

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 KRISTI GUDOSKI COOK, State Bar No. 185257
Deputy Attorney General
4 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
5 Telephone: (213) 620-6343
Facsimile: (213) 897-2804
6

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. 3290

12 JOEL ROBERT SMITH
34937 Acacia Ave.
13 Yucaipa, CA 92399
Pharmacy Technician Registration No. TCH
14 46392

ACCUSATION

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

22 2. On or about December 3, 2002, the Board of Pharmacy (Board) issued
23 Pharmacy Technician Registration Number TCH 46392 to Joel Robert Smith (Respondent). The
24 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges
25 brought herein and will expire on May 31, 2010, unless renewed.

26 ///

27 ///

28 ///

1 JURISDICTION

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

5 STATUTORY PROVISIONS

6 4. Section 4300, subdivision (a), states: "Every license issued may be
7 suspended or revoked."

8 5. Section 4301 states, in pertinent part:

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

13

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

17

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

20

21 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or
22 abetting the violation of or conspiring to violate any provision or term of this chapter [the
23 Pharmacy Law (§ 4000, et seq.)] or of the applicable federal and state laws and regulations
24 governing pharmacy, including regulations established by the board or by any other state or
25 federal regulatory agency."

26 6. Section 4059, subdivision (a), states:

27 "A person may not furnish any dangerous drug except upon the prescription of a
28 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to

1 Section 3640.7. A person may not furnish any dangerous device, except upon the prescription
2 of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to
3 Section 3640.7.”

4 7. Section 4060 states, in pertinent part:

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

16 8. Health and Safety Code section 11158, subdivision (a), states, in pertinent
17 part: "Except as provided in Section 11159 or in subdivision (b) of this section, no controlled
18 substance classified in Schedule II shall be dispensed without a prescription meeting the
19 requirements of this chapter.”

20 9. Health and Safety Code section 11170 states: "No person shall prescribe,
21 administer, or furnish a controlled substance for himself.”

22 10. Health and Safety Code section 11173, subdivision (a), states:

23 "No person shall obtain or attempt to obtain controlled substances, or procure or
24 attempt to procure the administration of or prescription for controlled substances, (1) by fraud,
25 deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.”

26 ///

27 ///

28 ///

1 **CONTROLLED SUBSTANCES/DANGEROUS DRUGS**

2 11. Morphine is a Schedule II controlled substance as designated by Health
3 and Safety Code section 11055, subdivisions (a) and (b)(1)(M), and is a dangerous drug as
4 defined in section 4022.

5 12. Hydromorphone is a Schedule II controlled substance as designated by
6 Health and Safety Code section 11055, subdivisions (a) and (b)(1)(K), and is a dangerous drug
7 as defined in section 4022.

8 13. Section 4022 states, in pertinent part:

9 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for
10 self-use in humans or animals, and includes the following:

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

13

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

16 **COST RECOVERY PROVISION**

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

21 **FIRST CAUSE FOR DISCIPLINE**

22 (Unprofessional Conduct/Possession of a Controlled Substance)

23 15. Respondent is subject to disciplinary action under sections 4301,
24 subdivisions (j) and (o), and 4060, for possessing a controlled substance. The circumstances are
25 as follows:

26 a. On or about January 26, 2007, Respondent drove up to a DUI checkpoint,
27 and a Sheriff's Department officer approached him and spoke to him while he was sitting in his
28 vehicle. The officer asked Respondent to pull over and step out of the vehicle.

1 b. During a pat down search of Respondent, the officer found multiple
2 syringes filled with liquid. Respondent admitted to the officer that the syringes were filled with
3 Morphine and that he had taken them without authorization from Loma Linda University
4 Medical Center Hospital where he worked as a pharmacist assistant. Later, Respondent also
5 admitted to the officer that he had a recreational habit of using Morphine intravenously.

6 c. Respondent was arrested for possession of a controlled substance. The
7 arrest did not result in a conviction because Respondent successfully participated in a deferred
8 entry of judgment program.

9 **SECOND CAUSE FOR DISCIPLINE**

10 (Furnishing a Dangerous Drug/Controlled Substance Without Authorization)

11 16. Respondent is subject to disciplinary action under sections 4301,
12 subdivisions (j) and (o), and 4059, subdivision (a), in conjunction with Health and Safety Code
13 sections 11158, subdivision (a), and 11170, for furnishing a dangerous drug/controlled substance
14 to himself without a prescription or authorization from a prescriber. Complainant refers to and
15 incorporates all the allegations set forth in paragraphs 15.a. through 15.b, inclusive, as though set
16 forth fully. The circumstances are as follows:

17 a. During a period of about two to three months before Respondent's January
18 26, 2007 arrest for possession of a controlled substance, Respondent had been taking Morphine
19 and Hydromorphone from Loma Linda University Medical Center Hospital Pharmacy without
20 authorization for his own recreational use.

21 b. During his shifts in the IV Room, Respondent would go into the IV hoods
22 when no one else was present and take 1-2 ml at a time of Morphine or Hydromorphone from
23 different vials, which had some amount of "overfill" in them.

24 **THIRD CAUSE FOR DISCIPLINE**

25 (Obtaining a Controlled Substance by Fraud, Deceit or Subterfuge)

26 17. Respondent is subject to disciplinary action under section 4301,
27 subdivisions (f), (j) and (o), in conjunction with Health and Safety Code section 11173,
28 subdivision (a), for obtaining a controlled substance by fraud, deceit or subterfuge. Complainant

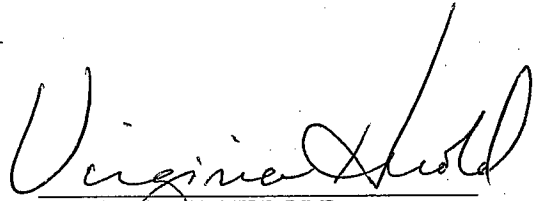
1 refers to and incorporates all the allegations set forth in paragraphs 15.a. through 15.b, and 16.a.
2 through 16.b, inclusive, as though set forth fully.

3 PRAYER

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

- 6 1. Revoking or suspending Pharmacy Technician Registration Number TCH
7 46392, issued to Joel Robert Smith.
- 8 2. Ordering Joel Robert Smith to pay the Board the reasonable costs of the
9 investigation and enforcement of this case, pursuant to Business and Professions Code section
10 125.3; and
- 11 3. Taking such other and further action as deemed necessary and proper.

12
13 DATED: 6/2/09

14 
15
16 VIRGINIA K. HEROLD
17 Executive Officer
18 Board of Pharmacy
19 Department of Consumer Affairs
20 State of California
21 Complainant

22 LA2009602870
23 60406670.wpd

24
25
26
27
28