insight into her condition. Such behavior supported the opinions that her prognosis was poor, in that it indicated she will not accept help for her condition, and that it would be difficult to plan therapy.

19. Dr. Botello's opinions were supported by information Dr. O'Donnell obtained from a doctor who treated Respondent during her incarceration, when she was being evaluated by the Superior Court. That psychiatrist, Dr. Velarde, described her as "very paranoid, suspicious and guarded" during her confinement, refusing to provide access to outside providers or family so that information could be obtained. (Ex. 8, p. 5.) She made bizarre claims, such as her belief that she had scratch marks all over her body, when none could be seen by staff; that she had a hole in her head, and that her skin had become so thin she could see the bones in her hands. She claimed to have had a romantic relationship with the brother of another staff psychiatrist, and accused that person of conspiring to have her confined. (*Id.*)

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Respondent's Defense

20. Respondent testified at the hearing in this matter. She attested that she is not currently employed, and she was living in San Diego at the time of the hearing. She last worked as a pharmacist in 2009.

21. Respondent denied that she suffers from a mental illness, though she did assert that she had been the victim of abuse by her adoptive parents. The fact that she was found competent to stand trial in March 2010 (in the matter of the false bomb threat) was offered as proof that she does not suffer from a mental illness.

22. Respondent asserted that various police officers had made false statements against her, and she claimed that in one of her brushes with the law a female police officer sexually harassed her by touching Respondent's buttocks. Regarding her conviction for passing a bad check, Respondent claimed that she intended to clear up the negative balance in her checking account, and had no intent to pass a bad check.

23. In the course of her cross-examination, Respondent acknowledged that she had not held any job as a pharmacist for longer than four months, and many such jobs were held for a much shorter time. She noted physical ailments, such as stomach pain, led to her leaving some positions, and otherwise stated, in a rambling way, that she is a competent pharmacist but that "circumstances" have not allowed her to work full time.

24. The letter that Respondent sent to the ALJ the day after the hearing, Exhibit B, does little to support Respondent's case, while accusing the Board and Complainant's attorney of "discrimination, perjury, unprofessional and unethical conducts and misconducts (serious negligence in their conducts-believed to involve illegal drugs/alcoholism/psychological illnesses (including eating disorder & bipolar depression) of individuals, unprofessional relationships, and incompetency" (Ex. B, p. 1. All spelling and punctuation as in the original.)

Costs

25. The Board has incurred costs of \$19,135 in the investigation and prosecution of this matter. However, Respondent has no ability to pay any part of the costs at this time or in the foreseeable future.

Other Findings Necessary for Resolution of the Case

26. It is clear that Respondent suffers from serious mental illness, so debilitating that she can not safely practice her profession. It is also clear that she is unlikely to be sufficiently healed of her mental illness in the foreseeable future. There is no evidence that a probation program would assist her in practicing her profession without endangering the public.

27. While there is evidence that Respondent's mental health problems contributed to her conviction for trespassing, that is less clear when the matter of the bad checks is concerned. There is no evidence that her paranoia drove her to utter the worthless documents. To be sure, the other incidents involving law enforcement appear related to her mental health problems, but ultimately, her conviction for passing the bad checks must be found to be substantially related to the duties, qualifications, and functions of a pharmacist, especially because her second conviction implies dishonest conduct on her part.

LEGAL CONCLUSIONS

1. Cause exists to revoke the registered pharmacist's license issued to Respondent Diane M. Kim pursuant to sections 822 and 4300 because her ability to practice as a pharmacist safely has been and is impaired by mental illness, to the extent that she may be a danger to the public. This Conclusion is based on Factual Findings 1 through 24, 26 and 27.

2. Cause exists to revoke the registered pharmacist's license issued to Respondent Diane M. Kim pursuant to sections 822 and 4301, subdivision (b) because her ability to practice as a pharmacist safely has been and is impaired by mental illness, which mental illness has made her incompetent. This Conclusion is based on Factual Findings 1 through 24, 26 and 27.

3. Cause exists to revoke the registered pharmacist's license issued to Respondent Diane M. Kim pursuant to sections 490, 4300, and 4301, subdivisions (f), (l), (o), and (p), for her conviction of a crime substantially related to the duties, qualifications, and functions of a pharmacist, based on Factual Findings 6, 7, 8, and 27.

4. The Board is entitled to recover its costs of investigation and prosecution pursuant to section 125.3, based on Legal Conclusions 1 through 3, and each of them. However, given Respondent's long unemployment and impecunious status, and the prognosis for recovery, no costs should be awarded. (See *Zuckerman v. State Board of Chiropractic Examiners*, (2002) 29 Cal.4th 32, 45 [an agency must consider the licensee's ability to pay costs].)

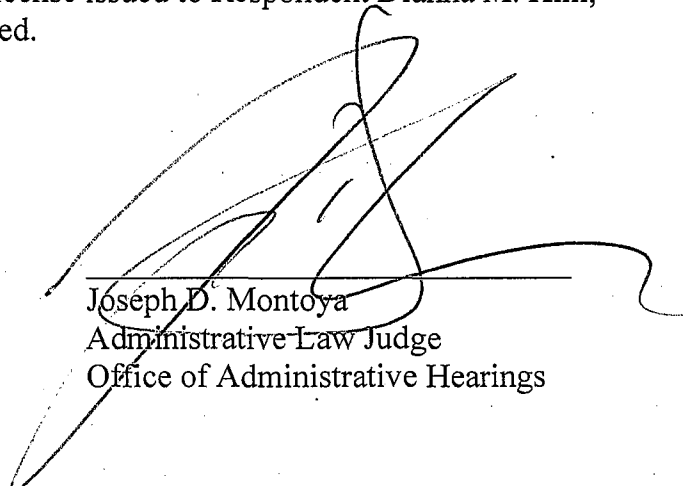
5. The purpose of hearings of this type is to protect the public, and not to punish an errant licensee. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 784-786; *Bryce v. Board of Medical Quality Assurance* (1986) 184 Cal.App.3d 1471, 1476.) The Board is obligated to place public protection ahead of a licensee's rehabilitation. (§ 4313.) To be sure, Respondent can not show rehabilitation at this time; she won't acknowledge that she suffers from serious debilitating mental illness, and therefore can not take the first step toward managing that illness. While that may be another manifestation of the disease, the Board can

not allow her to practice, where some paranoid delusion might cause her to make a serious error in her practice, leading to harm. In all the circumstances, the Board has no choice but to revoke Respondent's license.

ORDER

The registered pharmacist's license issued to Respondent Dianna M. Kim, number RPH 54036, is hereby revoked.

February 16, 2011



Joseph D. Montoya
Administrative Law Judge
Office of Administrative Hearings

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7 *Attorneys for Complainant*

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

11 In the Matter of the First Amended Accusation
Against:
12 **DIANNA MIKYUNG KIM**
813 East 4th Place
13 Los Angeles, CA 90013
14 Alternate Address:
15 759 8th Avenue
San Diego, CA 92101
16
17 **Registered Pharmacist License No. RPH**
54036
18
19 Respondent.

Case No. 3434

**FIRST AMENDED
ACCUSATION**

20 Complainant alleges:

21 **PARTIES**

- 22 1. Virginia Herold (Complainant) brings this First Amended Accusation solely in her
23 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer
24 Affairs.
- 25 2. On or about October 29, 2002, the Board of Pharmacy issued Registered Pharmacist
26 License Number RPH 54036 to Dianna Mikyung Kim (Respondent). The Registered Pharmacist
27 License was in full force and effect at all times relevant to the charges brought herein and will
28 expire on July 31, 2012, unless renewed.

JURISDICTION

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3. The original Accusation in this matter was filed on August 31, 2009 and duly served to Respondent, who filed her timely Notice of Defense.

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

5. Section 4300 permits the Board to take disciplinary action to suspend or revoke a license issued by the Board.

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:

...

(b) Incompetence

...

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

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

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

....

7. Section 820 states:

“Whenever it appears that any person holding a license, certificate or permit under this division or under any initiative act referred to in this division may be unable to practice his or her profession safely because the licentiate's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made available to the licentiate and may be received as direct evidence in proceedings conducted pursuant to Section 822.

8. Section 822 states:

“If a licensing agency determines that its licentiate's ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods:

- (a) Revoking the licentiate's certificate or license.
- (b) Suspending the licentiate's right to practice.
- (c) Placing the licentiate on probation.
- (d) Taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper.

The licensing agency shall not reinstate a revoked or suspended certificate or license until it has received competent evidence of the absence or control of the condition which caused its action and until it is satisfied that with due regard for the public health and safety the person's right to practice his or her profession may be safely reinstated.”

9. Section 490 states:

“A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the

1 establishment of a conviction may be taken when the time for appeal has elapsed, or the
2 judgment of conviction has been affirmed on appeal, or when an order granting probation is
made suspending the imposition of sentence, irrespective of a subsequent order under the
provisions of Section 1203.4 of the Penal Code."

3 10. California Code of Regulations, title 16, section 1770, states:

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

10 11. Business and Professions Code section 125.3, subdivision (a), states, in pertinent part:

11 "Except as otherwise provided by law, in any order issued in resolution of a disciplinary
12 proceeding before any board within the department . . . the board may request the
13 administrative law judge to direct a licensee found to have committed a violation or
14 violations of the licensing act to pay a sum not to exceed the reasonable costs of the
15 investigation and enforcement of the case."

16 FIRST CAUSE FOR DISCIPLINE

17 (Ability to Practice Safely Impaired Due to Mental Illness)

18 12. Respondent is subject to disciplinary action under Business and Professions Code
19 sections 4300 and 822, based on findings reported to the Board in and about July of 2010,
20 following a psychiatric examination conducted pursuant to the Board's Order issued under
21 Business and Professions Code section 820, to the effect that Respondent is mentally ill to the
22 extent that her condition affects her ability to safely conduct practice as a pharmacist. The
23 circumstances are as follows:

24 a. On or about November 24, 2009 Complainant filed a petition pursuant Business and
25 Professions Code section 820, based on a concern that Respondent may be mentally ill to the
26 extent that her condition affects her ability to safely conduct practice as a pharmacist.

27 b. On or about April 12, 2009, the Board granted Complainant's petition, and issued an
28 order to compel a psychiatric evaluation of Respondent. Shortly thereafter, Dr. Timothy Botello, a
psychiatrist and Medical Director of the University of Southern California Institute of Psychiatry,
Law and Behavioral Science (USC Institute), at the University of Southern California's Keck
School of Medicine was appointed to complete a psychological examination of Respondent.

1 c. Respondent was cooperative with the Board's Order, and presented herself on several
2 dates in May of 2010, for interview, examination and testing at USC Institute.

3 d. The resulting evaluation, documented in a 12 page report ("Report"), delivered to the
4 Board on or about July 7, 2010, found that Respondent has serious psychotic illness, with a poor
5 long-term prognosis due to "her completed denial of any mental health problems and her rejection
6 of psychiatric treatment."

7 e. Regarding the specific issue of "(Whether) the licensee's ability to safely practice
8 pharmacy impaired due to a mental or physical illness?", the Report states as follows:

9 *"Ms. Kim is unable to safely practice pharmacy as a result of her
10 psychotic delusions, which involve paranoid and persecutory themes, her history of
11 bizarre and erratic behavior, her denial of mental problems, and her lack of
12 connection to mental health services."*

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Incompetence Due to Mental Illness)**

14 13. Respondent is subject to disciplinary action for incompetence under Business and
15 Professions Code section 4300, in conjunction with sections 822 and 4301 subdivision "(b)", in
16 that Respondent does not at present have the qualifications, ability or fitness to perform or
17 conduct the duties and functions of a licensed pharmacist, based on findings reported to the Board
18 in and about July of 2010, following compelled psychiatric examination of Respondent conducted
19 pursuant to Business and Professions Code section 820, as described in paragraph 12, above.

20 **THIRD CAUSE FOR DISCIPLINE**

21 **(Conviction of Substantially Related Crimes)**

22 14. Respondent is subject to disciplinary action under Business and Professions Code
23 section 4300 and section 4301, subdivisions (f), (l), (o), and (p), in conjunction with Business and
24 Professions Code section 490, on the grounds of unprofessional conduct, as defined in California
25 Code of Regulations, title 16, section 1770, in that Respondent has been convicted of multiple
26 crimes and/or acts substantially related to the qualifications, functions or duties of a pharmacist,
27 as follows:

28 ///

1 **TRESPASSING (2004)**

2 a. On or about November 3, 2004, Respondent was convicted on a plea of guilty,
3 of one count of violating section 602(o) of the Penal Code, a misdemeanor, (trespassing), in the
4 Superior Court of Orange County, West Justice Center, Case No. 04WM11036, entitled *The*
5 *People of the State of California v. Diana Mikyung Kim.*

6 b. The circumstances surrounding the conviction are that on or about October 4,
7 2004, Respondent was observed by Westminster police driving into the parking lot of a 'locked
8 down' psychiatric hospital after being told multiple times that she was not welcome at the
9 facility. Respondent had previously been ordered off the property by Westminster police and
10 advised of the trespassing laws. Respondent acknowledged that she was not supposed to be
11 present at the location. She was subsequently arrested for trespassing.

12 **BURGLARY (2005)**

13 c. On or about September 2, 2005, Respondent was convicted on a plea of guilty,
14 to one count of violating section 459 of the Penal Code, a misdemeanor, (burglary), in the
15 Superior Court of Orange County, North Justice Center, Case No. 05NM09244, entitled *The*
16 *People of the State of California v. Diana Mikyung Kim.*

17 d. The circumstances surrounding the conviction are that on or about August 21-
18 23, 2005 Respondent wrote a checks to the Radisson Hotel in Anaheim, Ca. and the Coast Hotel
19 in Anaheim, Ca., but did not have enough funds in her account to pay her room bill. Anaheim
20 police officers spoke to a representative from Washington Mutual Bank where Respondent's
21 checking account was held and learned that Respondent's account was overdrawn by \$3,000.00
22 and that the Bank was no longer accepting Respondent's personal checks.

23 **OTHER MATTERS**

24 15. To determine the degree of penalty to be imposed on Respondent, if any,
25 Complainant makes the following additional allegations:

26 **False Report of Chemical Terrorist Attack – Summer 2009**

27 a. On or about June 24, 2009, at approximately 9:46 a.m., a 911 dispatcher
28 employed with the Los Angeles Police Department received a telephone call where a female

1 reported that "A chemical terrorist attack will be made on the Glendale Galleria." The caller then
2 hung up.

3 b. Investigators determined that the call originated from Respondent's cell phone
4 number, and in or about September of 2009, when Police Department officers spoke with
5 Respondent, she admitted that she had called 911 falsely reporting a chemical terrorist attack and
6 also admitted that she had made over twenty such calls.

7 c. Respondent was arrested on September 22, 2009 and charged in the Superior
8 Court of Los Angeles County, Glendale Courthouse, Case No. 9GN03869, entitled *The People of*
9 *the State of California v. Diana Kim* with making the false report (False Bomb Report to an
10 Official) under Penal Code section 148.1(A). Respondent was incarcerated at Century Regional
11 Detention Facility, and ordered to undergo evaluation for mental competence pursuant to Penal
12 Code section 1368.

13 d. On or about March 3, 2010, a Los Angeles County Superior Court Judge found
14 Respondent mentally incompetent within the meaning of Penal Code section 1368 to stand trial
15 for criminal charges resulting from the false report incident, and the case was then dismissed on
16 the people's motion in the interest of justice. Respondent was released from the Century Regional
17 Detention Facility on or about March 5, 2010.

18 **Detention for Trespass at Walt Disney Corporation – Spring 2008**

19 e. On or about May 24, 2008, Respondent was detained by Glendale Police
20 Department officers, following a complaint by security personnel at Walt Disney Corporation
21 headquarters in Glendale. Over a two week period preceding the complaint, Respondent had
22 continued to make unwanted visits and contacts, despite being told that she was no longer
23 welcome on the property. Officers spoke to Respondent, who became angry and "yelled
24 incoherently." After checking her identification, the officers discovered an outstanding arrest
25 warrant related to a case pending in Orange County and took her into custody. No criminal
26 charges resulted from the alleged trespass.

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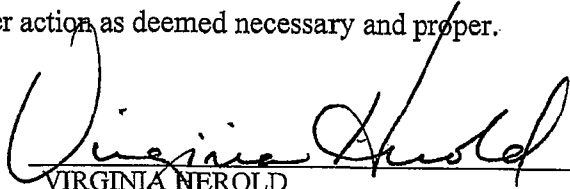
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PRAYER

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 Registered Pharmacist License Number RPH 54036, issued to Dianna Mikyung Kim;
2. Ordering Dianna Mikyung Kim 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: 10/11/10



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

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7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 3434

12 **DIANNA MIKYUNG KIM**
13 **4680 San Fernando Rd.**
Glendale, CA 91204

ACCUSATION

14 **And**

15 **17050 San Mateo St., Apt. #C**
Fountain Valley, Ca. 92788

16 **And**

17 **P. O. Box 10013**
18 **Glendale, Ca. 91209**

19 **And**

20 **31639 Bunkers Way**
21 **Temecula, Ca. 92591**

22 **Registered Pharmacist License No. RPH**
54036

23 Respondent.

25 Complainant alleges:

26 **PARTIES**

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

1 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
2 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
3 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
4 of this provision. The board may take action when the time for appeal has elapsed, or the
5 judgment of 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 Section 1203.4 of
7 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
8 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
9 indictment.

10

....

11

“(o) Violating or attempting to violate, directly or indirectly, or assisting in or
12 abetting the violation of or conspiring to violate any provision or term of this chapter or of the
13 applicable federal and state laws and regulations governing pharmacy, including regulations
14 established by the board.

15

“(p) Actions or conduct that would have warranted denial of a license.”

16

7. Section 118, subdivision (b) states:

17

“The suspension, expiration, or forfeiture by operation of law of a license
18 issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the
19 board or by order of a court of law, or its surrender without the written consent of the board, shall
20 not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the
21 board of its authority to institute or continue a disciplinary proceeding against the licensee upon
22 any ground provided by law or to enter an order suspending or revoking the license or otherwise
23 taking disciplinary action against the licensee on any such ground.”

24

8. Section 490 states:

25

“A board may suspend or revoke a license on the ground that the licensee has
26 been convicted of a crime, if the crime is substantially related to the qualifications, functions, or
27 duties of the business or profession for which the license was issued. A conviction within the
28 meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo

1 contendere. Any action which a board is permitted to take following the establishment of a
2 conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has
3 been affirmed on appeal, or when an order granting probation is made suspending the imposition
4 of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal
5 Code."

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

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

13 10. Business and Professions Code section 125.3, subdivision (a), states, in pertinent part:

14 "Except as otherwise provided by law, in any order issued in resolution of a
15 disciplinary proceeding before any board within the department . . . the board may request the
16 administrative law judge to direct a licentiate found to have committed a violation or violations of
17 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
18 enforcement of the case."

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(Conviction of Substantially Related Crimes)**

21 11. Respondent is subject to disciplinary action under Business and Professions Code
22 section 4300 and section 4301, subdivisions (f), (l), (o), and (p), in conjunction with Business and
23 Professions Code section 490, on the grounds of unprofessional conduct, as defined in California
24 Code of Regulations, title 16, section 1770, in that Respondent was convicted of crimes and/or
25 acts substantially related to the qualifications, functions or duties of a pharmacist. The
26 circumstances are as follows:

27 a. On or about November 3, 2004, Respondent was convicted on a plea of
28 guilty, to one count of violating section 602(o) of the Penal Code, a misdemeanor, (trespassing),

1 in the Superior Court of Orange County, West Justice Center, Case No. 04WM11036, entitled
2 *The People of the State of California v. Diana Mikyung Kim*.

3 b. The circumstances surrounding the conviction are that on or about October 4,
4 2004, Respondent was observed by Westminster police driving into the parking lot of a locked
5 down psychiatric hospital after being told multiple times that she was not welcome at the facility.
6 Respondent had previously been ordered off the property by Westminster police and advised of
7 the trespassing laws. Respondent acknowledged that she was not supposed to be present at the
8 location. She was subsequently arrested for trespassing.

9 c. On or about September 2, 2005, Respondent was convicted on a plea of
10 guilty, to one count of violating section 459 of the Penal Code, a misdemeanor, (burglary), in the
11 Superior Court of Orange County, North Justice Center, Case No. 05NM09244, entitled *The*
12 *People of the State of California v. Diana Mikyung Kim*.

13 d. The circumstances surrounding the conviction are that on or about August
14 21-23, 2005 Respondent wrote a check to the Radisson Hotel in Anaheim, Ca. and the Coast
15 Hotel in Anaheim, Ca. which did not have enough funds in the account to pay the room bill.
16 Anaheim police officers spoke to a representative from Washington Mutual Bank where
17 Respondent's checking account was held and learned that Respondent's account was overdrawn
18 by \$3000.00 and that the Bank was no longer accepting Respondent's personal checks.

19 e. On or about May 24, 2008, Respondent was arrested by the Glendale
20 (California) Police Department for violating Vehicle Code section 40508(a), a misdemeanor,
21 (Failure to Appear/Written Promise to Appear). The case is currently pending against
22 Respondent.

23 f. The circumstances surrounding the arrest are that on or about May 24,
24 2008, Respondent was found trespassing at the Walt Disney Corporation headquarters in
25 Glendale. Respondent was acting bizarrely and was admonished by Disney security personnel
26 that she is no longer welcome on Disney property. Officers discovered a warrant for her arrest out
27 of a case pending in Orange County and arrested Respondent for the outstanding warrant.
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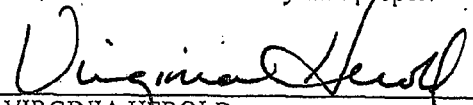
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PRAYER

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

DATED: 8/31/09



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

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