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8	BEFORE THE BOARD OF PHARMACY				
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA				
10					
11	In the Matter of the Petition to Revoke	Case No. 5287			
12	Probation Against:	Case 110. 5267			
13	KURTIS LAYNE MCKINZEY 15 Western Shore Lane #4	DEFAULT DECISION AND ORDER			
14	San Francisco, CA 94115	DEFAULT DECISION AND ORDER			
15	Pharmacy Technician Registration No. TCH 102783	[Gov. Code, §11520]			
16					
17	Respondent.				
18					
19	FINDING	S OF FACT			
20	1. On or about November 4, 2014, Con	nplainant Virginia K. Herold, in her official			
21	capacity as the Executive Officer of the Board of	f Pharmacy, Department of Consumer Affairs,			
22	filed Petition to Revoke Probation No. 5287 again	inst Kurtis Layne McKinzey (Respondent) before			
23	the Board of Pharmacy. (Petition to Revoke Probation attached as Exhibit A.)				
24	2. On or about February 4, 2013, the Board of Pharmacy (Board) issued Pharmacy				
25	Technician Registration No. TCH 102783 to Respondent. The Pharmacy Technician Registration				
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27	Probation No. 5287, expired on September 30, 2	014, and has not been renewed. The lapse in			
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DEFAULT DECISION AND ORDER

1	licensure, however, pursuant to Business and Professions Code section 118(b), does not deprive					
2	the Board of its authority to institute or continue this proceeding.					
3	3. On or about November 20, 2014, Respondent was served by Certified and First Class					
4	Mail copies of the Petition to Revoke Probation No. 5287, Statement to Respondent, Notice of					
5	Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5,					
6	11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and					
7	Professions Code section 4100, is required to be reported and maintained with the Board.					
8	Respondent's address of record was and is:					
9	15 Western Shore Lane #4					
10	San Francisco, CA 94115.					
11	4. Service of the Petition to Revoke Probation was effective as a matter of law under the					
12	provisions of Government Code section 11505(c) and/or Business & Professions Code section					
13	124					
14	5. On or about December 16, 2014, the aforementioned documents were returned by the					
15	U.S. Postal Service marked "Unclaimed."					
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 of the accusation not expressly admitted. Failure to file a notice of defense shall					
19	constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.					
20	7. Respondent failed to file a Notice of Defense within 15 days after service upon him					
21	of the Petition to Revoke Probation, and therefore waived his right to a hearing on the merits of					
22	Petition to Revoke Probation No. 5287.					
23	8. California Government Code section 11520 states, in pertinent part:					
24	(a) If the respondent either fails to file a notice of defense or to appear at the baseling the the baselin					
25	hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to					
26	respondent.					
27	9. Pursuant to its authority under Government Code section 11520, the Board finds					
28	Respondent is in default. The Board will take action without further hearing and, based on the					
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	DEFAULT DECISION AND ORDER					

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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 or		
3	file at the Board's offices regarding the allegations contained in Petition to Revoke Probation No.		
4	5287, finds that the charges and allegations in Petition to Revoke Probation No. 5287 are,		
5	separately and severally, found to be true and correct by clear and convincing evidence.		
6	DETERMINATION OF ISSUES		
7	1. Based on the foregoing findings of fact, Respondent Kurtis Layne McKinzey has	-	
8	subjected his Pharmacy Technician Registration No. TCH 102783 to discipline.		
9	2. The agency has jurisdiction to adjudicate this case by default.		
10	3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician		
11	Registration based upon the following violations alleged in the Petition to Revoke Probation		
12	which are supported by the evidence contained in the Default Decision Evidence Packet in this		
13	case:		
14	a. Violation of Condition 5 of Respondent's probation, in that Respondent failed to		
15	cooperate with Board monitoring and investigation of his compliance with probation terms.		
16	b. Violation of Condition 7 of Respondent's probation, in that Respondent failed to pay	ÿ	
17	his probation monitoring costs.		
18	c. Violation of Condition 16 of Respondent's probation, in that Respondent failed to		
19	participate in drug testing as directed by the Board and failed to submit to tests.		
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1	ORDER				
2	IT IS ORDERED that Pharmacy Technician Registration No. TCH 102783, heretofore				
3	issued to Respondent Kurtis Layne McKinzey, is revoked.				
4	Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a				
5	written motion requesting that the Decision be vacated and stating the grounds relied on within				
6	seven (7) days after service of the Decision on Respondent. The agency in its discretion may				
7	vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.				
8	This decision shall become effective on March 27, 2015.				
9	It is so ORDERED on February 25, 2015.				
10	BOARD OF PHARMACY				
11	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA				
12					
13	La C. Wussi				
14	By				
15	Board President				
16	41189141.DOC				
17	DOJ Matter ID:SF2014409421				
18	Attachment: Exhibit A: Petition to Revoke Probation				
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	4 DEFAULT DECISION AND ORDER				

# Exhibit A

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Petition to Revoke Probation

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1	KAMALA D. HARRIS Attorney General of California			
2	JOSHUA A. ROOM Supervising Deputy Attorney General			
3	BRETT A. KINGSBURY Deputy Attorney General			
4	State Bar No. 243744 455 Golden Gate Avenue, Suite 11000			
5	San Francisco, CA 94102-7004 Telephone: (415) 703-1192			
6	Facsimile: (415) 703-5480 Attorneys for Complainant			
7		FTHE		
8	BEFORE THE BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS			
9		ALIFORNIA		
10		(lass b) - 5097		
11	In the Matter of the Petition to Revoke Probation Against,	Case No. 5287		
12	KURTIS LAYNE MCKINZEY 15 Western Shore Lane #4	PETITION TO REVOKE PROBATION		
13	San Francisco, CA 94115 Pharmacy Technician Registration No. TCH	TETHION TO REPORE TRODUTION		
14	102783			
15	Respondent.			
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18	Complainant alleges:			
19	PAR	TIES		
20	1. Virginia Herold (Complainant) bring	s this Petition to Revoke Probation solely in her		
21	official capacity as the Executive Officer of the E	Board of Pharmacy (Board), Department of		
22	Consumer Affairs.			
23	2. On or about February 4, 2013, the Bo	oard issued Pharmacy Technician Registration		
24	Number TCH 102783 to Kurtis Layne McKinzey (Respondent). The Pharmacy Technician			
25	Registration was in effect at all times relevant to	the charges brought herein and will expire on		
26	September 30, 2014, unless renewed.			
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ļ		PETITION TO REVOKE PROBATION		

1	PRIOR BOARD ACTION	
2	3. In a disciplinary action entitled "In the Matter of Statement of Issues Against Kurtis	
3	Layne McKinzey," Case No. 3996, the Board issued a decision, effective May 4, 2012, in which	
4	Respondent's Pharmacy Technician Registration was ordered issued upon the satisfaction of all	
5	statutory and regulatory requirements for licensure, but immediately revoked. However, the	
6	decision ordered the revocation stayed and Respondent's Pharmacy Technician Registration	
7	placed on probation for a period of three (3) years with certain terms and conditions. A copy of	
8	that decision is attached as Exhibit A and is incorporated by reference.	
9	JURISDICTIONAL AND STATUTORY PROVISIONS	
10	4. This Petition to Revoke Probation is brought before the Board, Department of	
11	Consumer Affairs, under the authority of the following laws. All section references are to the	
12	Business and Professions Code (Code) unless otherwise indicated.	
13	5. Section 4300 of the Code states:	
14	"(a) Every license issued may be suspended or revoked.	
15	"(b) The board shall discipline the holder of any license issued by the board, whose default	
16	has been entered or whose case has been heard by the board and found guilty, by any of the	
17	following methods:	
18	"(1) Suspending judgment.	
19	"(2) Placing him or her upon probation.	
20	"(3) Suspending his or her right to practice for a period not exceeding one year.	
21	"(4) Revoking his or her license.	
22	"(5) Taking any other action in relation to disciplining him or her as the board in its	
23	discretion may deem proper.	
24	"(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The	
25	board may, in its sole discretion, issue a probationary license to any applicant for a license who is	
26	guilty of unprofessional conduct and who has met all other requirements for licensure. The board	İ
27	may issue the license subject to any terms or conditions not contrary to public policy, including,	
28	but not limited to, the following:	
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1	"(1) Medical or psychiatric evaluation.
2	"(2) Continuing medical or psychiatric treatment.
3	"(3) Restriction of type or circumstances of practice.
4	"(4) Continuing participation in a board-approved rehabilitation program.
5	"(5) Abstention from the use of alcohol or drugs.
6	"(6) Random fluid testing for alcohol or drugs.
7	"(7) Compliance with laws and regulations governing the practice of pharmacy.
8	"(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary
9	certificate of licensure for any violation of the terms and conditions of probation. Upon
10	satisfactory completion of probation, the board shall convert the probationary certificate to a
11	regular certificate, free of conditions.
12	"(e) The proceedings under this article shall be conducted in accordance with Chapter 5
13	(commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board
14	shall have all the powers granted therein. The action shall be final, except that the propriety of the
15	action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil
16	Procedure."
17	6. Section 4300.1 of the Code states:
18	"The expiration, cancellation, forfeiture, or suspension of a board-issued license by
19	operation of law or by order or decision of the board or a court of law, the placement of a license
20	on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
21	of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
22	proceeding against, the licensee or to render a decision suspending or revoking the license."
23	FIRST CAUSE TO REVOKE PROBATION
24	(Cooperate With Board Staff)
25	7. At all times after the effective date of Respondent's probation, Condition 5 stated:
26	"Respondent shall cooperate with the board's inspection program and with the board's
27	monitoring and investigation of respondent's compliance with the terms and conditions of his
28	probation. Failure to cooperate shall be considered a violation of probation."
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1	8. Respondent's probation is subject to revocation because he failed to comply with
2	Probation Condition 5, referenced above. The facts and circumstances regarding this violation are
3	that from on or about May 13, 2014, through June 16, 2014, the Board made attempts to contact
4	Respondent by phone, but Respondent did not return the calls.
5	SECOND CAUSE TO REVOKE PROBATION
6	(Notification of a Change in Name, Residence Address, Mailing Address or Employment)
7	9. At all times after the effective date of Respondent's probation, Condition 10 stated:
8	"Respondent shall notify the board in writing within ten (10) days of any change of
9	employment Respondent shall further notify the board in writing within ten (10) days of a
10	change in name, residence address and mailing address, or phone number.
11	"Failure to timely notify the board of any change in name(s), address(es), or phone
12	number(s) shall be considered a violation of probation."
13	10. In the alternative to the First Cause for Discipline, Respondent's probation is subject
14	to revocation because he failed to comply with Probation Condition 10, referenced above. The
15	facts and circumstances regarding this violation are that Respondent failed to update his phone
16	number with the Board, thus failing to obtain knowledge of the Board's attempts to contact him
17	from on or about May 13, 2014, through June 16, 2014.
18	THIRD CAUSE TO REVOKE PROBATION
19	(Probation Monitoring Costs)
20	11. At all times after the effective date of Respondent's probation, Condition 7 stated:
21	"Respondent shall pay any costs associated with probation monitoring as determined by the
22	board each and every year of probation. Such costs shall be payable to the board on a schedule as
23	directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall
24	be considered a violation of probation."
25	12. Respondent's probation is subject to revocation because he failed to comply with
26	Probation Condition 7, referenced above. The facts and circumstances regarding this violation are
27	as follows:
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### PETITION TO REVOKE PROBATION

A. On or about March 20, 2014, the Board sent Respondent a letter instructing Respondent to pay probation monitoring costs in the amount of \$357.00 within 15 days.

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B. Respondent failed to remit payment within 15 days, and has not remitted payment to date.

#### FOURTH CAUSE TO REVOKE PROBATION

#### (Random Drug Screening)

At all times after the effective date of Respondent's probation, Condition 16 stated:
"Respondent, at his own expense, shall participate in random testing, including but not
limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug
screening program as directed by the board or its designee. . . . At all times respondent shall fully
cooperate with the board or its designee, and shall, when directed, submit to such tests and
samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled
substances as the board or its designee may direct. . . ."

14 14. Respondent's probation is subject to revocation because he failed to comply with
15 Probation Condition 16, referenced above. The facts and circumstances regarding this violation
16 are as follows:

A. On or about May 23, 2013, the Board sent Respondent a letter by certified and first
class mail advising him of his failure to call in or log on to the FirstLab system to report for
testing on May 19, 2013, and notifying him that any further failure to contact FirstLab on a daily
basis would constitute a violation of probation.

B. On or about July 19, 2013, the Board sent Respondent a letter by certified and first
class mail advising him of his failure to call in or log on to the FirstLab system to report for
testing on July 13, 2013, and notifying him that any further failure to contact FirstLab on a daily
basis would constitute a violation of probation.

C. On or about April 25, 2014, the Board sent Respondent a letter by certified and first
class mail advising him of his failure to call in or log on to the FirstLab system to report for
testing on April 23, 2014, and notifying him that any further failure to contact FirstLab on a daily
basis would constitute a violation of probation.

1	D. Respondent failed to call in or log on to the FirstLab system to report for testing on				
2	May 9, May 10, and May 11, 2014.				
3	E. Respondent thereafter completely stopped calling in or logging on to the FirstLab				
4	system. Respondent did not call in or log on from May 12, 2014, through at least June 15, 2014.				
5	F. Respondent's failure to call in or log on to FirstLab during this period resulted in				
6	Respondent missing scheduled tests on May 29 and May 31, 2014.				
7	PRAYER				
8	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,				
9	and that following the hearing, the Board of Pharmacy issue a decision:				
10	1. Revoking the probation that was granted by the Board of Pharmacy in Case No. 3996				
11	and imposing the disciplinary order that was stayed, thereby revoking Pharmacy Technician				
12	Registration No. TCH 102783 issued to Kurtis Layne McKinzey;				
13	2. Taking such other and further action as is deemed necessary and proper.				
14					
15	DATED: 1/4/14 (injusted)				
16	VIRGINIA HEROLD { Executive Officer				
17	Board of Pharmacy Department of Consumer Affairs				
18	State of California Complainant				
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20	SF2014409421 41079101.doc				
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	6 PETITION TO REVOKE PROBATION				

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# Exhibit A

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**Decision and Order** 

Board of Pharmacy Case No. 3996

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

In the Matter of the Statement of Issues Against:

Case No. 3996

### KURTIS LAYNE MCKINZEY 15 Western Shore Lane #4 San Francisco, CA 94115

Respondent.

#### **DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on May 4,, 2012.

It is so ORDERED on April 4, 2012.

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

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STANLEY C. WEISSER Board President

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1	Kamala D. Harris
2	Attorney General of California FRANK H. PACOE
3	Supervising Deputy Attorney General BRETT A. KINGSBURY
~ 4	Deputy Attorney General
-	State Bar No. 243744 455 Golden Gate Avenue, Suite 11000
5	San Francisco, CA 94102-7004 Telephone: (415) 703-1192
6	Facsimile: (415) 703-5480 Attorneys for Complainant
7	BEFORE THE
8	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS
9	STATE OF CALIFORNIA
10	In the Matter of the Statement of Issues Case No. 3996
11	Against: OAH No. 2011090733
12	KURTIS LAYNE MCKINZEY STIPULATED SETTLEMENT AND
13	Respondent. DISCIPLINARY ORDER
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15	
16	IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
17	entitled proceedings that the following matters are true:
18	PARTIES
19	1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
20	She brought this action solely in her official capacity and is represented in this matter by Kamala
21	D. Harris, Attorney General of the State of California, by Brett A. Kingsbury, Deputy Attorney
22	General.
23	2. Respondent Kurtis Layne McKinzey (Respondent) is representing himself in this
24	proceeding and has chosen not to exercise his right to be represented by counsel.
25	3. On or about April 15, 2010, Respondent filed an application dated April 12, 2010,
26	with the Board of Pharmacy to obtain Pharmacy Technician Registration license.
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	I STIPULATED SETTLEMENT (3996)

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JURISDICTION 1 4. Statement of Issues No. 3996 was filed before the Board of Pharmacy (Board), Department 2 3 of Consumer Affairs, and is currently pending against Respondent. The Statement of Issues and all other statutorily required documents were properly served on Respondent on August 2, 2011, 4 ADVISEMENT AND WAIVERS 5 5. Respondent has carefully read, and understands the charges and allegations in 6 Statement of Issues No. 3996. Respondent has also carefully read, and understands the effects of 7 this Stipulated Settlement and Disciplinary Order. 8 Respondent is fully aware of his legal rights in this matter, including the right to a 9 6. hearing on the charges and allegations in the Statement of Issues; the right to be represented by 10 counsel at his own expense; the right to confront and cross-examine the witnesses against him; 11 the right to present evidence and to testify on his own behalf; the right to the issuance of 12 subpoenas to compel the attendance of witnesses and the production of documents; the right to 13 reconsideration and court review of an adverse decision; and all other rights accorded by the 14 California Administrative Procedure Act and other applicable laws. 15 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and 16 every right set forth above. 17CULPABILITY 18 Respondent admits the truth of each and every charge and allegation in Statement of. 8. 19 Issues No. 3996. 20 9. Respondent agrees that his Pharmacy Technician Registration is subject to denial and 21 22 he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below. 23 RESERVATION 24 The admissions made by Respondent herein are only for the purposes of this 25 10. 26 proceeding, or any other proceedings in which the Board of Pharmacy or other professional 27 licensing agency is involved, and shall not be admissible in any other criminal or civil 28 proceeding. 2

#### CONTINGENCY

This stipulation shall be subject to approval by the Board of Pharmacy. Respondent 2 11. understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter. 13 an tao 1

12. The parties understand and agree that facsimile copies of this Stipulated Settlement 11 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and 12 effect as the originals. 13

This Stipulated Settlement and Disciplinary Order is intended by the parties to be an 13. 14 integrated writing representing the complete, final, and exclusive embodiment of their agreement. 15 16 It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary 17 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a 18 writing executed by an authorized representative of each of the parties. 19

14. In consideration of the foregoing admissions and stipulations, the parties agree that 20the Board may, without further notice or formal proceeding, issue and enter the following 21 22 Disciplinary Order:

#### DISCIPLINARY ORDER

Upon satisfaction of all statutory and regulatory requirements for issuance of a license, a 24 license shall be issued to respondent and immediately revoked; the order of revocation is stayed 25 26 and respondent is placed on probation for 3 years upon the following terms and conditions:

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Respondent shall be automatically suspended from working as a pharmacy technician until

Certification Prior to Resuming Work

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he is certified as defined by Business and Professions Code section 4202(a)(4) and provides
satisfactory proof of certification to the board. Respondent shall not resume working as a
pharmacy technician until notified by the board. Failure to achieve certification within one (1)
year shall be considered a violation of probation. Respondent shall not resume working as a
pharmacy technician until notified by the board.

During suspension, respondent shall not enter any pharmacy area or any portion of any 6 other board licensed premises (wholesaler, veterinary food-animal drug retailer or any other 7 distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and 8 devices or controlled substances are maintained. Respondent shall not do any act involving drug 9 selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent 10manage, administer, or assist any licensee of the board. Respondent shall not have access to or 11 control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled 12 substances. Respondent shall not resume work until notified by the board. 13

Subject to the above restrictions, respondent may continue to own or hold an interest in any
licensed premises by the board in which he holds an interest at the time this decision becomes
effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

2. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the board, in writing, within seventy-two (72) hours of such occurrence:

an arrest or issuance of a criminal complaint for violation of any provision of the
 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
 substances laws

a plea of guilty or nolo contendre in any state or federal criminal proceeding to any criminal complaint, information or indictment

□ a conviction of any crime

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discipline, citation, or other administrative action filed by any state or federal agency

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which involves respondent's Pharmacy Technician Registration license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

Failure to timely report any such occurrence shall be considered a violation of probation.

#### 3. Report to the Board

Respondent shall report to the board quarterly, on a schedule as directed by the board or its designee. The report shall be made either in person or in writing, as directed. Among other 7 requirements, respondent shall state in each report under penalty of perjury whether there has 8 been compliance with all the terms and conditions of probation. Failure to submit timely reports 9 in a form as directed shall be considered a violation of probation. Any period(s) of delinquency 10 in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the board.

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#### Interview with the Board 4.

· Upon receipt of reasonable prior notice, respondent shall appear in person for interviews 15 with the board or its designee, at such intervals and locations as are determined by the board or its 16 17 designee. Failure to appear for any scheduled interview without prior notification to board staff, 18 or failure to appear at two (2) or more scheduled interviews with the board or its designee during 19 the period of probation, shall be considered a violation of probation.

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#### 5. Cooperate with Board Staff

Respondent shall cooperate with the board's inspection program and with the board's 21 monitoring and investigation of respondent's compliance with the terms and conditions of his 22 probation. Failure to cooperate shall be considered a violation of probation. 23

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#### 6. Notice to Employers

During the period of probation, respondent shall notify all present and prospective 25 employers of the decision in case number 3996 and the terms, conditions and restrictions imposed 26 on respondent by the decision, as follows: 27

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Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of

respondent undertaking any new employment, respondent shall cause his direct supervisor,
pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's
tenure of employment) and owner to report to the board in writing acknowledging that the listed
individual(s) has/have read the decision in case number 3996 and the terms and conditions
imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or
supervisor(s) submit timely acknowledgement(s) to the board.

7 If respondent works for or is employed by or through a pharmacy employment service,
8 respondent must notify his direct supervisor, pharmacist-in-charge and owner at every pharmacy
9 of the terms and conditions of the decision in case number 3996 in advance of the respondent
10 commencing work at each pharmacy. A record of this notification must be provided to the board
11 upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause his direct supervisor with the pharmacy employment service to report to the board in writing acknowledging that he has read the decision in case number 3996 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

Failure to timely notify present or prospective employer(s) or to cause that/those
employer(s) to submit timely acknowledgements to the board shall be considered a violation of
probation.

"Employment" within the meaning of this provision shall include any full-time, part-time, temporary or relief service or pharmacy management service as a pharmacy technician or in any position for which a pharmacy technician license is a requirement or criterion for employment, whether the respondent is considered an employee, independent contractor or volunteer.

7. Probation Monitoring Costs

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Respondent shall pay any costs associated with probation monitoring as determined by the board each and every year of probation. Such costs shall be payable to the board on a schedule as

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directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall
 be considered a violation of probation.

8. Status of License

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Respondent shall, at all times while on probation, maintain an active, current pharmaey... technician license with the board, including any period during which suspension or probation is tolled. Failure to maintain an active, current license shall be considered a violation of probation.

7 If respondent's pharmacy technician license expires or is cancelled by operation of law or
8 otherwise at any time during the period of probation, including any extensions thereof due to
9 tolling or otherwise, upon renewal or reapplication respondent's license shall be subject to all
10 terms and conditions of this probation not previously satisfied.

9. License Surrender While on Probation/Suspension

Following the effective date of this decision, should respondent cease work due to 12 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, 13 respondent may tender his pharmacy technician license to the board for surrender. The board or 14 its designee shall have the discretion whether to grant the request for surrender or take any other 15 16 action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation. This 17 surrender constitutes a record of discipline and shall become a part of the respondent's license 18 history with the board. 19

Upon acceptance of the surrender, respondent shall relinquish his pharmacy technician license to the board within ten (10) days of notification by the board that the surrender is accepted. Respondent may not reapply for any license, permit, or registration from the board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board.

10. Notification of a Change in Name, Residence Address, Mailing Address or Employment

Respondent shall notify the board in writing within ten (10) days of any change of

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employment. Said notification shall include the reasons for leaving, the address of the new
 employer, the name of the supervisor and owner, and the work schedule if known. Respondent
 shall further notify the board in writing within ten (10) days of a change in name, residence
 address and mailing address, or phone number. -

Failure to timely notify the board of any change in employer(s), name(s), address(es), or
phone number(s) shall be considered a violation of probation.

11. Tolling of Probation

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8 Except during periods of suspension, respondent shall, at all times while on probation, be 9 employed as a pharmacy technician in California for a minimum of 20 hours per calendar month. 10 Any month during which this minimum is not met shall toll the period of probation, i.e., the 11 period of probation shall be extended by one month for each month during which this minimum is 12 not met. During any such period of tolling of probation, respondent must nonetheless comply 13 with all terms and conditions of probation.

Should respondent, regardless of residency, for any reason (including vacation) cease
working as a pharmacy technician for a minimum of 20 hours per calendar month in California,
respondent must notify the board in writing within ten (10) days of cessation of work and must
further notify the board in writing within ten (10) days of the resumption of the work. Any failure
to provide such notification(s) shall be considered a violation of probation.

19 It is a violation of probation for respondent's probation to remain tolled pursuant to the
20 provisions of this condition for a total period, counting consecutive and non-consecutive months,
21 exceeding thirty-six (36) months.

"Cessation of work" means calendar month during which respondent is not working for at least 20 hours as a pharmacy technician, as defined in Business and Professions Code section 4115. "Resumption of work" means any calendar month during which respondent is working as a pharmacy technician for at least 20 hours as a pharmacy technician as defined by Business and Professions Code section 4115.

12. Violation of Probation

If a respondent has not complied with any term or condition of probation, the board shall

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have continuing jurisdiction over respondent, and probation shall automatically be extended, until 1 all terms and conditions have been satisfied or the board has taken other action as deemed 2 3 appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed. 4

If respondent violates probation in any respect, the board, after giving respondent notice 5 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that 6 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If 8 a petition to revoke probation or an accusation is filed against respondent during probation, the board shall have continuing jurisdiction, and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided,

13. Completion of Probation

Upon written notice by the board indicating successful completion of probation, respondent's pharmacy technician license will be fully restored. 14

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### 14. No Ownership of Licensed Premises

Respondent shall not own, have any legal or beneficial interest in, or serve as a manager, 16 administrator, member, officer, director, trustee, associate, or partner of any business, firm, 17 partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell 18 or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90) 19 days following the effective date of this decision and shall immediately thereafter provide written 20 proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide 21 22 documentation thereof shall be considered a violation of probation.

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15. Attend Substance Abuse Recovery Relapse Prevention and Support Groups Upon Failed Drug Screen

Upon one confirmed positive drug screen, respondent shall begin regular attendance at a 25 recognized and established substance abuse recovery support group in California, (e.g., . 26 27 Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been approved by the board or its 28 designee. Respondent must attend at least one group meeting per week unless otherwise directed

by the board or its designee. Respondent shall continue regular attendance and submit signed and
 dated documentation confirming attendance with each quarterly report for the duration of
 probation. Failure to attend or submit documentation thereof shall be considered a violation of
 probation.

16. Random Drug Screening

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Respondent, at his own expense, shall participate in random testing, including but not '6 limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug 7 screening program as directed by the board or its designee. Respondent may be required to 8 participate in testing for the entire probation period and the frequency of testing will be 9 determined by the board or its designee. At all times respondent shall fully cooperate with the -10 board or its designee, and shall, when directed, submit to such tests and samples for the detection 11 of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its 12 designee may direct. Failure to timely submit to testing as directed shall be considered a violation 13 of probation. Upon request of the board or its designee, respondent shall provide documentation 14 from a licensed practitioner that the prescription for a detected drug was legitimately issued and is 15 a necessary part of the treatment of the respondent. Failure to timely provide such documentation 16 shall be considered a violation of probation. Any confirmed positive test for alcohol or for any 17 drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment 18 shall be considered a violation of probation and shall result in the automatic suspension of work 19 by respondent. Respondent may not resume work as a pharmacy technician until notified by the 20 board in writing. 21

During suspension, respondent shall not enter any pharmacy area or any portion of or any other board licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer, or assist any licensee of the board. Respondent shall not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled

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substances. Respondent shall not resume work until notified by the board.

Respondent shall not direct, control or perform any aspect of the practice of pharmacy.
Subject to the above restrictions, respondent may continue to own or hold an interest in any
licensed premises in which he holds an interest at the time this decision becomes effective unless
otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

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#### 17. Notification of Departure

Prior to leaving the probationary geographic area designated by the board or its designee for a period greater than twenty-four (24) hours, respondent shall notify the board verbally and in writing of the dates of departure and return. Failure to comply with this provision shall be considered a violation of probation.

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#### 18. Abstain from Drugs and Alcohol Use

Respondent shall completely abstain from the possession or use of alcohol, controlled 13 substances, dangerous drugs and their associated paraphernalia except when the drugs are 14 lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon 15 request of the board or its designee, respondent shall provide documentation from the licensed 16 practitioner that the prescription for the drug was legitimately issued and is a necessary part of the 17 treatment of the respondent. Failure to timely provide such documentation shall be considered a 18 violation of probation. Respondent shall ensure that he is not in the same physical location as 19 individuals who are using illicit substances even if respondent is not personally ingesting the 20 drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia 21 not supported by the documentation timely provided, and/or any physical proximity to persons 22 using illicit substances, shall be considered a violation of probation. 23

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#### 19. Prescription Coordination and Monitoring of Use

Within thirty (30) days of the effective date of this decision, respondent shall submit to the board, for its prior approval, the name and qualifications of a single physician, nurse practitioner, physician assistant, or psychiatrist of respondent's choice, who shall be aware of the respondent's history with alcohol and controlled substances and who will coordinate and monitor any

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prescriptions for respondent for dangerous drugs, controlled substances or mood-altering drugs. 1 The approved practitioner shall be provided with a copy of the board's Statement of Issues and 2 decision. A record of this notification must be provided to the board upon request. Respondent 3 shall sign a release authorizing the practitioner to communicate with the board about respondent's 4 treatment(s). The coordinating physician, nurse practitioner, physician assistant, or psychiatrist 5 shall report to the board on a quarterly basis for the duration of probation regarding respondent's 6 compliance with this condition. If any substances considered addictive have been prescribed, the 7 report shall identify a program for the time limited use of any such substances, The board may 8 require that the single coordinating physician, nurse practitioner, physician assistant or 9 psychiatrist be a specialist in addictive medicine, or consult a specialist in addictive medicine. 10 Should respondent, for any reason, cease supervision by the approved practitioner, respondent 11 shall notify the board immediately and, within thirty (30) days of ceasing treatment, submit the 12 name of a replacement physician, nurse practitioner, physician assistant, or psychiatrist of 13 respondent's choice to the board or its designee for its prior approval. Failure to timely submit 14 the selected practitioner or replacement practitioner to the board for approval, or to ensure the 15 16 required reporting thereby on the quarterly reports, shall be considered a violation of probation.

17 If at any time an approved practitioner determines that respondent is unable to practice 18 safely as a Pharmacy Technician, the practitioner shall notify the board immediately by telephone 19 and follow up by written letter within three (3) working days. Upon notification from the board 20 or its designee of this determination, respondent shall be automatically suspended and shall not 21 resume practice until notified by the board that practice may be resumed.

During suspension, respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices or controlled substances are maintained. Respondent shall not practice as a Pharmacy Technician hor do any act involving drug selection, selection of stock, manufacturing, compounding,

dispensing or patient consultation; nor shall respondent manage, administer, or be a consultant to
any licensee of the board, or have access to or control the ordering, manufacturing or dispensing

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of dangerous drugs and controlled substances. Respondent shall not resume practice until notified by the board.

During suspension, Respondent shall not perform the duties of a pharmacy technician or a designated representative for any entity licensed by the board. Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises in which he or she holds an interest at the time this decision becomes effective unless otherwise specified in this order. Failure to comply with this suspension shall be considered a violation of probation.

#### ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Pharmacy Technician Registration license. Lenter, into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: Ø2-Ø1-2Ø12

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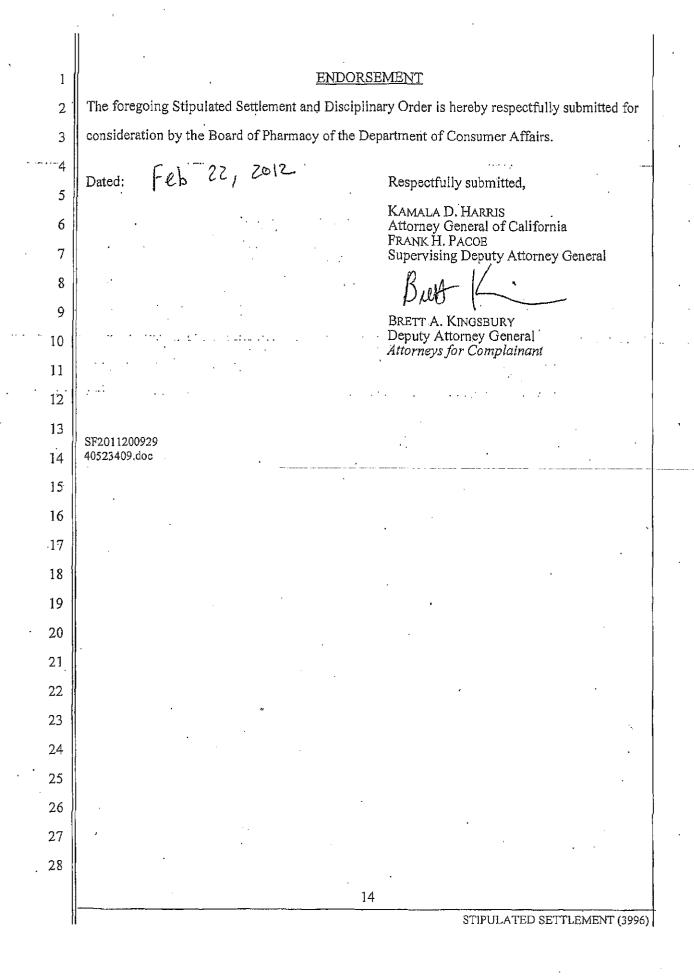
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KURTIS LAYNE MCKINZEY Respondent



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# Exhibit A

## Statement of Issues No. 3996

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1	KAMALA D. HARRIS		
2	Attorney General of California FRANK H. PACOE		
3	Supervising Deputy Attorney General BRETT A. KINGSBURY		
4	Deputy Attorney General State Bar No. 243744		
5	455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004		
6	Telephone: (415) 703-1192 Facsimile: (415) 703-5480		
7	Attorneys for Complainant		
8	BEFORE THE BOARD OF PHARMACY		
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
10	· · · · · · · · · · · · · · · · · · ·		
11	In the Matter of the Statement of Issues Case No. 3996		
12	KURTIS LAYNE MCKINZEY         15 Western Shore Ln., #4         STATEMENT OF ISSUES		
13	San Francisco, CA 94115	ł	
14	Respondent.		
15			
16	Complainant alleges:		
17	PARTIES		
18	1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official		
19	capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.		
20	2. On or about April 15, 2010, the Board of Pharmacy, Department of Consumer Affairs		
21	received an application for Pharmacy Technician Registration from Kurtis Layne McKinzey		
22	(Respondent). On or about April 12, 2010, Respondent certified under penalty of perjury to the		
<sup>.</sup> 23	truthfulness of all statements, answers, and representations in the application. The Board denied		
24	the application on October 20, 2010.		
25	JURISDICTION		
26	3. This Statement of Issues is brought before the Board of Pharmacy (Board),		
27	Department of Consumer Affairs, under the authority of the following laws. All section		
28	references are to the Business and Professions Code unless otherwise indicated.		
	1		
	STATEMENT OF ISSUES	†	

4. Section 118(a) of the Code states:

"(a) The withdrawal of an application for a license after it has been filed with a board in the
department shall not, unless the board has consented in writing to such withdrawal, deprive the
board of its authority to institute or continue a proceeding against the applicant for the denial of
the license upon any ground provided by law or to enter an order denying the license upon any
such ground."

#### STATUTORY AND REGULATORY PROVISIONS

5. Section 480 of the Code states:

"(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

....

<sup>N</sup>....

"(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially
benefit himself or herself or another, or substantially injure another.

14 "(3) (A) Done any act that if done by a licentiate of the business or profession in question,
15 would be grounds for suspension or revocation of license.

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6. Section 4300 of the Code states:

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"(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The
board may, in its sole discretion, issue a probationary license to any applicant for a license who is
guilty of unprofessional conduct and who has met all other requirements for licensure. The board
may issue the license subject to any terms or conditions not contrary to public policy . . . .

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"(e) The proceedings under this article shall be conducted in accordance with Chapter 5
(commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board
shall have all the powers granted therein. The action shall be final, except that the propriety of
the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of
Civil Procedure."

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STATEMENT OF ISSUES

· Section 4301 of the Code states: 7. 1 "The board shall take action against any holder of a license who is guilty of unprofessional 2 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. 3 Unprofessional conduct shall include, but is not limited to, any of the following: 4 <sup>11</sup>.... 5 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or 6 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and 7 whether the act is a felony or misdemeanor or not. 8 "(g) Knowingly making or signing any certificate or other document that falsely represents 9 the existence or nonexistence of a state of facts. 10 ".... 11 "(i) The violation of any of the statutes of this state, of any other state, or of the United 12 States regulating controlled substances or dangerous drugs. 13 11 14 "(n) The revocation, suspension, or other discipline by another state of a license to practice 15 pharmacy, operate a pharmacy, or do any other act for which a license is required by this chapter. 16 17 Section 4324(a) of the Code states: 18 8. "Every person who signs the name of another, or of a fictitious person, or falsely makes, 19 alters, forges, utters, publishes, passes, or attempts to pass, as genuine, any prescription for any 20drugs is guilty of forgery and upon conviction thereof shall be punished by imprisonment in the 21 state prison, or by imprisonment in the county jail for not more than one year." 22 DRUGS 23 24 9. Norco® is a brand name drug consisting of hydrocodone 10mg and acetaminophen (APAP) 325mg. It is a dangerous drug per B&P 4022 and categorized as Schedule III narcotic 25 controlled substance per H&S 11056(e)(4). 26 27 28 3

STATEMENT OF ISSUES

Hydrocodone is a Schedule II controlled substance pursuant to Health & Safety Code. 10. 1 section 11055, subdivision (b)(1)(I), and a dangerous drug within the meaning of Code section 2 4022. 3 FIRST CAUSE FOR DENIAL OF APPLICATION 4

#### (Act Involving Dishonesty)

Respondent's application is subject to denial under §§ 480(a), 4300, and 4301(f) of 11. the Code in that Respondent committed an act involving dishonesty, fraud, or deceit, with an intent to benefit himself or harm another. Specifically, in 1998, Respondent illegally obtained and attempted to use a physician's DEA number, writing himself a prescription for Norco®, which is a medication containing Hydrocodone.

#### SECOND CAUSE FOR DENIAL OF APPLICATION

(Knowingly Signing a False Document)

12. Respondent's application is subject to denial under §§ 480(a), 4300, and 4301(g) of the Code in that Respondent knowingly signed a false document. The details are described above 14 in the First Cause for Denial of Application.

#### THIRD CAUSE FOR DENIAL OF APPLICATION

(Prescription Forgery)

13. Respondent's application is subject to denial under §§ 4301(j) and 4324(a) of the 18 Code in that Respondent attempted to pass as genuine a false prescription for drugs. The details 19 are described above in the First Cause for Denial of Application. 20

FOURTH CAUSE FOR DENIAL OF APPLICATION

#### (Out-of-State Discipline)

14. Respondent's application is subject to denial under §§ 480(a), 4300, and 4301(n) of 23 the Code in that Respondent's certificate to practice as a pharmacy technician in the State of 24 Washington was disciplined on April 5, 2000. Specifically, based on the conduct described above 25 in the First Cause for Denial of Application, the State of Washington revoked Respondent's 26 certificate. 27

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STATEMENT OF ISSUES

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: Denying the application of Kurtis Layne McKinzey for a Pharmacy Technician 1. Registration; Taking such other and further action as deemed necessary and proper. 2. DATED: VIRGINIA HEROLD Executive Officer Board of Pharmacy Department of Consumer Affairs State of California Complainant SF2011200929 20449356.doc STATEMENT OF ISSUES