

1 EDMUND G. BROWN JR.
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 KENT D. HARRIS
Deputy Attorney General
4 State Bar No. 144804
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-7859
Facsimile: (916) 327-8643
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. 3579

12 **FRANK ANTHONY GUTIERREZ**
13 **931 Cutting street**
Madera, CA 93637

ACCUSATION

14 **Pharmacy Technician Registration No.**
15 **TCH 64204**

16 Respondent.

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 August 24, 2005, the Board of Pharmacy issued Pharmacy Technician
22 Registration Number TCH 64204 to Frank Anthony Gutierrez (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 November 30, 2010, 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 of the Code states in pertinent part:

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

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

"(1) Suspending judgment.

"(2) Placing him or her upon probation.

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

"(4) Revoking his or her license.

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

...

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

5. Section 4301 of the Code states in pertinent part:

"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:

...

1 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous
2 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
3 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
4 to the extent that the use impairs the ability of the person to conduct with safety to the public the
5 practice authorized by the license.

6 ...

7 "(k) The conviction of more than one misdemeanor or any felony involving the use,
8 consumption, or self-administration of any dangerous drug or alcoholic beverage, or any
9 combination of those substances.

10 "(l) The conviction of a crime substantially related to the qualifications, functions, and
11 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
12 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
13 substances or of a violation of the statutes of this state regulating controlled substances or
14 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
15 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
16 The board may inquire into the circumstances surrounding the commission of the crime, in order
17 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
18 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
19 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
20 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
21 of this provision. The board may take action when the time for appeal has elapsed, or the
22 judgment of conviction has been affirmed on appeal or when an order granting probation is made
23 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
24 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
25 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
26 indictment.

27 ...

1 over for running a right red arrow at a traffic signal. At that time respondent's license was
2 suspended as a result of his prior DUI conviction, and his arrest on October 20, 2006 set forth
3 above in paragraph 7(a) and(b).

4 d. On December 6, 2007 in the Superior Court, Madera County, California in the case
5 entitled *People of the State of California v. Frank Anthony Gutierrez* , Case No. R007641,
6 Respondent was convicted by the court of a violations of Vehicle Code section 23152(b) (driving
7 with a blood alcohol level of .08 or higher) a misdemeanor, and Vehicle Code section 14601.2(a)
8 (driving when privilege suspended for prior DUI conviction) a misdemeanor . The circumstances
9 are as follows: On May 18, 2007, respondent drove a motor vehicle in Madera County while
10 under the influence of alcohol or drugs and while his license was suspended for prior DUI arrests
11 and convictions.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Multiple Convictions involving the use of Alcohol)**

14 8. Respondent is subject to disciplinary action for unprofessional conduct under section
15 4301(k) in that he has suffered multiple convictions for crimes involving the use of alcohol as set
16 forth above in paragraphs 7 (a), (b), and (d).

17 **THIRD CAUSE FOR DISCIPLINE**

18 **(Use of Alcoholic Beverage to the Extent or in a Manner Dangerous or Injurious to Others)**

19 9. Respondent is subject to disciplinary action for unprofessional conduct under section
20 4301(h) in that he consumed alcoholic beverages to an extent or in a manner that was dangerous
21 or injurious to himself and others as set forth in paragraphs 7(a), (b), and (d) above.

22 **PRAYER**

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

25 1. Revoking or suspending Pharmacy Technician Registration Number TCH 64204,
26 issued to Frank Anthony Gutierrez Frank Anthony Gutierrez.

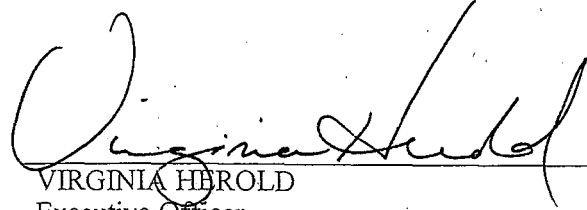
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2. Ordering Frank Anthony Gutierrez to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: _____

5/6/10



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

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