

1 EDMUND G. BROWN JR.
Attorney General of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 JANICE K. LACHMAN
Supervising Deputy Attorney General
4 State Bar No. 186131
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 445-7384
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 3299

13 **CHARLENE A. SIERRA, A.K.A.**
14 **CHARLENE AGRIPINA BERNAL**
15 **5655 Huntington Street, #211**
16 **Fresno, CA 93727**

ACCUSATION

17 **Original Pharmacy Technician**
18 **Registration No. TCH 39666**

Respondent.

19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about October 31, 2001, the Board of Pharmacy issued Original Pharmacy
24 Technician Registration Number TCH 39666 to Charlene A. Sierra, also known as Charlene
25 Agripina Bernal (Respondent). The Original Pharmacy Technician Registration was in full force
26 and effect at all times relevant to the charges brought herein and will expire on February 28,
27 2011, unless renewed.

JURISDICTION

1
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 unless otherwise indicated.

5 4. Section 4300 of the Code states:

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

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

10 “(1) Suspending judgment.

11 “(2) Placing him or her upon probation.

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

13 “(4) Revoking his or her license.

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

16 ...

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

22 5. Section 118 of the Code states:

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

1 “(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a
2 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by
3 order of a court of law, or its surrender without the written consent of the board, shall not, during
4 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
5 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
6 provided by law or to enter an order suspending or revoking the license or otherwise taking
7 disciplinary action against the licensee on any such ground.

8 “(c) As used in this section, ‘board’ includes an individual who is authorized by any
9 provision of this code to issue, suspend, or revoke a license, and ‘license’ includes ‘certificate,’
10 ‘registration,’ and ‘permit.’”

11 6. Section 4301 of the Code states:

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

15 ...

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

21 ...

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

24 ...

25 “(l) The conviction of a crime substantially related to the qualifications, functions, and
26 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
27 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
28 substances or of a violation of the statutes of this state regulating controlled substances or

1 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
2 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
3 The board may inquire into the circumstances surrounding the commission of the crime, in order
4 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
5 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
6 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
7 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
8 of this provision. The board may take action when the time for appeal has elapsed, or the
9 judgment of conviction has been affirmed on appeal or when an order granting probation is made
10 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
11 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
12 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
13 indictment.

14 ...

15 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
16 violation or conspiring to violate any provision or term of this chapter or of the applicable federal
17 and state laws and regulations governing pharmacy..."

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

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

25 8. Section 4060 of the Code states:

26 "No person shall possess any controlled substance, except that furnished to a person upon
27 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
28 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified

1 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
2 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
3 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
4 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
5 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
6 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
7 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
8 labeled with the name and address of the supplier or producer.

9 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a
10 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs
11 and devices."

12 9. Health & Safety Code section 11377(a) provides that, except as otherwise authorized,
13 by law, "every person who possesses any controlled substance which is (1) classified in Schedule
14 III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054,
15 except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph (11) of
16 subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section
17 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the
18 prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state,
19 shall be punished by imprisonment in a county jail for a period of not more than one year or in the
20 state prison."

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

25 **FIRST CAUSE FOR DISCIPLINE**

26 (Substantially Related Criminal Conviction)

27 11. Respondent is subject to disciplinary action under section 4301, subsection (l), in that
28 on August 7, 2008, in the case entitled *People vs. Charlene Agripina Bernal, aka Charlene Sierra*

1 (Fresno Cnty Sup. Ct. Case No. F08902274), Respondent was convicted following her plea of
2 nolo contendere of violating Health and Safety Code section 11377(a) (unlawful possession of
3 controlled substance - methamphetamine), a misdemeanor. The underlying circumstances are
4 that on April 2, 2008, while two officers from the Fresno Police Department were conducting
5 proactive patrol, they received information that an individual was selling drugs from a tent in the
6 area. The police officers investigated and found an outdoor makeshift tent located in an
7 apartment complex. As the officers approached, a male exited the tent and fled the area.
8 Respondent then emerged from the tent, telling the officers, she lived there with her boyfriend.
9 Respondent admitted there was crystal methamphetamine in the tent and that she and her
10 boyfriend had smoked methamphetamine an hour before the officers arrived. Respondent also
11 admitted she had been dating her boyfriend for about a year, stating that this was the same
12 amount of time she had been addicted to and smoking crystal methamphetamine. Respondent
13 was subsequently arrested.

14 **SECOND CAUSE FOR DISCIPLINE**

15 (Self-Administration of Controlled Substance)

16 12. Respondent is subject to disciplinary action under section 4301, subsection (h), in that
17 from approximately April 2007, through the beginning of April 2008, Respondent, by her own
18 admission, self-administered the controlled substance methamphetamine to an extent or in a
19 manner dangerous or injurious to herself or others, as more fully described above in paragraph 11.

20 **THIRD CAUSE FOR DISCIPLINE**

21 (Violation of Laws Governing Controlled Substances)

22 13. Respondent is subject to disciplinary action under section 4301, subsection (j), in that
23 from approximately April 2007, through April 2, 2008, and specifically on April 2, 2008,
24 Respondent possessed the controlled substance methamphetamine in violation of Code section
25 4060 and Health and Safety Code section 11377(a).

1 **FOURTH CAUSE FOR DISCIPLINE**

2 (Violation of Pharmacy Laws)

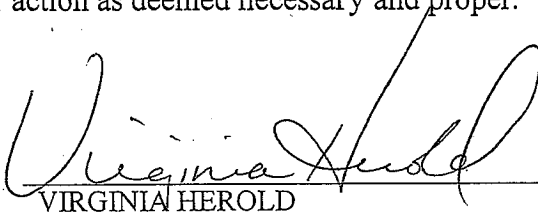
3 14. Respondent is subject to disciplinary action under section 4301, subsection (o), in that
4 Respondent committed violations of the laws governing pharmacy, as more fully described above
5 in paragraphs 11 through 13.

6 **PRAYER**

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

- 9 1. Revoking or suspending Original Pharmacy Technician Registration Number TCH
10 39666, issued to Charlene A. Sierra, a.k.a. Charlene Agripina Bernal;
- 11 2. Ordering Charlene A. Sierra, a.k.a. Charlene Agripina Bernal to pay the Board of
12 Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to
13 Business and Professions Code section 125.3;
- 14 3. Taking such other and further action as deemed necessary and proper.

15
16 DATED: 10/12/09


17 VIRGINIA HEROLD
18 Executive Officer
19 Board of Pharmacy
20 Department of Consumer Affairs
21 State of California
22 Complainant

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