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

In the Matter of the Accusation Against:
KRISTIAN MICHELLE KLIMAN
25058 Babbling Brook Circle
Menifee, CA 92584
Pharmacy Technician Registration
No. TCH 125321

Respondent.

Case No. 4520
DEFAULT DECISION AND ORDER
[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about March 1, 2013, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4520 against Kristian Michelle Kliman (Respondent) before the Board of Pharmacy. (The Accusation is attached as Exhibit A.)
2. On or about August 2, 2012, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 125321 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 4520 and will expire on June 30, 2014, unless renewed.
3. On or about March 11, 2013, Respondent was served by Certified and First Class Mail copies of the Accusation No. 4520, Statement to Respondent, Notice of Defense, Request

1 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
2 11507:7) at Respondent's address of record which, pursuant to Business and Professions Code
3 section 4100 and California Code of Regulations, title 16, section 1704, is required to be reported
4 and maintained with the Board. Respondent's address of record was and is:

5 25058 Babbling Brook Circle
6 Menifee, CA 92584

7 4. Service of the Accusation was effective as a matter of law under the provisions of
8 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
9 124.

10 5. On or about March 22, 2013, the aforementioned documents were returned by the
11 U.S. Postal Service marked "Not Deliverable as Addressed -- Unable to Forward." The address
12 on the documents was the same as the address on file with the Board. Respondent failed to
13 maintain an updated address with the Board and the Board has made attempts to serve the
14 Respondent at the address on file. Respondent has not made himself available for service and
15 therefore, has not availed himself of his right to file a notice of defense and appear at hearing.

16 6. Government Code section 11506 states, in pertinent part:

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

22 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
23 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
24 4520.

25 8. California Government Code section 11520 states, in pertinent part:

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

9. Pursuant to its authority under Government Code section 11520, the Board finds
Respondent is in default. The Board will take action without further hearing and, based on the

1 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
2 taking official notice of all the investigatory reports, exhibits and statements contained therein on
3 file at the Board's offices regarding the allegations contained in Accusation No. 4520, finds that
4 the charges and allegations in Accusation No. 4520, are separately and severally, found to be true
5 and correct by clear and convincing evidence.

6 10. Taking official notice of its own internal records, pursuant to Business and
7 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
8 and Enforcement is \$522.50 as of April 10, 2013.

9 **DETERMINATION OF ISSUES**

10 1. Based on the foregoing findings of fact, Respondent Kristian Michelle Kliman has
11 subjected his Pharmacy Technician Registration No. TCH 125321 to discipline.

12 2. The agency has jurisdiction to adjudicate this case by default.

13 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
14 Registration based upon the following violations alleged in the Accusation which are supported
15 by the Default Decision Investigatory Evidence Packet in this case:

16 a. Respondent has subjected his registration to disciplinary action under section
17 4301, subdivision (h) of the Code for unprofessional conduct in that on or about September 6,
18 2012, Respondent illegally used the controlled substance heroin in a manner as to be dangerous or
19 injurious to himself, to others, and to the public.

20 b. Respondent has subjected his registration to disciplinary action under section
21 4301, subdivision (j) of the Code for unprofessional conduct in that on or about September 6,
22 2012, Respondent violated Health and Safety Code section 11550, subdivision (a), under the
23 influence of a controlled substance, and Health and Safety Code section 11375, subdivision
24 (b)(2), unlawful possession of a controlled substance.

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ORDER

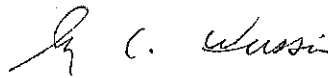
IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 125321, heretofore issued to Respondent Kristian Michelle Kliman, is revoked.

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

This Decision shall become effective on July 11, 2013.

It is so ORDERED ON June 11, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA


By _____
STANLEY C. WEISSER
Board President

DOJ Matter ID: SD2012704665

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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Attorneys for Complainant

8
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. 4520

13 **KRISTIAN MICHELLE KLIMAN**
14 **25058 Babbling Brook Circle**
Menifee, CA 92584

A C C U S A T I O N

15 **Pharmacy Technician Registration**
16 **No. TCH 125321**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about August 2, 2012, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 125321 to Kristian Michelle Kliman (Respondent). The Pharmacy
25 Technician Registration was in full force and effect at all times relevant to the charges brought
26 herein and will expire on June 30, 2014, unless renewed.

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1 **JURISDICTION**

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

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

7 5. Section 4300.1 of the Code states:

8 The expiration, cancellation, forfeiture, or suspension of a board-issued license
9 by operation of law or by order or decision of the board or a court of law, the
10 placement of a license on a retired status, or the voluntary surrender of a license by a
11 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.

12 **STATUTORY PROVISIONS**

13 6. Section 4301 of the Code states:

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

17

18 (h) The administering to oneself, of any controlled substance, or the use of any
19 dangerous drug or of alcoholic beverages to the extent or in a manner as to be
20 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.

21

22 (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.

23

24 7. Section 4022 of the Code states

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

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

28

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

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

7 COSTS

8 8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
9 administrative law judge to direct a licentiate found to have committed a violation or violations of
10 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
11 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
12 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
13 included in a stipulated settlement.

14 DRUGS

15 9. Heroin is a Schedule I controlled substance as designated by Health and Safety
16 Code section 11054, subdivision (c)(11), and is a dangerous drug pursuant to Business and
17 Professions Code section 4022.

18 10. Xanax, a brand name for alprazolam, is a Schedule IV controlled substance as
19 designated by Health and Safety Code section 11057, subdivision (d)(1), and is a dangerous drug
20 pursuant to Business and Professions Code section 4022.

21 FACTUAL ALLEGATIONS

22 11. On or about September 6, 2012, deputies from the Riverside County Sheriff's
23 Department assigned to the City of Temecula's Special Enforcement Team were conducting
24 proactive patrol. The deputies observed a vehicle with excessively tinted windows and no front
25 license plate. The deputies got behind the vehicle and activated their emergency lights. They
26 observed the vehicle swerving in its lane, until it finally pulled over after three or four blocks.
27 Based on their observations, the deputies believed that the occupants of the vehicle were
28 attempting to conceal items from law enforcement. Upon making contact with the driver of the
vehicle (Respondent's sister), they observed she appeared to be under the influence of a
controlled substance. Her two-year-old son was in the back seat. Respondent, who was in the

1 passenger seat, admitted to the deputies that he had a Xanax in his pocket. The deputies searched
2 Respondent and found a partial tablet of Xanax and a digital scale in his pockets. Respondent
3 told the deputies that he did not have a legal prescription for the Xanax, and that he possessed the
4 digital scale because he was going to pharmacy school. Respondent admitted to the deputies that
5 he had smoked heroin just before they were pulled over. Based on Respondent's objective
6 symptoms (constricted pupils, slow speech, brown tongue, and eyelid flutter), the deputies
7 believed Respondent was under the influence of a controlled substance. Respondent was arrested
8 and transported to the sheriff substation. After being *Mirandized*, Respondent told the deputies
9 that prior to being pulled over, he and his sister had smoked heroin using a piece of tin foil found
10 in the vehicle. Respondent further admitted that he had been using heroin off and on for about a
11 year and that he uses it about once a week.

12 12. As a result of the arrest, in a criminal proceeding entitled *People of the State of*
13 *California v. Kristian Michelle Kliman*, in Riverside County Superior Court, case number
14 SWM1206479, a complaint was filed on October 16, 2012, charging Respondent with violating
15 Health and Safety Code section 11550, subdivision (a), under the influence of a controlled
16 substance, and Health and Safety Code section 11375, subdivision (b)(2), unlawful possession of
17 a controlled substance, misdemeanors. Respondent failed to appear at his arraignment on October
18 18, 2012. The court issued a bench warrant which remains in effect.

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(Illegal Use of a Controlled Substance)**

21 13. Respondent has subjected his registration to disciplinary action under section 4301,
22 subdivision (h) of the Code for unprofessional conduct in that on or about September 6, 2012, as
23 described in paragraph 12, above, Respondent illegally used the controlled substance heroin in a
24 manner as to be dangerous or injurious to himself, to others, and to the public.

25 **SECOND CAUSE FOR DISCIPLINE**

26 **(Violation of State Laws Regulating Controlled Substances)**

27 14. Respondent has subjected his registration to disciplinary action under section 4301,
28 subdivision (j) of the Code for unprofessional conduct in that on or about September 6, 2012, as

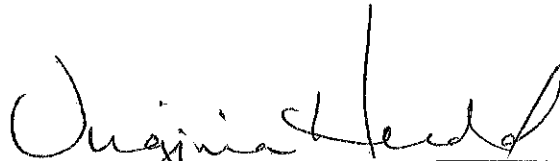
1 detailed in paragraph 12, above, Respondent violated Health and Safety Code section 11550,
2 subdivision (a), under the influence of a controlled substance, and Health and Safety Code section
3 11375, subdivision (b)(2), unlawful possession of a controlled substance.

4 **PRAYER**

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

- 7 1. Revoking or suspending Pharmacy Technician Registration Number TCH 125321,
8 issued to Kristian Michelle Kliman;
- 9 2. Ordering Kristian Michelle Kliman to pay the Board of Pharmacy the reasonable
10 costs of the investigation and enforcement of this case, pursuant to Business and Professions
11 Code section 125.3;
- 12 3. Taking such other and further action as deemed necessary and proper.

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14
15 DATED: 3/1/13



16 VIRGINIA HEROLD
17 Executive Officer
18 Board of Pharmacy
19 Department of Consumer Affairs
20 State of California
21 *Complainant*

22 SD2012704665

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