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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:
13 SYLVIA SAWYER
16702 Bartlet Lane #2
14 Huntington Beach, CA 92647
15 Pharmacy Technician License No. TCH 27671
16 Respondent.

Case No. 3275
ACCUSATION

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 November 16, 1998, the Board of Pharmacy issued Pharmacy
24 Technician license number TCH 27671 to Sylvia Sawyer (Respondent). The Pharmacy
25 Technician license was in full force and effect at all times relevant to the charges brought herein
26 and will expire on October 31, 2010, unless renewed.

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JURISDICTION

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

4. Section 4300 of the Code states:

“(a) Every license issued may be suspended or revoked.

“(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

“(1) Suspending judgment.

“(2) Placing him or her upon probation.

“(3) Suspending his or her right to practice for a period not exceeding one year.

“(4) Revoking his or her license.

“(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

“....”

“(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.”

5. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

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STATUTORY PROVISIONS AND REGULATIONS

6. Code section 4301 provides in part:

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

“...

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

“...

“(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 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

1 controlled substances or dangerous drugs, to determine if the conviction is of an offense
2 substantially related to the qualifications, functions, and duties of a licensee under this chapter.
3 A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a
4 conviction within the meaning of this provision...

5 "....

6 7. Section 490 of the Code states:

7 "(a) In addition to any other action that a board is permitted to take against a
8 licensee, a board may suspend or revoke a license on the ground that the licensee has been
9 convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties
10 of the business or profession for which the license was issued.

11 "(b) Notwithstanding any other provision of law, a board may exercise any
12 authority to discipline a licensee for conviction of a crime that is independent of the authority
13 granted under subdivision (a) only if the crime is substantially related to the qualifications,
14 functions, or duties of the business or profession for which the licensee's license was issued.

15 "(c) A conviction within the meaning of this section means a plea or verdict of
16 guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted
17 to take following the establishment of a conviction may be taken when the time for appeal has
18 elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting
19 probation is made suspending the imposition of sentence, irrespective of a subsequent order
20 under the provisions of Section 1203.4 of the Penal Code.

21 "(d) The Legislature hereby finds and declares that the application of this section
22 has been made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142
23 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and
24 regulations in question, resulting in potential harm to the consumers of California from licensees
25 who have been convicted of crimes. Therefore, the Legislature finds and declares that this
26 section establishes an independent basis for a board to impose discipline upon a licensee, and
27 that the amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session do
28 not constitute a change to, but rather are declaratory of, existing law."

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8. Section 493 of the Code states:

“Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

“As used in this section, ‘license’ includes ‘certificate,’ ‘permit,’ ‘authority,’ and ‘registration.’”

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

“For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a 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.”

10. Section 482 of the Code states:

“Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

- “(a) Considering the denial of a license by the board under Section 480; or
- “(b) Considering suspension or revocation of a license under Section 490.

“Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.”

11. Title 16, Code of Regulations, section 1769 provides in part:

“(b) When considering the suspension or revocation of a facility or a personal

1 license on the ground that the licensee or the registrant has been convicted of a crime, the board,
2 in evaluating the rehabilitation of such person and his present eligibility for a license will
3 consider the following criteria:

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

5 “(2) Total criminal record.

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

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

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

11 **COST RECOVERY**

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

16 **DRUGS**

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

20 **FACTS**

21 14. On or about May 8, 2007, in the matter of *People of the State of California*
22 *v. Sylvia Marie Sawyer*, Orange County Superior Court-West Justice Center, Case No.
23 07WM05126, Respondent was charged with: 1) child abuse and endangerment (Penal Code
24 section 273a(b); 2) driving under the influence of alcohol/drugs (Vehicle Code section
25 23152(a); 3) being under the influence of a controlled substance (Health and Safety Code
26 section 11550); and, 4) possession of controlled substance paraphernalia (Health and Safety
27 Code section 11364). On or about October 4, 2007, Respondent pled guilty to counts one, two
28 and four and count three was dismissed. Respondent was convicted on her plea of guilty to

1 violation of Penal Code section 273a(b) (Child Abuse and Endangerment); violation of Vehicle
2 Code section 23152(a) (Driving Under the Influence of Alcohol/Drugs), and violation of Health
3 and Safety Code section 11364 (Possession of Controlled Substance Paraphernalia), all
4 misdemeanors.

5 15. The circumstances that led to Respondent's conviction are as follows: On
6 or about May 5, 2007, at about 4:03 p.m., a police officer with the Huntington Beach Police
7 Department responded to a family disturbance call in which a 10-year old calling from a
8 neighbor's house reported that his 15-year old brother and his mother were involved in a
9 physical fight and that his brother had hit his mother on the head. The responding police officer
10 parked directly west of the residence. As the officer was approaching the rear of the residence
11 from the north/south alleyway, he saw Respondent driving a motor vehicle and pull into her
12 driveway. When Respondent stopped the car, she appeared visibly upset and requested the
13 police officer's assistance. The officer heard a small child crying in the backseat of
14 Respondent's vehicle. Respondent identified the child as her daughter. At Respondent's
15 request, the officer made contact with her son who was inside the residence while Respondent
16 was instructed to wait outside with her daughter.

17 16. A large round table sat in the entry way of Respondent's residence and
18 prevented the front door from opening more than 16 inches. When the officer entered the
19 residence, he observed that the floor surfaces were covered with dirt, dirty clothing, old rotting
20 food and other debris. Although it was about 70 degrees outside, all the windows were shut and
21 covered with sheets and blankets. The kitchen was full of dirty dishes. Old, rotten food covered
22 the counter tops and the floor. There were children's toys, dirty clothes, trash and other
23 miscellaneous items covering almost all surfaces. An open scissor lay on the floor. The
24 condition of the home led the officer to be concerned about the safety of the children, especially
25 because of unsanitary and potentially dangerous conditions for Respondent's two-year old
26 daughter. The officer observed that Respondent's children were dirty and was informed that the
27 15-year old had not bathed or showered in two days.

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SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Use of Controlled Substance)

21. Respondent is subject to disciplinary action under section 4301(h) for unprofessional conduct in that she used a dangerous drug, methamphetamine, in a manner as to be dangerous or injurious to herself, or to any other person or to the public, as more fully set forth above in paragraphs 14-19.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Child Abuse and Endangerment)

22. Respondent is subject to disciplinary action under Code section 4301(f) for unprofessional conduct in the commission of any act involving moral turpitude, dishonesty, fraud, deceit or corruption in that she pled guilty to, and was convicted of, child abuse and endangerment on October 4, 2007, as more fully set forth above in paragraphs 14-19.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Possession of Drug Paraphernalia)

23. Respondent is subject to disciplinary action under Code section 4301(j) for unprofessional conduct in that Respondent pled guilty to, and was convicted of, possessing drug paraphernalia on October 4, 2007, as more fully set forth above in paragraphs 14-19.

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 License Number TCH 27671, issued to Sylvia Sawyer Sylvia Sawyer;

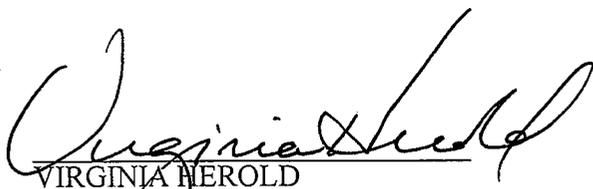
2. Ordering Sylvia Sawyer to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 5/14/09



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

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