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

In the Matter of the Accusation Against:
KELLY JEAN KENNEDY
2925 Huron Court
Santa Rosa, CA 95403
Pharmacy Technician License No. TCH 33678

Respondent.

Case No. 5016
DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about May 17, 2014, Complainant Virginia K. Herold, in in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 5016 against Kelly Jean Kennedy (Respondent) before the Board of Pharmacy. (A copy of the Accusation is attached as exhibit A.)

2. On or about June 30, 2000, the Board of Pharmacy (Board) issued Pharmacy Technician License No. TCH 33678 to Respondent. The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought in Accusation No. 5016 and will expire on February 29, 2016, unless renewed.

3. On or about May 23, 2014, Respondent was served by Certified and First Class Mail with copies of: Accusation No. 4978; a Statement to Respondent; a Notice of Defense (2 copies); a Request for Discovery; and the text of the Discovery Statutes (Government Code sections

1 11507.5, 11507.6, and 11507.7), at Respondent's address of record which was and is: 2925
2 Huron Court, Santa Rosa, CA 95403. On or about June 3, 2014, the Certified Mail Return
3 Receipt card associated with the Certified Mail delivery of these materials was signed and
4 returned by "Dion Kennedy," apparently demonstrating receipt of the materials by Respondent.

5 4. Pursuant to Business and Professions Code section 136 and/or 4100, and/or California
6 Code of Regulations, title 16, section 1704, Respondent's address of record, and any changes
7 thereto, are required to be reported and maintained with the Board.

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

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

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

16 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
17 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 5016.

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

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

23 9. Pursuant to its authority under Government Code section 11520, the Board finds
24 Respondent is in default. The Board will take action without further hearing and, based on the
25 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
26 taking official notice of all the investigatory reports, exhibits and statements contained therein on
27 file at the Board's offices regarding the allegations contained in Accusation No. 5016, finds that
28 the charges and allegations in Accusation No. 5016, are separately and severally, found to be true
and correct by clear and convincing evidence.

1 10. Taking official notice of its own internal records, pursuant to Business and
2 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
3 and Enforcement are \$1,500.00 as of June 24, 2014.

4 DETERMINATION OF ISSUES

5 1. Based on the foregoing findings of fact, Respondent Kelly Jean Kennedy has
6 subjected her Pharmacy Technician License No. TCH 33678 to discipline.

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

8 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
9 License based upon the following violations alleged in the Accusation which are supported by the
10 evidence contained in the Default Decision Evidence Packet in this case.:

11 a. Respondent's License is subject to revocation pursuant to Business and Professions
12 Code section(s) 4301(l) and/or 490, by reference to California Code of Regulations, title 16,
13 section 1770, for the conviction of substantially related crime(s), in that on or about March 27,
14 2013, in *People v. Kelly Jean Kennedy*, Case No. 13-70968 in Mendocino County Superior Court,
15 Respondent was convicted of violating Vehicle Code section 23152(b) (Driving with Blood
16 Alcohol of 0.08% or Higher), a misdemeanor, with an admitted special allegation of having a
17 blood alcohol level of 0.15% or higher pursuant to Vehicle Code section 23578.

18 b. Respondent's License is subject to revocation pursuant to Business and Professions
19 Code section 4301(h) in that, as stated above, she used alcohol in a dangerous/injurious manner.

20 c. Respondent's License is subject to revocation pursuant to Business and Professions
21 Code section(s) 4301(l) and/or 490, by reference to California Code of Regulations, title 16,
22 section 1770, for the conviction of substantially related crime(s), in that on or about October 3,
23 2013, in *People v. Kelly Jean Kennedy*, Case No. 13-72906 in Mendocino County Superior Court,
24 Respondent was convicted of violating (1) Vehicle Code section 23152(b) (Driving with Blood
25 Alcohol of 0.08% or Higher), a misdemeanor, and (2) Vehicle Code section 14601.5(a) (Driving
26 When Privilege Suspended or Revoked), a misdemeanor, with an admitted special allegation of a
27 prior conviction under Vehicle Code section 23152(b) on March 27, 2013.

1 d. Respondent's License is subject to revocation pursuant to Business and Professions
2 Code section 4301(h) in that, as stated above, she used alcohol in a dangerous/injurious manner.

3 e. Respondent's License is subject to revocation pursuant to Business and Professions
4 Code section 4301(k) in that, as stated above, she was convicted of more than one misdemeanor
5 involving the use or consumption of an alcoholic beverage or a dangerous drug.

6 f. Respondent's License is subject to revocation pursuant to Business and Professions
7 Code section 4301, in that Respondent, as stated above, engaged in unprofessional conduct.

8
9 ORDER

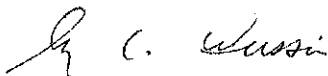
10 IT IS SO ORDERED that Pharmacy Technician License No. TCH 33678, heretofore issued
11 to Respondent Kelly Jean Kennedy, is revoked.

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

16 This Decision shall become effective on September 18, 2014.

17 It is so ORDERED August 19, 2014.

18 BOARD OF PHARMACY
19 DEPARTMENT OF CONSUMER AFFAIRS
20 STATE OF CALIFORNIA

21 By 
22 STAN C. WEISSER
23 Board President

24 41003840.DOC
25 DOJ Matter ID:SF2013406717

26 Attachment:
27 Exhibit A: Accusation
28

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JOSHUA A. ROOM
Supervising Deputy Attorney General
4 State Bar No. 214663
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-1299
6 Facsimile: (415) 703-5480
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 5016

12 **KELLY JEAN KENNEDY**
~~2925 Huron Court~~
Santa Rosa, CA 95403

ACCUSATION

13 **Pharmacy Technician License No. TCH 33678**

14 Respondent.

15
16 Complainant alleges:

17 PARTIES

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

20 2. On or about June 30, 2000, the Board of Pharmacy issued Pharmacy Technician
21 License No. TCH 33678 to Kelly Jean Kennedy (Respondent). The License was in force at all
22 times relevant to the charges herein and will expire on February 29, 2016, unless renewed.

23
24 JURISDICTION

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

1 4. Section 4011 of the Code provides that the Board shall administer and enforce both
2 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
3 Act [Health & Safety Code, § 11000 et seq.].

4 5. Section 4300(a) of the Code provides that every license issued by the Board may be
5 suspended or revoked.

6 6. Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or
7 suspension of a Board-issued license, the placement of a license on a retired status, or the
8 voluntary surrender of a license by a licensee, shall not deprive the Board of jurisdiction to
9 commence or proceed with any investigation of, or action or disciplinary proceeding against, the
10 licensee or to render a decision suspending or revoking the license.
11

12 STATUTORY AND REGULATORY PROVISIONS

13 7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action
14 against any holder of a license who is guilty of “unprofessional conduct,” defined to include, but
15 not be limited to, any of the following:

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

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

24 (l) The conviction of a crime substantially related to the qualifications, functions, and duties
25 of a licensee under this chapter.

26 8. Section 490 of the Code provides, in pertinent part, that the Board may suspend or
27 revoke a license when it finds that the licensee has been convicted of a crime substantially related
28 to the qualifications, functions or duties of the license.

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

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

8 10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
9 administrative law judge to direct a licensee found to have committed a violation of the licensing
10 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.
11

12 FIRST CAUSE FOR DISCIPLINE

13 (Conviction of Substantially Related Crime(s))

14 11. Respondent is subject to discipline under section 4301(l) and/or section 490 of the
15 Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of
16 substantially related crime(s), in that on or about March 27, 2013, in the criminal case *People v.*
17 *Kelly Jean Kennedy*, Case No. 13-70968 in Mendocino County Superior Court, Respondent was
18 convicted of violating Vehicle Code section 23152(b) (Driving with Blood Alcohol of 0.08% or
19 Higher), a misdemeanor, with an admitted special allegation of having a blood alcohol level of
20 0.15% or higher pursuant to Vehicle Code section 23578. The conviction was entered as follows:

21 a. On or about November 9, 2012, at about 7:00 p.m., California Highway Patrol
22 officer(s) in the Ukiah, CA area observed a silver Nissan sedan stopped in a left-hand turn lane
23 about 4 feet over the crosswalk, partially in the intersection, with its headlights off despite it being
24 dark. The officer(s) stopped the vehicle, which was slow to respond to instructions and had some
25 trouble parking in a parking stall, and contacted the driver (Respondent). The officer(s) detected
26 the smell of alcohol coming from the vehicle, and observed other symptoms of Respondent's gait
27 and demeanor that raised the suspicion of alcohol use. The officer(s) administered Field Sobriety
28 Tests (FSTs) to Respondent, which she was not able to perform correctly.

1 a. On or about February 11, 2013, at about 11:00 p.m., Ukiah Police Department
2 officer(s) observed Respondent driving a vehicle that was weaving within the lane, drove into the
3 bicycle lane, and then failed to stop at the limit line at a stop sign. The officer(s) stopped the
4 vehicle and contacted Respondent. The officer(s) detected the smell of alcohol coming from the
5 vehicle, and observed other symptoms that raised the suspicion of alcohol use. The officer(s)
6 were advised by dispatch that Respondent's driving privilege was suspended or revoked. She
7 admitted that she knew her license was suspended or revoked. Respondent also told the officer(s)
8 that she had a drinking problem and/or was an alcoholic.

9 b. On or about June 25, 2013, in *People v. Kelly Jean Kennedy*, Case No. 13-
10 72906 in Mendocino County Superior Court, Respondent was charged with violating (1) Vehicle
11 Code section 23152, subdivision (a) (Driving Under the Influence of Alcohol/Drug), a
12 misdemeanor; (2) Vehicle Code section 23152, subdivision (b) (Driving With Blood Alcohol of
13 0.08% or Higher), a misdemeanor, with a first special allegation that she had been previously
14 convicted of violating Vehicle Code section 23152, subdivision (b), a misdemeanor on March 27,
15 2013, based on conduct occurring on November 9, 2012; and (3) Vehicle Code section 14601.5,
16 subdivision (a) (Driving When Privilege Suspended or Revoked), a misdemeanor.

17 c. On or about March 27, 2013, Respondent entered a plea of nolo contendere as
18 to Count 2 (violation of Vehicle Code section 23152, subdivision (b)) with an admission to the
19 special allegation of a prior conviction and a stipulated blood alcohol level of 0.10, and Count 3
20 (violation of Vehicle Code section 14601.5, subdivision (a)). Imposition of judgment was
21 suspended and Respondent was placed on Summary Probation for sixty (60) months (five years),
22 on terms and conditions including 10 days in county jail (suspended for Respondent to complete
23 26 weeks in an outpatient treatment program), completion of an 18-month Multiple Offender DUI
24 Program, use of an Interlock Ignition Device for two (2) years, community service of 131 hours
25 (in lieu of payment of fine), and payment of other restitution amounts, fines and fees.

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1 FOURTH CAUSE FOR DISCIPLINE

2 (Dangerous or Injurious Use of Alcohol)

3 14. Respondent is subject to discipline under section 4301(h) of the Code, in that as
4 described in paragraph 13, Respondent used alcohol in a dangerous or injurious manner.

5
6 FIFTH CAUSE FOR DISCIPLINE

7 (Conviction of Alcohol or Drug-Involved Crimes)

8 15. Respondent is subject to discipline under section 4301(k) of the Code, in that, as
9 described in paragraphs 11 and 13 above, Respondent was convicted of more than one
10 misdemeanor involving the use or consumption of an alcoholic beverage or a dangerous drug.
11

12 SIXTH CAUSE FOR DISCIPLINE

13 (Unprofessional Conduct)

14 16. Respondent is subject to discipline under section 4301 of the Code in that, as
15 described in paragraphs 11-15 above, Respondent engaged in unprofessional conduct.
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22 PRAYER

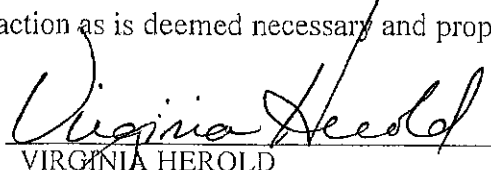
23 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
24 and that following the hearing, the Board of Pharmacy issue a decision:

- 25 1. Revoking or suspending Pharmacy Technician License Number TCH 33678, issued to
26 Kelly Jean Kennedy (Respondent);
- 27 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
28 enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 5/17/14



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

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