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7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 3351

11 **BRIAN D. HIGHSMITH**
12 2808 Garvin Street
13 Richmond, California 94801

A C C U S A T I O N

14 **Pharmacy Technician License No. TCH 64644**

15 Respondent.

16 Complainant alleges:

17 PARTIES

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

20 2. On or about August 22, 2005, the Board of Pharmacy issued Pharmacy Technician
21 License Number TCH 64644 to Brian D. Highsmith (Respondent). The Pharmacy Technician
22 License was in full force and effect at all times relevant to the charges brought herein and will
23 expire on September 30, 2011, unless renewed.

24 JURISDICTION

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

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1 8. Section 490 of the Code provides, in pertinent part, that the Board may suspend or
2 revoke a license when it finds that the licensee has been convicted of a crime substantially related
3 to the qualifications, functions or duties of the license.

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

5 “For the purpose of denial, suspension, or revocation of a personal or facility license
6 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
7 crime or act shall be considered substantially related to the qualifications, functions or duties of a
8 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
9 licensee or registrant to perform the functions authorized by her license or registration in a
10 manner consistent with the public health, safety, or welfare.”

11 10. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous
12 drug or dangerous device except upon the prescription of an authorized prescriber.

13 11. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
14 controlled substance, except that furnished upon a valid prescription/drug order.

15 12. Health and Safety Code section 11170 provides that no person shall prescribe,
16 administer, or furnish a controlled substance for himself or herself.

17 13. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess
18 a controlled substance in Schedule I, subdivision(s) (b), (c), or (f)(1), Schedule II, subdivision(s)
19 (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

20 14. Health and Safety Code section 11351, in pertinent part, makes it unlawful to possess
21 for sale or purchase for purposes of sale, a controlled substance in Schedule I, subdivision(s) (b),
22 (c) or (e), or any narcotic drug in Schedules III-V.

23 15. Health and Safety Code section 11351.5, in pertinent part, makes it unlawful to
24 possess for sale, or purchase for purposes of sale, **cocaine** base.

25 16. Health and Safety Code section 11357, in pertinent part, makes it unlawful for any
26 person to possess **marijuana** or concentrated cannabis.

27 17. Health and Safety Code section 11359, in pertinent part, makes it unlawful for any
28 person to possess **marijuana** for sale.

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

4 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

5 19. Section 4021 of the Code states:

6 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
7 11053) of Division 10 of the Health and Safety Code.”

8 20. Section 4022 of the Code states, in pertinent part:

9 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use,
10 except veterinary drugs that are labeled as such, and includes the following:

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

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

15 21. **Marijuana** is a Schedule I controlled substance as designated by Health and Safety
16 Code section 11054(d)(13), and a dangerous drug as designated by Business and Professions
17 Code section 4022. It is a hallucinogenic drug.

18 22. **Cocaine** is a Schedule I (in base form) or Schedule II controlled substance as
19 designated by Health and Safety Code sections 11054(f)(1) and 11055(b)(6) and a dangerous drug
20 as designated by Business and Professions Code section 4022. It is a narcotic drug.

21 23. **Heroin** is a Schedule I controlled substance as designated by Health and Safety Code
22 section 11054(c)(11) and a dangerous drug as designated by Business and Professions Code
23 section 4022. It is an opiate drug.

24 FACTUAL BACKGROUND

25 24. On or about September 5, 2004, Oakland Police discovered Respondent sitting in the
26 driver’s seat of a parked car with thirty-one (31) small bags of suspected rock (base) **cocaine** in
27 his lap, a plastic bag with approximately ½ ounce of suspected **marijuana** on the floorboard at
28 his feet, and other plastic bags containing smaller amounts of **marijuana** in the driver’s seat.

1 SECOND CAUSE FOR DISCIPLINE

2 (Furnishing of Controlled Substance)

3 27. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
4 4059 of the Code, and/or Health and Safety Code section 11170 in that Respondent, as described
5 in paragraphs 23 to 25 above, furnished to himself or another without a valid prescription, and/or
6 conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.

7
8 THIRD CAUSE FOR DISCIPLINE

9 (Possession of Controlled Substance)

10 28. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
11 4060 of the Code, and/or Health and Safety Code section(s) 11350 and/or 11357, in that
12 Respondent, as described in paragraphs 23 to 25 above, possessed, conspired to possess, and/or
13 assisted in or abetted possession of, a controlled substance, without a prescription.

14
15 FOURTH CAUSE FOR DISCIPLINE

16 (Possession or Purchase of Controlled Substance for Sale)

17 29. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
18 and/or Health and Safety Code section(s) 11351, 11351.5 and/or 11359, in that Respondent, as
19 described in paragraphs 23 to 25 above, possessed or purchased a controlled substance for sale, or
20 conspired and/or assisted in or abetted such possession or purchase for sale.

21
22 FIFTH CAUSE FOR DISCIPLINE

23 (Unprofessional Conduct)

24 30. Respondent is subject to discipline under section 4301 of the Code in that
25 Respondent, as described in paragraphs 23 to 29 above, engaged in unprofessional conduct.

1 DISCIPLINE CONSIDERATIONS

2 31. To determine the proper degree of discipline, if any, to be imposed on Respondent,
3 Complainant alleges that on or about July 18, 2005, in a case titled *People v. Brian Douglas*
4 *Highsmith*, Case No. HO2831343 in Santa Clara County Superior (Traffic) Court, Respondent
5 was convicted of violating Vehicle Code section 21956 (Pedestrian on roadway), an infraction,
6 and two counts of violating Vehicle Code section 40508, subdivision (a) (Willful failure to appear
7 in court following a written promise to appear), also infractions, as follows:

8 a. On or about June 15, 2003, Respondent was issued Citation / Notice to Appear
9 J2806754 for violating Vehicle Code section 21956 (Pedestrian on roadway), an infraction.

10 b. On or about July 16, 2003, August 1, 2003, September 27, 2003, May 16, 2004,
11 and/or June 21, 2004, Respondent failed to appear in court as ordered, and bench warrant(s) were
12 issued charging him with two (2) counts of violating Vehicle Code section 40508, subdivision (a)
13 (Willful failure to appear in court following a written promise to appear), both misdemeanors.

14 c. On or about July 18, 2005, Respondent appeared and pleaded guilty to the one
15 (1) count of violating Vehicle Code section 21956 (Pedestrian on roadway), an infraction and the
16 two (2) counts of violating Vehicle Code section 40508, subdivision (a) (Willful failure to appear
17 in court following a written promise to appear), that were both reduced to infractions. Sentencing
18 on counts two and three was suspended, and Respondent was required to pay total fines and fees
19 on count one of \$62.50 by no later than October 17, 2005. When payment was not made by on or
20 about November 26, 2005, a further bench warrant was issued for Respondent's arrest pursuant to
21 Vehicle Code section 40508, subdivision (b) (Willful failure to pay bail or fine), a misdemeanor,
22 requiring a bail/payment of \$337.50 from Respondent.

23
24 PRAYER

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

27 1. Revoking or suspending Pharmacy Technician License Number TCH 64644, issued
28 to Brian D. Highsmith (Respondent);

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- 2. Ordering Respondent to pay the Board 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 is deemed necessary and proper.

DATED: 10/27/09 

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

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