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

In the Matter of the Accusation Against:

**JENNIFER CLAIRE SHEWBART
aka JENNIFER C. MITCHELL
3409 Joanna Drive
Modesto, CA 95355**

**Pharmacy Technician Registration
No. TCH 109977**

Respondent.

Case No. 4555
DEFAULT DECISION AND ORDER
[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about November 4, 2013, Complainant Virginia Herold (“Complainant”), in her official capacity as the Executive Officer of the Board of Pharmacy (“Board”), Department of Consumer Affairs, filed Accusation No. 4555 against Jennifer Claire Shewbart, also known as Jennifer C. Mitchell (“Respondent”) before the Board. (A true and correct copy of the Accusation is attached hereto and marked Exhibit A.)

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1 2. On or about August 2, 2011, the Board issued Pharmacy Technician Registration No.
2 TCH 109977 to Respondent. The Pharmacy Technician Registration was in full force and effect
3 at all times relevant to the charges brought in Accusation No. 4555 and expired on August 31,
4 2013, without timely renewal. This lapse in licensure, however, pursuant to Business and
5 Professions Code section 4300.1 does not deprive the Board of its authority to institute or
6 continue this disciplinary proceeding.

7 3. On or about November 18, 2013, Respondent was served by Certified and First Class
8 Mail copies of the Accusation No. 4555, Statement to Respondent, Notice of Defense, Request
9 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
10 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
11 section 4100, is required to be reported and maintained with the Board. Respondent's address of
12 record was and is: 3409 Joanna Drive, Modesto, CA 95355.

13 4. Service of the Accusation was effective as a matter of law under the provisions of
14 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
15 124.

16 5. None of the aforementioned documents were returned by the U.S. Postal Service.

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

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

23 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
24 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 4555.

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
29 respondent.

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1 b. Respondent violated Code sections 4300 and 4301, subdivision (j), in that on or about
2 July 1, 2012, Respondent was in possession of Methamphetamine, a Schedule II controlled
3 substance, in violation of Health and Safety Code section 11377,¹ subdivision (a).

4 c. Respondent violated Code sections 4300 and 4301, subdivision (j), in that on or about
5 July 1, 2012, Respondent was in possession of a glass smoking pipe used for unlawfully smoking,
6 among other things, Methamphetamine, a Schedule II controlled substance, in violation of Health
7 and Safety Code section 1364.1,² subdivision (a).

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26 ¹ Paragraph 12, subpart a, of the Accusation, is amended by deleting "113771" and
27 substituting "11377."

28 ² Paragraph 12, subpart b, is hereby amended to delete "1364.1" and to substitute
"11364.1."

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ORDER

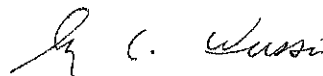
IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 109977, heretofore issued to Respondent Jennifer Claire Shewbart, is REVOKED.

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 March 27, 2014.

It is so ORDERED ON February 25, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____
STAN C. WEISSER
Board President

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Attachment:

Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 LESLIE A. BURGERMYER
Deputy Attorney General
4 State Bar No. 117576
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-5337
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:
12 **JENNIFER CLAIRE SHEWBART,**
a.k.a. JENNIFER C. MITCHELL
13 3409 Joanna Drive
Modesto, CA 95355
14 Pharmacy Technician Registration
15 No. TCH 109977
16 Respondent.

Case No. 4555

ACCUSATION

18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about August 2, 2011, the Board issued Pharmacy Technician Registration
24 Number TCH 109977 to Jennifer Claire Shewbart, also known as Jennifer C. Mitchell
25 ("Respondent"). The Pharmacy Technician Registration was in full force and effect at all times
26 relevant to the charges brought herein and expired on August 31, 2013, and has not been
27 renewed.

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1. **JURISDICTION**

2. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code ("Code") unless otherwise indicated.

3. Section 4300 of the Code 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. . . .

4. Section 4300.1, of the Code provides:

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.

20. **STATUTORY PROVISIONS**

5. Section 4301 of the Code 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:

(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.

(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

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

16 6. Section 490 of the Code states, in pertinent part:

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

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

27 (c) A conviction within the meaning of this section means a plea or verdict of
28 guilty or a conviction following a plea of nolo contendere. Any action that a board
is permitted to take following the establishment of a conviction may be taken 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 the provisions of Section 1203.4
of the Penal Code.

7. Health and Safety Code section 11377, subdivision (a), provides it is illegal to
possess a controlled substance without a lawful prescription and violators shall be punished.

8. Health and Safety Code section 11364.1, subdivision (a), provides it is illegal to
possess any device, contrivance, instrument, or paraphernalia used for unlawfully smoking a
controlled substance specified in Health and Safety Code section 11055, subdivision (d).

DRUG

9. **Methamphetamine** is a Schedule II controlled substance as designated in Health
and Safety Code section 11055, subdivision (d)(2).

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1 **COST RECOVERY**

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

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Conviction of Crime Substantially Related to Licensure)**

8 11. Respondent is subject to disciplinary action pursuant to Code sections 4300 and 4301,
9 subdivision (l), on the grounds of unprofessional conduct, in that on or about July 5, 2012, in the
10 case titled *People v. Jennifer Claire Shewbart*, Tuolumne County Case No. CRM38743,
11 Respondent pled guilty to violating Health and Welfare Code sections 11377, subdivision (a)
12 [possession of a controlled substance – methamphetamine], and 11364.1, subdivision (a)
13 [possession of smoking device for controlled substance], both misdemeanors. The underlying
14 circumstances are as follows:

15 a. On or about July 1, 2012, a Tuolumne County Sheriff Deputy observed
16 Respondent and her companion parked in Respondent's vehicle in the Sierra Rock area of
17 Jamestown, California. The officer contacted Respondent and observed she was very fidgety and
18 kept moving about the passenger side of her vehicle. The officer observed that Respondent spoke
19 rapidly and continually interrupted the officer and constantly moved when he questioned her.
20 The officer conducted a consent search of Respondent's vehicle whereupon he located a glass
21 smoking pipe and a small baggie containing a white crystalline substance. Respondent denied
22 knowledge of the pipe and substance and how they ended up in her vehicle. Based upon the
23 officer's training and experience, he suspected the substance to be Methamphetamine.
24 Respondent was arrested, given her Miranda rights, and transferred to the Sheriff's Office. The
25 officer weighed the baggie containing the substance, resulting in approximately 0.63 grams gross.
26 The officer also tested the substance, resulting in presumptive positive for Methamphetamine.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Violation of Laws Regulating Controlled Substances)**

3 12. Respondent is subject to disciplinary action pursuant to Code sections 4300 and 4301,
4 subdivision (j), on the grounds of unprofessional conduct, as follows:

5 a. On or about July 1, 2012, Respondent was in possession of Methamphetamine,
6 a Schedule II controlled substance, in violation of Health and Safety Code section 113771,
7 subdivision (a). The underlying circumstances are set forth in paragraph 11, subparagraph a,
8 above.

9 b. On or about July 1, 2012, Respondent was in possession of a glass smoking
10 pipe used for unlawfully smoking, among other things, Methamphetamine, a Schedule II
11 controlled substance, in violation of Health and Safety Code section 1364.1, subdivision (a). The
12 underlying circumstances are set forth in paragraph 11, subparagraph a, above.

13 **DISCIPLINARY CONSIDERATIONS**

14 13. In order to determine the level of discipline, Complainant submits the following for
15 consideration:

16 a. On or about October 6, 2004, Respondent was convicted on her guilty plea to
17 violating Vehicle Code section 23103 (reckless driving pursuant to Vehicle Code section
18 23103.5), a misdemeanor. Respondent was sentenced to three years summary probation,
19 including completion of a Driving Under the Influence ("DUI") First Offender Program or
20 Wet/Reckless Program, payment of fines and fees, and restitution.

21 b. On or about July 10, 2007, due to Respondent's multiple violations of probation
22 for her October 6, 2004, conviction, the Court revoked Respondent's probation and sentenced her
23 to serve 22 days in Jail.

24 **PRAYER**

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

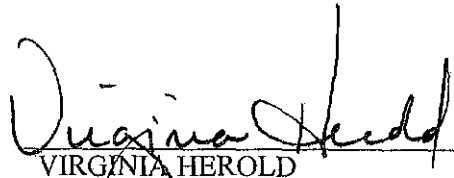
27 1. Revoking or suspending Pharmacy Technician Registration Number TCH 109977,
28 issued to Jennifer Claire Shewbart, also known as Jennifer C. Mitchell.

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2. Ordering Jennifer Claire Shewbart, also known as Jennifer C. Mitchell, 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: 11/4/13



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

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