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

In the Matter of the Accusation Against:

Case No. 5269

**MICHAEL JOHN KYGER  
1686 Landmark Way  
Beaumont, CA 92223**

**DEFAULT DECISION AND ORDER**

**Pharmacy Technician Registration No. TCH  
134738**

[Gov. Code, §11520]

Respondent.

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FINDINGS OF FACT

1. On or about May 21, 2015, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 5269 against Michael John Kyger (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about August 30, 2013, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 134738 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 5269 and expired on November 30, 2014. This lapse in licensure, however, pursuant to Business and Professions Code sections 118(b) and 4300.1, does not deprive the Board of its authority to institute or continue this disciplinary proceeding.

3. On or about June 8, 2015, Respondent was served by Certified Mail with copies of Accusation No. 5269, a Statement to Respondent, a Notice of Defense, a Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at

1 Respondent's address of record which, pursuant to Business and Professions Code section 4100,  
2 is required to be reported and maintained with the Board. Respondent's address of record was  
3 and is:

4 1686 Landmark Way  
5 Beaumont, CA 92223.

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

8 5. On or about July 2, 2015, the aforementioned documents were served by the U.S.  
9 Postal Service at Respondent's address of record.

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 him  
17 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.  
18 5269.

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

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

24 9. Pursuant to its authority under Government Code section 11520, the Board finds  
25 Respondent is in default. The Board will take action without further hearing and, based on the  
26 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as  
27 taking official notice of all the investigatory reports, exhibits and statements contained therein on  
28 file at the Board's offices regarding the allegations contained in Accusation No. 5269, finds that  
the charges and allegations in Accusation No. 5269, 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 is \$2,142.50 as of May 8, 2015.

4 DETERMINATION OF ISSUES

5 1. Based on the foregoing findings of fact, Respondent Michael John Kyger has  
6 subjected his Pharmacy Technician Registration No. TCH 134738 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 Registration based upon the following violations alleged in the Accusation which are supported  
10 by the evidence contained in the Default Decision Evidence Packet in this case:

11 a. Business and Professions Code section 4301, subsection (i) - Unprofessional Conduct  
12 – Furnishing a Controlled Substance to an Addict.

13 b. Business and Professions Code section 4301, subsection (j) - Unprofessional Conduct  
14 – Possession of a Controlled Substance.

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ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 134738, heretofore issued to Respondent Michael John Kyger, 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 September 8, 2015.

It is so ORDERED August 7, 2015.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By \_\_\_\_\_  
Amy Gutierrez, Pharm.D.  
Board President

Attachment:  
Exhibit A: Accusation

# Exhibit A

Accusation

(MICHAEL JOHN KYGER)

1 KAMALA D. HARRIS  
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2 GREGORY J. SALUTE  
Supervising Deputy Attorney General  
3 MANUEL ARAMBULA  
Deputy Attorney General  
4 State Bar No. 289718  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2098  
7 Facsimile: (619) 645-2061  
*Attorneys for Applicant Virginia Herold,  
8 Executive Officer, Board of Pharmacy,  
State of California*

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

12 In the Matter of the Accusation Against:

Case No. 5269

13 **MICHAEL JOHN KYGER**  
14 **1686 Landmark Way**  
**Beaumont, CA 92223**

**A C C U S A T I O N**

15 **Pharmacy Technician Registration No. TCH**  
16 **134738**

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 30, 2013, the Board of Pharmacy issued Pharmacy Technician  
24 Registration Number TCH 134738 to Michael John Kyger (Respondent). The Pharmacy  
25 Technician Registration was in full force and effect at all times relevant to the charges brought  
26 herein and expired on November 30, 2014.

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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 unless otherwise indicated.

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

5. Section 4300.1 of the Code 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**

6. Section 4301 of the Code states:

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:

.....  
(i) Except as otherwise authorized by law, knowingly selling, furnishing, giving away, or administering or offering to sell, furnish, give away, or administer any controlled substance to an addict.

(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.

.....  
7. Section 11752.1, subsection (j), of the Health and Safety Code states:

"Drug abuser" means anyone who has a problem related to the consumption of illicit, illegal, legal, or prescription drugs or over-the-counter medications in a manner other than prescribed, whether or not it is of a periodic or continuing nature. This definition includes, but is not limited to, persons referred to as "drug addicts." The drug-consumption-related problems of these persons may be evidenced by substantial impairment to the person's physical, mental, or social well-being, which impairment adversely affects his or her abilities to function in the community.

1 **DRUG**

2 8. MDMA is a Schedule II controlled substance as designated by Health and Safety  
3 Code section 11055, subsection (d)(2), and a dangerous drug pursuant to Code section 4022.

4 **COST RECOVERY**

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

9 **FIRST CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct – Furnishing a Controlled Substance to an Addict)**

11 10. Respondent is subject to disciplinary action under section 4301 in that Respondent  
12 was unlawfully in possession of Methylenedioxyamphetamine (MDMA) on January 26,  
13 2014. The circumstances are as follows:

14 11. On or about January 26, 2014, a Palm Springs police officer stopped and spoke to  
15 Respondent and his boyfriend, JL, at the Desert Lodge motel in Palm Springs, California. During  
16 this conversation, the police officer learned that both Respondent and JL were staying in the same  
17 room at the hotel and that JL was on felony probation out of Riverside County Superior Court.  
18 The officer conducted a probation compliance search of the room in accordance with JL's  
19 probationary terms. JL had previously plead guilty and was currently on felony probation for the  
20 offense of possession of MDMA at the time of this incident.

21 12. The officer searched the room and found a laptop computer bag without any  
22 identifying information. The officer found a black plastic case in an outer zipper pocket of the  
23 bag, which contained a clear plastic baggie that further contained a white crystalline substance,  
24 which the officer suspected might be MDMA. The officer then placed the these items back in the  
25 outside zipper pocket of the laptop computer bag and walked back outside of the hotel room to  
26 ask both Respondent and JL to whom the laptop computer bag belonged to.

27 13. Respondent immediately stated that the computer laptop bag and its contents  
28 belonged to him. The officer removed the black case from the computer laptop bag and



1 Respondent stated that the case also belonged to him. When the officer removed the clear plastic  
2 baggie with the white powdery substance from the black plastic case, Respondent then stated that  
3 the baggie was not his and that someone must have placed it there without his knowledge.

4 14. Respondent was placed under arrest for violating Health and Safety Code section  
5 11377, subsection (a), unlawful possession of a controlled substance. At the station, the officer  
6 tested the white powdery substance and it presumptively tested positive for MDMA. The baggie  
7 weighed 0.5 grams.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Unprofessional Conduct – Possession of a Controlled Substance)**

10 15. Respondent is subject to disciplinary action under section 4301, subsection (i), in that  
11 Respondent furnished MDMA to JL, an addict, on January 26, 2014. The circumstances are set  
12 forth in paragraphs 11 through 14, which are incorporated herein by this reference, and as  
13 follows:

14 a. Respondent's boyfriend, JL, is a drug abuser to whom Respondent furnished or  
15 otherwise made MDMA available.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Unprofessional Conduct – Possession of a Controlled Substance)**

18 16. Respondent is subject to disciplinary action under section 4301, subsection (J), in  
19 that Respondent unlawfully possessed MDMA on January 26, 2014. The circumstances are set  
20 forth in paragraphs 11 through 14, which are incorporated herein by this reference, and as  
21 follows:

22 a. Respondent was in possession of MDMA, a dangerous drug, on January 26, 2014.

23 b. Respondent was in possession of MDMA, in violation of Health and Safety Code  
24 section 11377, subsection (a), on January 26, 2014.

25 c. Respondent was in possession of MDMA, in violation of United States Code section  
26 841, subsection (a), on January 26, 2014.

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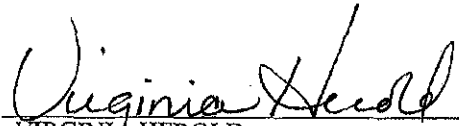
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**PRAYER**

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 Pharmacy Technician Registration Number TCH 134738, issued to Michael John Kyger;
2. Ordering Michael John Kyger 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: 5/21/15



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

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