EDMUND G. BROWN JR.
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General
G. MICHAEL GERMAN
Deputy Attorney General
State Bar No. 103312
110 West "A" Street, Suite 1100
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2617
Facsimile: (619) 645-2061
Attorneys for Complainant

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

In the Matter of the Accusation Against:	Case No. 3340
CHRISTY LEIGH CHANTRY **21440 Shakespeare Court** **Moreno Valley, CA 92557** **Pharmacy Technician Registration** **No. TCH 50438** Respondent.	**A C C U S A T I O N**

Complainant alleges:

PARTIES

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

2. On or about July 31, 2003, the Board of Pharmacy issued Pharmacy Technician Registration Number TCH 50438 to Christy Leigh Chantry (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein. Said registration will expire on June 30, 2011, unless renewed.

JURISDICTION

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, subdivision (a) of the Code states, "Every license issued may be suspended or revoked."

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.

STATUTORY PROVISIONS

6. Section 480 states, in pertinent part:

> (a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:
>
> (1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken 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 the provisions of Section 1203.4 of the Penal Code.
>
> (2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or
>
> (3) Done any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.
>
> The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.
>
> . . . .
>
> (c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for such license.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

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. Section 4301 of the Code states:

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.

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

(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.

. . . .

(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.

. . . .

10. 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.

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

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

12. Section 4060 of the Code states:

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

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

REGULATORY PROVISIONS

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

. . . .

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

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

(2) Total criminal record.

(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. 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.

COST RECOVERY

15. 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.

FIRST CAUSE FOR DISCIPLINE

(June 18, 2008 Criminal Conviction for Unlawful Public Fighting on March 18, 2008)

16. Respondent subjected her license to discipline under sections 490 and 4301, subdivision (l) of the Code in that she 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 June 18, 2008, in a criminal proceeding entitled *People of the State of California v. Christy Leigh Chantry,* in Riverside County Superior Court, case number RIM513013, Respondent was convicted on her plea of guilty to an orally amended count to the complaint for violating Penal Code section 415, subdivision (1), unlawful public fighting, a misdemeanor.

b. As a result of the conviction, on or about June 18, 2008, Respondent was sentenced to fines and restitution in the amount of $120.

c. The facts that led to the conviction were that on or about the afternoon of March 18, 2008, the Moreno Valley Police Department and the Riverside County Sheriff's Department responded to a domestic disturbance call involving Respondent and her boyfriend. Upon arrival at the scene, witnesses along the roadway waved down a patrol officer and pointed at Respondent, who was driving a Honda Accord. After seeing the officer's patrol vehicle make a U-turn to follow her, Respondent immediately pulled into the driveway of a liquor store and parked. A sheriff's deputy arrived and Respondent was asked to perform a series of field sobriety tests. Respondent's eyes were red, watery, and bloodshot. The officer also noted that Respondent was unsteady on her feet, she swayed from side to side as she spoke, and had the odor of an alcoholic beverage emitting from her person. Respondent admitted to drinking three beers earlier in the day. Respondent was unable to perform the field sobriety tests as explained and demonstrated by the officer. Respondent was arrested and transported to the Moreno Valley Police Department where she provided two breath samples with results of 0.08 and 0.08 percent blood alcohol concentration (BAC). Respondent also provided a blood sample which subsequently tested positive for opiates and marijuana. The blood sample tested at 0.04 percent BAC.

SECOND CAUSE FOR DISCIPLINE

(Under the Influence of Controlled Substances on March 18, 2008)

17. Respondent is subject to disciplinary action under section 4301, subdivision (h) of the Code in that on or about March 18, 2008, as described in paragraph 16, above, Respondent operated a motor vehicle while under the combined influence of alcohol and controlled

substances, to wit opiates and marijuana, furnished to herself without a prescription in violation of sections 4059 and 4060 of the Code. Opiates and marijuana are scheduled controlled substances and dangerous drugs pursuant to Business and Professions Code section 4022. Such conduct is substantially related to the qualifications, duties, and functions of a pharmacy technician in that it evidences Respondent's present or potential unfitness to perform the functions authorized by her TCH license.

THIRD CAUSE FOR DISCIPLINE

(Act Involving Dishonesty, Fraud & Deceit)

18. Respondent is subject to disciplinary action under section 4301, subdivisions (f) and (g) of the Code in that on or about October 18, 2002, in a criminal proceeding entitled *People of the State of California v. Christy Leigh Chantry,* in Riverside County Superior Court, case number RIF101343, Respondent pled guilty to violating Health and Safety Code section 11358, illegal cultivation of marijuana, a felony. As a result of the plea, the court ordered judgment deferred and Respondent was placed on drug diversion for a period of not less than 18 months pursuant to Penal Code section 1000. Respondent successfully completed diversion on or about March 17, 2003.

19. On or about June 30, 2003, Respondent signed an Application for Registration as a Pharmacy Technician. Question No. 7 of the application asked:

> Have you ever been convicted of or pled no contest to a violation of any law of a foreign country, the United States or any state laws of local ordinances? You must include all misdemeanor and felony convictions, regardless of the age of the conviction, including those which have been set aside under Penal Code sections 1000 or 1203.4. Traffic violation of $500 or less need not be reported. If "yes," attach an explanation including the type of violation, the date, circumstances, location and the complete penalty received.

20. The application further directed Respondent to carefully read the following:

> I understand that falsification of the information on this form may constitute grounds for denial or revocation of the license. I hereby certify under penalty of perjury under the laws of the State of California to the truth and accuracy of all statement, answers and representations made in this application, including all supplementary instructions attached to this application.

21. In response to Question No. 7, Respondent checked the box "No" and signed her name attesting to the truth and accuracy of all statements, answers and representations made in

the application. Respondent failed to declare her felony conviction that had been dismissed pursuant to Penal Code section 1000 as described in paragraph 17, above.

FOURTH CAUSE FOR DISCIPLINE

(Conduct That Would Have Warranted Denial of a License)

22. Respondent is subject to disciplinary action under section 4301, subdivision (p) of the Code in that Respondent's criminal conviction, her use of illegal controlled substances, and making a false statement on her application for licensure, as described in paragraphs 16-21, would have warranted the denial Respondent's application for a pharmacy technician registration under Business and Professions Code section 480, subdivisions (a)(1), (a)(2), (a)(3), and (c).

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 50438, issued to Christy Leigh Chantry;

2. Ordering Christy Leigh Chantry 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: 10/29/09

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

SD2009803965