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

11 In the Matter of the Accusation Against:

Case No. 3508

12 **MARTY JOSEPH GONZALES**  
13 **P.O. Box 372**  
**Wildomar, CA 92595**  
14 **Pharmacy Technician No. TCH 23010**

**A C C U S A T I O N**

15 Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about June 30, 1997, the Board of Pharmacy issued Pharmacy Technician  
22 Registration Number TCH 23010 to Marty Joseph Gonzales (Respondent). The Pharmacy  
23 Technician Registration was in full force and effect at all times relevant to the charges brought  
24 herein and will expire on March 31, 2011, unless renewed.

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1 JURISDICTION

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

9 STATUTORY PROVISIONS

10 5. Section 490 of the Code states:

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

14 ...

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  
17 permitted to take following the establishment of a conviction may be taken when the  
18 time for appeal has elapsed, or the judgment of conviction has been affirmed on  
19 appeal, or when an order granting probation is made suspending the imposition of  
20 sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of  
21 the Penal Code.

19 ....

20 6. Code section 493 of the Code states:

21 Notwithstanding any other provision of law, in a proceeding conducted by a  
22 board within the department pursuant to law to deny an application for a license or to  
23 suspend or revoke a license or otherwise take disciplinary action against a person who  
24 holds a license, upon the ground that the applicant or the licensee has been convicted  
25 of a crime substantially related to the qualifications, functions, and duties of the  
26 licensee in question, the record of conviction of the crime shall be conclusive  
27 evidence of the fact that the conviction occurred, but only of that fact, and the board  
28 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."

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7. 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:

(a) Gross immorality.

...

(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.

...

(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.

8. Section 4311 of the Code states:

...

(c) In addition to any suspension under subdivision (a), the board shall also suspend any license issued by the board, or the holder thereof, if the board determines that the felony conviction of the holder of the license is substantially related to the qualifications, functions, or duties of the licensee.

...

(4) A conviction of any crime referred to in Section 4301, or for violation of Section 187, 261, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee of the board. Upon its own motion or for good cause shown the board may decline to impose a suspension under this subdivision or may set aside a suspension previously imposed when it appears to be in the interest of justice to do so, with due regard to

1 maintaining the integrity of and confidence in the practice of pharmacy and the  
2 handling of dangerous drugs and devices.

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

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

11 10. California Code of Regulations, title 16, section 1769(b) states:

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

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

17 (2) Total criminal record.

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

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

21 (5) Evidence, if any, of rehabilitation submitted by the licensee.

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

#### 26 **FIRST CAUSE FOR DISCIPLINE**

27 (November 30, 2008 Conviction for Child Molestation on August 1, 2004)

28 12. Respondent is subject to disciplinary action under Code sections 490 and 4301(l) in  
that he has been convicted of a crime substantially related to the qualifications duties and  
functions of a pharmacy technician. Respondent was convicted of violating Penal Code section  
273a(a), commission of an unjustifiable offense against a child under conditions likely to produce  
great bodily harm or death. The circumstances are as follows:

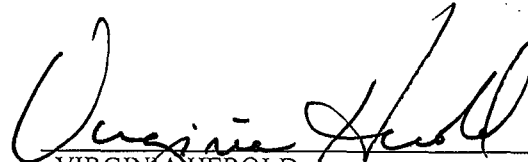


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3. Taking such other and further action as deemed necessary and proper.

DATED:

11/4/09



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

SD2009804880