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

In the Matter of the Accusation Against: **DAVID PHILIP PORRINI** **8241 Lavender Lane** **Riverside, CA 92508** **Pharmacy Technician Registration No. TCH 84158** Respondent.	Case No. 3636 **ACCUSATION**

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 June 30, 2008, the Board of Pharmacy issued Pharmacy Technician Registration Number TCH 84158 to David Philip Porrini (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 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 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.

5. Section 4300, subdivision (a) of the Code states that "Every license issued may be suspended or revoked."

STATUTORY AND REGULATORY PROVISIONS

6. Section 482 of the Code states:

> Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:
>
> (a) Considering the denial of a license by the board under Section 480; or
>
> (b) Considering the suspension or revocation of a license under Section 490.
>
> Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

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 492 of the Code states:

> Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional

misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division.

9. 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.'

10. Section 4059 of the Code provides, 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.

11. 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 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 or devices.

12. 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:

....

(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.

....

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

....

(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 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.

....

(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.

...

13. Title 16, California Code of Regulations, 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 offenses(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. Title 16, California Code of Regulations, 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.

DRUGS

16. Methamphetamine is a schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (d)(2), and is a dangerous drug pursuant to Business and Professions Code section 4022

17. Methylenedioxymethamphetamine (Ecstasy) is an analog of Methamphetamine within the meaning of Health and Safety Code section 11401(a). Methamphetamine is a Schedule II controlled substance as designated by Health and Safety Code section 11055(d)(2) and is a dangerous drug pursuant to Business and Professions Code section 4022.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Use of a Controlled Substance)

18. Respondent is subject to disciplinary action under section 4301(h) in that he used a controlled substance, methamphetamine. The circumstances are as follows:

a. On or about August 3, 2008, police officers responded to a call that Respondent had reportedly jumped out of his second story window. When officers arrived at Respondent's residence at 8241 Lavender Lane in Riverside, he told officers that he thought someone was in his house so he jumped out of his second story bedroom window. The officers searched the residence and found no intruders. The officers concluded that Respondent might be paranoid due to drug use so they asked him if he had taken any illegal drugs. Respondent admitted to the police officers that he had "smoked some meth" a few hours earlier in the morning prior to the officers' arrival. The police officers then searched Respondent's house and found one small cylindrical glass pipe with a round ball on the end that had a white burnt residue in it. As a result of the officer's training and experience, he recognized the glass pipe as a tool commonly used to smoke methamphetamine. Respondent was subsequently arrested for possession of drug paraphernalia.

b. On or about September 29, 2008, in a criminal proceeding entitled *People of the State of California v. David Philip Porrini*, in Riverside County Superior Court, case number RIM519374, Respondent plead guilty to a charge of violating Health and Safety Code section 11364, possession of controlled substance paraphernalia, a misdemeanor, and was granted deferred entry of judgment. Respondent filed proof of enrollment in a drug diversion program pursuant to Penal Code section 1000 with the court. After completing this drug program, Respondent filed proof of completion of the drug diversion program on September 28, 2009.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Violations of the Chapter)

19. Respondent is subject to disciplinary action under Code section 4301(o), for violations of the Pharmacy Act in that on or about August 3, 2008, Respondent furnished to

himself and possessed a controlled substance, methamphetamine, in violation of Code sections 4059 and 4060 as is more fully described in Paragraph 18 above.

THIRD CAUSE FOR DISCIPLINE

(March 26, 2009 Conviction for Possession of a Controlled Substance For Sale on October 29, 2008)

20. Respondent is subject to disciplinary action under sections 490 and 4301(l) of the Code in that he 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 March 26, 2009, in a criminal proceeding entitled *People of the State of California v. David Philip Porrini*, in Riverside County Superior Court, case number RIF147172, Respondent was convicted on his plea of guilty for violating Health and Safety Code section 11378, possession of a controlled substance for sale, a felony.

b. As a result of the conviction, on or about March 26, 2009, Respondent was sentenced to 36 months of formal probation, ordered to serve 120 days in jail with two days credit for time served, to participate in and complete any counseling, rehabilitation or treatment deemed appropriate by the probation officer, and to pay fines totaling $1215.

c. The facts that led to the conviction were that on or about October 29, 2008, police officers responded to a hotel room at 6830 Valley Way in the area of Rubidoux where the occupants, including Respondent were reportedly smoking marijuana. A police officer searched Respondent's person and felt a large bulge inside of Respondent's left pant pocket. The officer asked Respondent what was in his pocket and Respondent admitted that he had Ecstasy pills in his pant pocket. The officer removed a baggie from Respondent's pants and found that the baggie contained 95 Ecstasy pills and 1.4 grams of broken Ecstasy pills. The pills field-tested positive for Ecstasy. Based on the officer's experience and training and the large amount of Ecstasy pills in Respondent's possession, the officer believed that Respondent possessed Ecstasy for the purpose of sale. The officer's drug field test evaluation also revealed that Respondent was under the influence of a controlled substance.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Violations of the Chapter)

21. Respondent is subject to disciplinary action under Code section 4301(o) for violations of the Pharmacy Act in that on or about October 29, 2008, Respondent possessed a controlled substance, Ecstasy, with the intent to sell, in violation of Code sections 4059 and 4060, as is more fully described in Paragraph 20 above.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Violating Laws Regulating Controlled Substances)

22. Respondent is subject to disciplinary action under section 4301(j) of the Code in that on or about August 3, 2008 and October 29, 2008, Respondent violated the California Uniform Controlled Substances Act (Health and Safety Code 11000, et seq.), as is more fully described in Paragraphs 18 and 20 above.

PRAYER

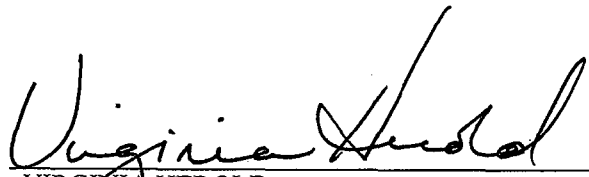
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Pharmacy Technician Registration Number TCH 84158, issued to David Philip Porrini;

2. Ordering David Philip Porrini 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: 6/9/10



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

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