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3 **BEFORE THE**
4 **BOARD OF PHARMACY**
5 **DEPARTMENT OF CONSUMER AFFAIRS**
6 **STATE OF CALIFORNIA**

7 In the Matter of the Accusation Against:

Case No. 4815

8 **KIMBERLY M. GAMBOA**
9 **1100 Holloway Avenue**
10 **San Francisco, CA 94806**

DEFAULT DECISION AND ORDER

11 **Pharmacy Technician Registration No. TCH**
12 **32909**

[Gov. Code, §11520]

13 Respondent.

14 FINDINGS OF FACT

15 1. On or about March 24, 2014, Complainant Virginia Herold, in her official capacity as
16 the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed
17 Accusation No. 4815 against Kimberly M. Gamboa (Respondent) before the Board of Pharmacy.
18 (Accusation attached as exhibit A.)

19 2. On or about April 5, 2000, the Board of Pharmacy (Board) issued Pharmacy
20 Technician Registration No. TCH 32909 to Respondent. The Pharmacy Technician Registration
21 was in full force and effect at all times relevant to the charges brought in Accusation No. 4815
22 and will expire on September 30, 2015, unless renewed.

23 3. On or about April 2, 2014, Respondent was served by Certified and First Class Mail
24 copies of the Accusation No. 4815, Statement to Respondent, Notice of Defense, Request for
25 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
26 Respondent's address of record which, pursuant to Business and Professions Code section 4100,
27 is required to be reported and maintained with the Board. Respondent's address of record was
28 and is: 1100 Holloway Avenue, San Francisco, CA 94806.

1 4. Service of the Accusation was effective as a matter of law under the provisions of
2 Government Code section 11505, subdivision (c), and/or Business & Professions Code section
3 124.

4 5. The certified mail receipt was signed and returned to my office, acknowledging
5 receipt of the Accusation and the accompanying documents.

6 6. Government Code section 11506, subdivision (c), states:

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

10 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
11 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 4815.

12 8. California Government Code section 11520, subdivision (a), states:

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

16 9. Pursuant to its authority under Government Code section 11520, the Board finds
17 Respondent is in default. The Board will take action without further hearing and, based on the
18 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
19 taking official notice of all the investigatory reports, exhibits, and statements on file at the Board's
20 offices regarding the allegations contained in Accusation No. 4815, finds that the charges and
21 allegations in Accusation No. 4815, are separately and severally, found to be true and correct by
22 clear and convincing evidence.

23 10. Taking official notice of its own internal records, pursuant to Business and
24 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
25 and Enforcement is \$2,245.00 as of April 23, 2014.

26 DETERMINATION OF ISSUES

27 1. Based on the foregoing findings of fact, Respondent Kimberly M. Gamboa has
28 subjected her Pharmacy Technician Registration No. TCH 32909 to discipline.

- 1 2. The agency has jurisdiction to adjudicate this case by default.
- 2 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
- 3 Registration based upon the following violations alleged in the Accusation that are supported by
- 4 the evidence contained in the Default Decision Evidence Packet in this case:
- 5 a. Convictions of crimes of moral turpitude (Code § 4301, subd. (f)) including three
- 6 misdemeanor counts of child endangerment (Pen. Code § 273a, subd. (b)), one felony count of
- 7 Corporal Injury to a Child (Pen. Code § 273d, subd. (a)), and one felony count of child abuse
- 8 (Pen. Code §273a, subd. (a)); and
- 9 b. Substantially related convictions. (Code § 4301, subd. (l), as defined by Cal. Code
- 10 Regs., tit. 16, § 1770.)

11 ORDER

12 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 32909, heretofore

13 issued to Respondent Kimberly M. Gamboa, is revoked.

14 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a

15 written motion requesting that the Decision be vacated and stating the grounds relied on within

16 seven (7) days after service of the Decision on Respondent. The agency in its discretion may

17 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

18 This Decision shall become effective on June 20, 2014.

19 It is so ORDERED ON May 21, 2014.

20 BOARD OF PHARMACY
21 DEPARTMENT OF CONSUMER AFFAIRS
22 STATE OF CALIFORNIA

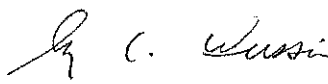
23 
24 By _____
25 STAN C. WEISSER
26 Board President

Exhibit A

Accusation

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Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 SHANA A. BAGLEY
Deputy Attorney General
4 State Bar No. 169423
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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:
12 **KIMBERLY M. GAMBOA**
13 **1100 Holloway Avenue**
San Francisco, CA 94806
14 **Pharmacy Technician Registration No. TCH**
15 **32909**
16 Respondent.

Case No. 4815

A C C U S A T I O N

17
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 Board of Pharmacy, Department of Consumer Affairs.
22 2. On or about April 5, 2000, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 32909 to Kimberly M. Gamboa (Respondent). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought in
25 this Accusation and will expire on September 30, 2015, unless renewed.

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JURISDICTION

3. This 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 (Code) unless otherwise indicated.

4. Code section 4300.1 states:

The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.

STATUTORY PROVISIONS

5. Code Section 4300 states, in 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.

6. Code section 4301 states, in part:

The board shall take action against any holder of a license who is guilty of unprofessional conduct . . . Unprofessional conduct shall include, but is not limited to, any of the following: . . .

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

1 (I) The conviction of a crime substantially related to the qualifications,
2 functions, and duties of a licensee under this chapter. The record of conviction of a
3 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
4 States Code regulating controlled substances or of a violation of the statutes of this
5 state regulating controlled substances or dangerous drugs shall be conclusive evidence
6 of unprofessional conduct. In all other cases, the record of conviction shall be
7 conclusive evidence only of the fact that the conviction occurred. The board may
8 inquire into the circumstances surrounding the commission of the crime, in order to
9 fix the degree of discipline or, in the case of a conviction not involving controlled
10 substances or dangerous drugs, to determine if the conviction is of an offense
11 substantially related to the qualifications, functions, and duties of a licensee under this
12 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
13 contendere is deemed to be a conviction within the meaning of this provision. The
14 board may take action when the time for appeal has elapsed, or the judgment of
15 conviction has been affirmed on appeal or when an order granting probation is made
16 suspending the imposition of sentence, irrespective of a subsequent order under
17 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
18 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
19 dismissing the accusation, information, or indictment.

20 REGULATORY PROVISION

21 7. California Code of Regulations, title 16, section 1770, states:

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

COST RECOVERY

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

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Crimes of Moral Turpitude)**

3 9. Respondent's license is subject to disciplinary action because she was convicted of
4 crimes of moral turpitude. (Code § 4301, subd. (f).) The circumstances are as follows:

5 10. On or about September 20, 2013, in a criminal matter entitled *The People of the State*
6 *of California v. Kimberly Gamboa*, Contra Costa County Superior Court Case No. 5-130426-0,
7 Respondent was convicted for violating three misdemeanor counts of child endangerment (Pen.
8 Code § 273a, subd. (b)), one felony count of Corporal Injury to a Child (Pen. Code § 273d, subd.
9 (a)), and one felony count of child abuse (Pen. Code §273a, subd. (a)). On or about December
10 18, 2013, the court sentenced Respondent to serve 365 days in jail and 4 years of formal
11 probation, abstain from consuming alcohol and marijuana, complete an anger management and
12 parenting program, and ordered her to comply with other terms and conditions. The record of the
13 criminal proceeding is incorporated as if fully set forth.

14 11. The factual circumstances underlying the convictions are that on or about January 24,
15 2012, the Richmond Police Department arrested Respondent for several counts of child abuse and
16 endangerment of her son (age 10) and daughter (age 8). On or about January 23, 2012,
17 Respondent hit her son with a belt and left marks and bruises on his skin. On several occasions,
18 from on or about January 2010 through January 23, 2012, Respondent physically abused her son
19 and her daughter.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Substantially Related Convictions)**

22 12. Respondent's license is subject to disciplinary action because she was convicted of
23 crimes substantially related to the qualifications, functions, and duties of a pharmacist. (Code §
24 4301, subd. (l), as defined by Cal. Code Regs., tit. 16, § 1770). The circumstances are set forth
25 more particularly in paragraphs 10 and 11, above.

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1 DISCIPLINARY CONSIDERATIONS

2 13. To determine the degree of discipline, if any, to be imposed on Respondent,
3 Complainant alleges that on or about on or about October 25, 2009, the Police Department
4 arrested Respondent for force with a deadly weapon and corporal injury to a spouse (Pen. Code §§
5 245, subd. (a)(1), and 273.5). Criminal charges were not filed.

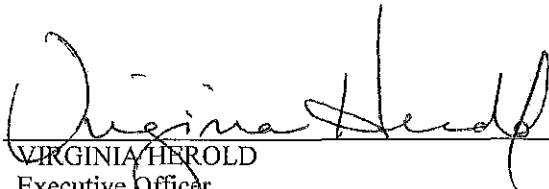
6 PRAYER

7 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
8 Accusation, and that following the hearing, the Board of Pharmacy issue a decision:

- 9 1. Revoking or suspending Pharmacy Technician Registration Number TCH 32909,
10 issued to Kimberly M. Gamboa;
- 11 2. Ordering Kimberly M. Gamboa to pay the Board of Pharmacy the reasonable costs of
12 the investigation and enforcement of this case, pursuant to Business and Professions Code section
13 125.3; and
- 14 3. Taking such other and further action as deemed necessary and proper.

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16
17 DATED: _____

3/24/14

18 

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

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