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

12 In the Matter of the Accusation Against:

Case No. 3239

13 MANUEL ARMENDARIZ
9019 Lemoran Avenue
14 Downey, CA 90240

ACCUSATION

15 Pharmacy Tech. Registration No. TCH 49698

16 Respondent.
17

18 Complainant alleges:

19 PARTIES

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

23 2. On or about August 29, 2003, the Board of Pharmacy issued Pharmacy
24 Technician Registration Number TCH 49698 to Manuel Armendariz (Respondent). The
25 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges
26 brought herein and will expire on February 8, 2009, unless renewed.

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

....

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

....

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

....

(p) Actions or conduct that would have warranted denial of a license.

....

9. . Section 4022 of the Code states

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

1 (c) Any other drug or device that by federal or state law can be lawfully
2 dispensed only on prescription or furnished pursuant to Section 4006.

3 10. Section 4059 of the Code states, in pertinent part, that a person may not
4 furnish any dangerous drug except upon the prescription of a physician, dentist, podiatrist,
5 optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not
6 furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist,
7 optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

8 11. Section 4060 of the Code states:

9 No person shall possess any controlled substance, except that furnished to
10 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
11 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
12 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
13 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant
14 pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or
15 a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause
16 (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.
17 This section shall not apply to the possession of any controlled substance by a
18 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
19 optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
20 practitioner, or physician assistant, when in stock in containers correctly labeled
21 with the name and address of the supplier or producer.

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23 12. California Code of Regulations, title 16, section 1770 states:

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

13 13. California Code of Regulations, title 16, section 1769 states:

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15 (b) When considering the suspension or revocation of a facility or a
16 personal license on the ground that the licensee or the registrant has been
17 convicted of a crime, the board, in evaluating the rehabilitation of such person
18 and his present eligibility for a license will consider the following criteria:

19 (1) Nature and severity of the act(s) or offense(s).

20 (2) Total criminal record.

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(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) Evidence, if any, of rehabilitation submitted by the licensee.

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

DRUGS

15. Cocaine is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (b)(6), and is a dangerous drug pursuant to Business & Professions Code section 4022.

16. Methamphetamine is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (d)(2), and is a dangerous drug pursuant to Business and Professions Code section 4022.

FIRST CAUSE FOR DISCIPLINE

(July 21, 2008 Criminal Conviction for Possession of Cocaine for Sale)

17. Respondent has subjected his license to discipline under sections 490 and 4301, subdivision (l) of the Code in that he was convicted of a crime that is substantially related to the qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

a. On or about July 21, 2008, in a criminal proceeding entitled *People of the State of California v. Manuel Armendariz*, in Riverside County Superior Court, case number SWF018750, Respondent was convicted on his plea of guilty to violating Health and Safety Code section 11351, possession of a controlled substance for sale, to wit, cocaine, a felony. The conviction was enhanced pursuant to Penal Code section 12022, subdivision (c) in that Respondent was in possession of a firearm in the commission of the principal offense.

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1 b. As a result of the conviction, on or about July 21, 2008, the court
2 sentenced Respondent to 365 days in the custody of the sheriff, with credit for 13 days, stayed
3 until September 2, 2008. Formal probation was granted for a period of 60 months. Respondent
4 was ordered to attend 52 Narcotics Anonymous meetings, participate in drug counseling or a
5 rehabilitation program, and not use or possess illegal controlled substances. Respondent was
6 further required to submit to search, biological chemical testing, not own or possess firearms or
7 deadly weapons for life, and payment of fees, fines, and court costs.

8 c. The facts that lead to the conviction were that on or about the
9 afternoon of November 1, 2006, a deputy from the Riverside County Sheriff's Department
10 conducted a traffic stop on Respondent who was driving a Cadillac Escalade with overly tinted
11 windows. Respondent appeared to be very nervous, so the deputy requested and received
12 permission to search the vehicle. Under the back seat of the vehicle, the deputy located an
13 eyeglass case containing 1.48 ounces of what later tested positive for methamphetamine. Based
14 on the quantity of the methamphetamine, the deputy contacted the department's narcotics unit to
15 conduct a search of Respondent's residence. Respondent's wife was intercepted while picking
16 her children up from school and she waited with a deputy outside the residence until the search
17 warrant was issued. During a search of the residence, three handguns were located in the closet
18 of the master bedroom: a Ruger 6-shot revolver, a Smith & Wesson six-shot revolver, and a
19 Smith & Wesson 9mm semi-automatic loaded with five rounds in the magazine. A records
20 check revealed the revolvers were stolen. Additional ammunition and \$211 in U.S. currency was
21 located in the closet. A one-ounce bag of cocaine was found in a linen cabinet in the master
22 bathroom. All of the items found were in locations easily accessible by Respondent's two
23 children. Respondent agreed to speak with the deputies and stated that the cocaine was for
24 personal use purchased for an upcoming family trip to Las Vegas. Respondent stated that he was
25 selling methamphetamine because of financial problems and he needed the money. Respondent
26 had \$500 in U.S. currency in his right front pants pocket. Respondent also exhibited the signs
27 and symptoms of being under the influence of a central nervous system stimulant. Child
28 Protective Services were called and the two minor children were removed from the residence.

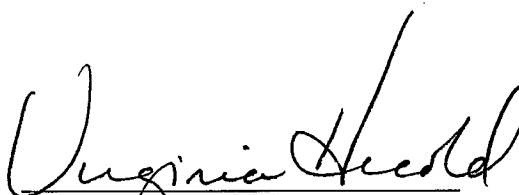
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PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 49698, issued to Manuel Armendariz;
2. Ordering Manuel Armendariz 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: 4/16/09


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

SD2008803167