

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

In the Matter of the Accusation Against:

JAGVIR KAUR

Pharmacy Technician License
No. TCH 83870,

Respondent.

Case No. 5660

OAH No. 2016060931

DECISION AND ORDER

The attached Proposed Decision of the administrative law judge is hereby adopted as the decision of the California State Board of Pharmacy in the above-entitled matter, except that, pursuant to the provisions of Business and Professions Code section 495 and Government Code section 11517, subdivision (c)(2)(B), the proposed penalty is reduced as follows:

Respondent Jagvir Kaur, Pharmacy Technician License Number 83870, is hereby publicly reprovved. Respondent is required to report this reprovval as a disciplinary action. Notwithstanding Legal Conclusion 7, Respondent is not ordered to pay cost recovery.

This Decision shall become effective at 5:00 p.m. on January 23, 2017.

IT IS SO ORDERED on this 22nd day of December, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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

In the Matter of the Accusation Against:

JAGVIR KAUR,

Pharmacy Technician License
No. TCH 83870

Respondent.

Case No. 5660

OAH No. 2016060931

PROPOSED DECISION

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter on October 4, 2016, in Oakland, California.

Deputy Attorney General Nicholas Tsukamaki represented complainant Virginia K. Herold, Executive Officer of the Board of Pharmacy.

Daniel Meagher, Attorney at Law, represented respondent Jagvir Kaur, who was present throughout the administrative hearing.

The matter was submitted for decision on October 4, 2016.

FACTUAL FINDINGS

1. Complainant Virginia K. Herold made the amended accusation in her official capacity as Executive Officer of the Board of Pharmacy (Board).

2. On June 9, 2008, the Board issued Pharmacy Technician License No. TCH 83870 to Jagvir Kaur (respondent). The license was active at all times relevant here.

Cause for Discipline

3. Respondent was employed at Omnicare in Hayward, California, as a pharmacy technician on March 3, 2015. After completing her shift, she diverted 490 milliliters of

hydromorphone solution¹ and 111 milliliters of opium tincture² from the pharmacy. She self-administered the drugs in the pharmacy's lunch room, left the pharmacy, and drove to a nearby park.

4. Respondent's misconduct raises a question about her fitness to work as a pharmacy technician. Licensees handle and dispense controlled substances; they must be reliable, competent, and able to communicate effectively and to exercise sound judgment.

Respondent's Evidence

RESPONDENT'S BACKGROUND

5. On March 3, 2015, respondent ingested what she knew to be a fatal dose of hydromorphone and opium tincture in an attempt to end her life. Respondent accepts full responsibility for her poor judgment. Respondent is not a substance abuser. Prior to this incident she had never consumed controlled substances.

6. In 2006, respondent came to the United States with her parents and two of her four siblings. Respondent was 19 years old at the time. She is originally from the Punjab region of India. Her parents are traditional people who strictly follow the tenets of the Sikh religion.

7. After arriving in the Bay Area, respondent's father required respondent and her sister to attend a private vocational school to become pharmacy technicians. Respondent completed the program and an externship at Omnicare Pharmacy in 2008. She obtained her license and was hired by Omnicare after graduating.

8. Respondent performed well in her position at Omnicare and by March 2015, she had been elevated to the position of lead technician in charge of the narcotics cage. Respondent's performance evaluations from Omnicare demonstrate that she was a reliable, competent and highly-valued employee.

9. Between 2008 and 2015, respondent worked as many hours as possible in addition to performing the cooking and cleaning in her parents' home. She saved all of her money and contributed \$50,000 toward the purchase of a family home. As a result of her parents' beliefs and traditions, respondent did not go out with friends or have a social life.

¹ Hydromorphone is the generic name for Dilaudid. It is a potent opioid pain medication, and is used to treat moderate to severe pain. Hydromorphone has a high potential for abuse and is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(J).

² Opium tincture is a potent narcotic medication and is used to treat diarrhea. It also has a high risk of abuse and is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(F).

10. In the fall of 2014, when respondent was 24 years old, her parents determined that it was time for respondent to marry. Consistent with their beliefs and cultural practices, they began asking friends and family members if they knew of a man who shared their strict traditional, cultural and religious values. Respondent told her mother that she was not interested in marrying, but her parents insisted.

11. A matchmaker, or "proposal lady," as respondent refers to her, found a suitable candidate to be respondent's husband. Respondent's mother told her that respondent was going to marry this gentleman. Respondent objected, but eventually after being pressured, agreed to meet him. In early 2015, respondent and her family members went to the home of the proposed husband to meet him and his family. There was a large crowd and respondent had very little time to speak with him.

12. Respondent wanted to get to know that man before rushing into the marriage, but her parents and the proposal lady were adamant that she marry "the sooner the better." Respondent contacted the man and asked him to meet her at a Starbucks cafe so that she could better determine if she would go through with the plan. They met on Sunday, March 1, 2015; respondent expressed that she would like to take things slowly, but he advised her that his visa would expire soon and therefore he wanted to marry very soon. This comment raised further concern in respondent; she did not want to marry someone just because that person needed residency in the United States.

13. After returning home from work on Monday, March 2, 2015, respondent was confronted by her parents and the proposal lady. They had discovered that she had met the proposed husband and they were very angry. They yelled at respondent for hours and accused her of bringing disgrace upon the family. Respondent was devastated that rather than considering her wishes, her parents sided with the proposal lady and the proposed husband; they insisted that she marry him right away.

14. Respondent did not sleep well that night. The next day, March 3, 2015, respondent went to work as usual at 5:30 a.m. Her supervisor could see that she was not herself and agreed to let her leave work at 11:00 a.m.

15. Respondent was confused, felt isolated and abandoned by her parents, did not want to marry the proposed husband and felt that she was a burden on her family by creating trouble. With no one to talk to about her feelings, she made the rash decision to end her life. Respondent accepts full responsibility for her poor judgment.

16. Respondent was found unconscious by a passerby in a park near the Omnicare Pharmacy after she ingested the drugs. Emergency medical technicians arrived, determined that she had overdosed on opiates and gave her medication to reverse the effects of the drugs. Respondent was transported to the hospital and admitted to the intensive care unit. Respondent was very lucky to have survived the overdose of medication. She remained in the hospital for several days, then was transferred to a psychiatric facility for a period of four days until it was determined that she was safe to go home. Respondent received mental

health treatment from a psychologist three times per week at Kaiser until she lost her insurance in July 2015. Respondent's physical recovery took six to eight months.

17. In July 2015, respondent was terminated from her position at Omnicare. Her supervisors were sympathetic, but corporate policy required her termination.

Janet Chen, Pharm. D., worked with respondent at Omnicare for eight years. Chen wrote a letter for the Board's consideration dated August 1, 2016. She found respondent to be very sincere, responsible, extremely competent and to provide outstanding customer service. Chen recommends respondent highly.

Thuy Tran, Pharm. D., wrote a letter in support of respondent dated August 5, 2016. Tran worked with respondent from May 2012 to March 2015. Tran reports that respondent's performance was exceptional; she completed her tasks efficiently, accurately and with great care. Tran found respondent to be a respectful and pleasant coworker and he misses her presence at the pharmacy.

Monica Scheu, Pharm. D., was the pharmacy manager at Omnicare beginning in June 2011. Scheu submitted a letter for the Board's consideration dated August 8, 2016. Scheu found the quality of respondent's work to be excellent. Respondent paid close attention to detail and was neat and organized. Respondent was extremely dedicated to her job, was punctual and rarely missed work. Scheu considers respondent to be an honest and trustworthy person of high integrity. Respondent expressed remorse and apologized to Scheu for her diversion of medication.

18. Respondent's parents cancelled the marriage plans and have come to realize that their daughter's happiness is more important than an arranged marriage. They have permitted respondent to develop some independence and a social life.

19. Respondent recently traveled to Chicago, and has plans to visit a friend from India who lives in Toronto, Canada. She is doing her best to be good to herself and to become independent.

20. Respondent's brother, Himat Singh, testified at hearing. He lives with respondent and their parents. Respondent and Singh are close, and she shares her feelings with him now. Singh confirmed that respondent's relationship with her parents has improved and that she seems happier. Singh believes that respondent should be given another opportunity to prove herself.

21. Harbinder Johal, the cousin of respondent's father, testified at hearing. Johal was raised in England but lives in Union City, California, now. She is very familiar with respondent's family and the cultural and religious traditions followed by respondent's parents. Johal was unaware of how unhappy respondent was about the arranged marriage proposal. She visited respondent in the hospital and has maintained a close relationship with respondent since the incident. Johal is available to respondent if she needs support.

After respondent was terminated from Omnicare, she lost her medical insurance and her Kaiser therapy sessions. Johal assisted respondent in applying for therapy at the Hume Center, which offers free counseling services, and specializes in therapy for women of Asian origin. Johal is sensitive to the difficulty encountered by many Asian women in transitioning from a strict cultural background to life in the United States. Respondent was on the waiting list at the Hume Center for seven or eight months, but began therapy in July 2016. As of the hearing date, respondent had attended five sessions.

22. Respondent is committed to continuing with therapy and hopes to continue with her career as a pharmacy technician. Since February 2016, she has worked as a per diem pharmacy technician at Mission Wellness Pharmacy in San Francisco. She has no interactions with patients; she fills prescriptions and takes inventory for medications prescribed to HIV, Hepatitis C and transplant patients. Respondent does not dispense controlled substances. In July 2016, respondent attended a work-related conference in Las Vegas, Nevada.

Respondent recently told her supervisors about her suicide attempt; they are awaiting the outcome of this proceeding.

23. Respondent expressed sincere remorse for her misconduct. She is sorry for having disappointed her manager, family members and friends. Respondent pledges to never again take controlled substances without a prescription. She is willing to continue attending therapy and to comply with any probationary conditions demanded of her by the Board.

24. Respondent has no prior disciplinary history on her license. She has never been arrested for, or convicted of, a crime.

Costs of Investigation and Enforcement

25. The Board has incurred \$2,073.50 in investigation costs, and \$3,185 in enforcement costs. The amount of investigation and prosecution costs incurred by the Board is reasonable.

LEGAL CONCLUSIONS

1. In an action seeking to impose discipline against the holder of a professional license, the burden of proof is on complainant to establish the charging allegations by clear and convincing evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 957.)

Causes for Discipline

2. Business and Professions Code section 4301, subdivisions (f) and (o), authorize the Board to impose discipline on a licensee who commits an act involving

dishonesty. As set forth in Factual Findings 3 through 5, cause for discipline exists pursuant to Business and Professions Code section 4301, subdivisions (f) and (o).

3. Business and Professions Code section 4301, subdivisions (h) and (o), authorize the Board to impose discipline on a licensee who uses controlled substances in a dangerous manner. By reason of the matters set forth in Factual Findings 3 through 5, respondent's self-administration of a fatal dose of hydromorphone and opium tincture constitutes cause for discipline pursuant to Business and Professions Code section 4301, subdivisions (h) and (o).

4. Business and Professions Code section 4301, subdivisions (j) and (o), authorize the Board to impose discipline on a licensee who possesses controlled substances illegally. As set forth in Factual Findings 3 through 5, respondent's possession of hydromorphone and opium tincture without a valid prescription constitutes cause for discipline pursuant to Business and Professions Code section 4301, subdivisions (j) and (o).

5. Business and Professions Code section 4301, subdivisions (j) and (o), and Health and Safety Code section 11173, subdivision (a), authorize the Board to impose discipline on a licensee who obtains controlled substances by fraud, deceit, subterfuge or concealment of a material fact. By reason of the matters set forth in Factual Findings 3 through 5, respondent's possession of hydromorphone and opium tincture constitutes cause for discipline pursuant to Business and Professions Code section 4301, subdivisions (j) and (o), and Health and Safety Code section 11173, subdivision (a).

Disciplinary Considerations

6. Cause for discipline having been established, the issue is the level of discipline to impose. The Board is a consumer protection agency with the primary mission of protecting the health, safety, and welfare of the public. The Board's criteria of rehabilitation (Cal. Code Regs., tit. 16, § 2522) and its disciplinary guidelines (Cal. Code Regs., tit. 16, § 2524) have been considered in determining the appropriate discipline in this matter. The relevant criteria of rehabilitation include: the nature and severity of the act; overall disciplinary record; number and variety of violations; mitigation evidence; time that has passed since the act occurred; and other evidence of rehabilitation.

The evidence did not establish that respondent is dependent on, or abuses, drugs or alcohol. Rather, respondent suffered a mental breakdown due to familial pressures. Respondent testified credibly that her relationship with her family has improved and she is committed never to ingest controlled substances without a valid prescription again.

Rehabilitation is a "state of mind" and the law looks with favor upon rewarding with the opportunity to serve one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) Here, respondent has lived a law-abiding life. Respondent is an

honest individual and has been upfront with the Board concerning her lapse in judgment. Respondent has expressed sincere remorse and has taken this matter very seriously.

Respondent has had an excellent work history. Her past supervisors and coworkers praise her competence, reliability and pleasant character.

Respondent has agreed to comply with probation and its conditions if ordered. Due to the gravity of respondent's act in attempting to end her life, in order for the Board to be assured that she is safe in a pharmacy setting, a psychiatric evaluation and regular psychotherapy from a qualified practitioner is required to protect her and to protect the public. A five-year probationary term that includes a psychiatric evaluation as well as therapy shall be ordered.

Costs of Enforcement

7. Complainant has requested that respondent be ordered to pay the Board the costs of investigating and enforcing this case. Business and Professions Code section 125.3 provides that respondent may be ordered to pay the Board "a sum not to exceed the reasonable costs of the investigation and enforcement of the case." The actual costs of investigation and enforcement have been found to be \$5,258.50. (Factual Finding 25.) The case of *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 sets forth the factors to be considered in determining whether the costs reimbursement should be ordered.

Those factors include whether the licensee has been successful at hearing in obtaining a dismissal or reduction of the charges, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct. Respondent objects to a portion of the costs, arguing that the matter should have resolved prior to hearing. This argument is rejected. The costs will not be reduced; however, respondent will be permitted to pay them over the probationary period.

ORDER

Pharmacy technician license number TCH 83870 is revoked; however the revocation is stayed and respondent Jagvir Kaur is placed on probation for five years upon the following terms and conditions:

1. Certification Prior to Resuming Work

Respondent shall be automatically suspended from working as a pharmacy technician until she is certified as defined by Business and Professions Code section 4202, subdivision (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 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 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 substances. Respondent shall not resume work until notified by the Board.

Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises by the Board in which 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.

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 72 hours of such occurrence:

- a. 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
- b. a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
- c. a conviction of any crime
- d. discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's pharmacy technician 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 requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency 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.

4. Interview with the Board

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

5. Cooperate with Board Staff

Respondent shall cooperate with the Board's inspections program and with the Board's monitoring and investigation of respondent's compliance with the terms and conditions of her probation. Failure to cooperate shall be considered a violation of probation.

6. Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 5660 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within 30 days of the effective date of this decision, and within 15 days of respondent undertaking any new employment, respondent shall cause her 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 5660 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that her

employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the Board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify her direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the decision in case number 5660 in advance of the respondent commencing work at each pharmacy. A record of this notification must be provided to the Board upon request.

Furthermore, within 30 days of the effective date of this decision, and within 15 days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause her direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that he or she has read the decision in case number 5660 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that her 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. Reimbursement of Board Costs

As a condition precedent to successful completion of probation, respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$5,258.50. Respondent shall make said payments as follows: payments of \$1,315 due within 90 days of the beginning of probation and within 90 days of each following year. There shall be no deviation from this schedule absent prior written approval by the Board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

The filing of bankruptcy by respondent shall not relieve respondent of her responsibility to reimburse the Board its costs of investigation and prosecution.

8. Probation Monitoring Costs

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 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.

9. Status of License

Respondent shall, at all times while on probation, maintain an active, current pharmacy 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.

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

10. License Surrender While on Probation/Suspension

Following the effective date of this decision, should respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender her pharmacy technician license to the Board for surrender. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other 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 surrender constitutes a record of discipline and shall become a part of the respondent's license history with the Board.

Upon acceptance of the surrender, respondent shall relinquish her pharmacy technician license to the Board within 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.

11. 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 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.

12. Tolling of Probation

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of 40 hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply 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 40 hours per calendar month in California, respondent must notify the Board in writing within 10 days of cessation of work and must further notify the Board in writing within 10 days of the resumption of the work. Any failure to provide such notification(s) shall be considered a violation of probation.

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

"Cessation of work" means calendar month during which respondent is not working for at least 40 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 40 hours as a pharmacy technician as defined by Business and Professions Code section 4115.

13. Violation of Probation

If a respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over respondent, and probation shall automatically be extended, until all terms and conditions have been satisfied or the Board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

If respondent violates probation in any respect, the Board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that 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 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.

14. Psychiatric Evaluation

Within 30 calendar days of the effective date of this decision, and on a periodic basis as may be required by the Board or its designee, respondent shall undergo at her own expense, a psychiatric evaluation by a Board-appointed or Board-approved licensed mental health practitioner. The approved evaluator shall be provided with a copy of the Board's accusation and decision. Respondent shall sign a release authorizing the evaluator to furnish the Board with a current diagnosis and a written report regarding the respondent's judgment and ability to function independently as a pharmacy technician with safety to the public. Respondent shall comply with all the recommendations of the evaluator if directed by the Board or its designee.

If the evaluator recommends, and the Board or its designee directs, respondent shall undergo psychotherapy. Within 30 days of notification by the Board that a recommendation for psychotherapy has been accepted, respondent shall submit to the Board or its designee, for prior approval, the name and qualification of a licensed mental health practitioner of respondent's choice.

Within 30 days of approval thereof by the Board, respondent shall submit documentation to the board demonstrating the commencement of psychotherapy with the approved licensed mental health practitioner. Should respondent, for any reason, cease treatment with the approved licensed mental health practitioner, respondent shall notify the Board immediately and, within 30 days of ceasing treatment therewith, submit the name of a replacement licensed mental health practitioner of respondent's choice to the Board for its prior approval. Within 30 days of approval thereof, respondent shall submit documentation to the Board demonstrating the commencement of psychotherapy with the approved replacement. Failure to comply with any requirement or deadline stated by this paragraph shall be considered a violation of probation.

Upon approval of the initial or any subsequent licensed mental health practitioner, respondent shall undergo and continue treatment with that therapist, at respondent's own expense, until the therapist recommends in

writing to the Board, and the Board or its designee agrees by way of a written notification to respondent, that no further psychotherapy is necessary. Upon receipt of such recommendation from the treating therapist, and before determining whether to accept or reject said recommendation, the Board or its designee may require respondent to undergo, at respondent's expense, a mental health evaluation by a separate Board-appointed or Board-approved evaluator. If the approved evaluator recommends that respondent continue psychotherapy, the Board or its designee may require respondent to continue psychotherapy.

Psychotherapy shall be at least once a week unless otherwise approved by the Board. Respondent shall provide the therapist with a copy of the Board's accusation and decision no later than the first therapy session. Respondent shall take all necessary steps to ensure that the treating therapist submits written quarterly reports to the Board concerning respondent's fitness to practice, progress in treatment, and other such information as may be required by the Board or its designee.

If at any time the approved evaluator or therapist determines that respondent is unable to practice safely or independently as a pharmacy technician, the licensed mental health practitioner shall notify the Board immediately by telephone and follow up by written letter within three working days. Upon notification from the Board or its designee of this determination, respondent shall be automatically suspended and shall not resume practice until notified by the Board that practice may be resumed.

15. Completion of Probation

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

DATED: October 19, 2016

DocuSigned by:

Jill Schlichtmann

00097D940B484D9...

JILL SCHLICHTMANN

Administrative Law Judge

Office of Administrative Hearings

1 KAMALA D. HARRIS
Attorney General of California
2 JOSHUA A. ROOM
Supervising Deputy Attorney General
3 NICHOLAS TSUKAMAKI
Deputy Attorney General
4 State Bar No. 253959
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-1188
6 Facsimile: (415) 703-5480
E-mail: Nicholas.Tsukamaki@doj.ca.gov
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:

Case No. 5660

12 **JAGVIR KAUR**
13 **28809 Foxfire Lane**
Hayward, CA 94544

ACCUSATION

14 **Pharmacy Technician Registration No. TCH**
15 **83870**

16 Respondent.

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 June 9, 2008, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 83870 to Jagvir Kaur (Respondent). The Pharmacy Technician
24 Registration was in full force and effect at all times relevant to the charges brought herein and
25 will expire on May 31, 2016, unless renewed.

26 ///

27 ///

28 ///

1 **JURISDICTION**

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

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

8 5. Section 4300.1 of the Code states:

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

14 **STATUTORY PROVISIONS**

15 6. Section 4060 of the Code states:

16 "No person shall possess any controlled substance, except that furnished to a person upon
17 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
18 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
19 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
20 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
21 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
22 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
23 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
24 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
25 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
26 labeled with the name and address of the supplier or producer.

27 ..."

28 ///

1 7. Section 4301 of the Code provides, in relevant part:

2 “The board shall take action against any holder of a license who is guilty of unprofessional
3 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
4 Unprofessional conduct shall include, but is not limited to, any of the following:

5 ...

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

9 ...

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

15 ...

16 “(j) The violation of any of the statutes of this state, or any other state, or of the United
17 States regulating controlled substances and dangerous drugs.

18 ...

19 “(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
20 violation of or conspiring to violate any provision or term of this chapter or of the applicable
21 federal and state laws and regulations governing pharmacy, including regulations established by
22 the board or by any other state or federal regulatory agency.

23 ...”

24 8. Health and Safety Code section 11173, subdivision (a), provides that no person shall
25 obtain or attempt to obtain controlled substances, or procure or attempt to procure the
26 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,
27 or subterfuge; or (2) by the concealment of a material fact.

28 ///

1 9. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess
2 any controlled substance listed in Schedule II (Health and Safety Code section 11055),
3 subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

4 10. Hydromorphone is a Schedule II controlled substance as designated by Health and
5 Safety Code section 11055, subdivision (b)(1)(J) and a dangerous drug as designated by Business
6 and Professions Code section 4022.

7 11. Opium is a Schedule II controlled substance as designated by Health and Safety Code
8 section 11055, subdivision (b)(1) and a dangerous drug as designated by Business and Professions
9 Code section 4022.

10 COSTS

11 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
12 administrative law judge to direct a licentiate found to have committed a violation or violations of
13 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
14 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
15 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
16 included in a stipulated settlement.

17 FACTUAL BACKGROUND

18 13. On or about March 3, 2015, Respondent was employed as a pharmacy technician at a
19 pharmacy in Hayward, California. On that date, Respondent diverted 490 milliliters of
20 hydromorphone solution 1mg/ml and 111 milliliters of opium tincture 10mg/ml from the
21 pharmacy. Respondent then self-administered the drugs in the pharmacy's lunch room, left the
22 pharmacy, and drove to a park.

23 FIRST CAUSE FOR DISCIPLINE

24 (Commission of an Act Involving Moral Turpitude, Dishonesty, Fraud, Deceit, and/or
25 Corruption)

26 14. Respondent is subject to disciplinary action under section 4301, subdivisions (f) and
27 (o) of the Code in that Respondent committed an act involving moral turpitude, dishonesty, fraud,
28 deceit, and/or corruption when she diverted hydromorphone and opium tincture from the

1 pharmacy where she was employed. The circumstances of Respondent's conduct are set forth
2 above in paragraph 13.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Dangerous Use of Controlled Substances and Dangerous Drugs)**

5 15. Respondent is subject to disciplinary action under section 4301, subdivisions (h) and
6 (o) of the Code in that Respondent used controlled substances and dangerous drugs in a dangerous
7 manner. The circumstances of Respondent's conduct are set forth above in paragraph 13.

8 **THIRD CAUSE FOR DISCIPLINE**

9 **(Illegal Possession of Controlled Substances)**

10 16. Respondent is subject to disciplinary action under section 4301, subdivisions (j)
11 and/or (o) and/or section 4060 of the Code, and/or Health and Safety Code section 11350, in that
12 Respondent possessed controlled substances without a prescription. The circumstances of
13 Respondent's conduct are set forth above in paragraph 13.

14 **FOURTH CAUSE FOR DISCIPLINE**

15 **(Obtaining Controlled Substance by Fraud, Deceit, or Subterfuge)**

16 17. Respondent is subject to disciplinary action under section 4301, subdivisions (j)
17 and/or (o) of the Code, and/or Health and Safety Code section 11173, subdivision (a), in that
18 Respondent obtained controlled substances and/or procured the administration of controlled
19 substances by fraud, deceit, subterfuge, and/or the concealment of a material fact. The
20 circumstances of Respondent's conduct are set forth above in paragraph 13.

21 **FIFTH CAUSE FOR DISCIPLINE**

22 **(Unprofessional Conduct)**

23 18. Respondent is subject to disciplinary action under section 4301 of the Code in that
24 Respondent engaged in unprofessional conduct. The circumstances of Respondent's conduct are
25 set forth above in paragraph 13.

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 83870 issued to Jagvir Kaur;
2. Ordering Jagvir Kaur 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: 4/15/16 Virginia Herold

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

SF2015403155
41487144.doc