

1 KAMALA D. HARRIS  
Attorney General of California  
2 GREGORY J. SALUTE  
Supervising Deputy Attorney General  
3 KEVIN J. RIGLEY  
Deputy Attorney General  
4 State Bar No. 131800  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2540  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*  
7

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

11 In the Matter of the Accusation Against:  
12 **NELSON GRODOALDO PORTILLO a.k.a.,**  
13 **NELSON GROALDO PORTILLO**  
6616 Irvine Avenue  
14 North Hollywood, CA 91606  
15 Pharmacy Technician Registration No. TCH 74159  
16 Respondent.

Case No. 3810

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

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 February 16, 2007, the Board of Pharmacy (Board) issued Pharmacy  
22 Technician Registration No. TCH 74159 to Nelson Grodoaldo Portillo, also known as Nelson  
23 Groaldo Portillo (Respondent). The Pharmacy Technician Registration was in full force and  
24 effect at all times relevant to the charges brought herein and will expire on May 31, 2012, unless  
25 renewed.

26 ///  
27 ///  
28 ///

1 JURISDICTION

2 3. This Accusation is brought before the Board under the authority of the following  
3 laws. All section references are to the Business and Professions Code unless otherwise indicated.

4 4. Section 118, subdivision (b) provides, in pertinent part, that the expiration of a license  
5 shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period  
6 within which the license may be renewed, restored, reissued or reinstated.

7 STATUTORY PROVISIONS

8 5. Section 492 states:

9 "Notwithstanding any other provision of law, successful completion of any diversion  
10 program under the Penal Code, or successful completion of an alcohol and drug problem  
11 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of  
12 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2  
13 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that  
14 division, from taking disciplinary action against a licensee or from denying a license for  
15 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a  
16 record pertaining to an arrest.

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

20 6. Section 4060 states, in pertinent part:

21 "No person shall possess any controlled substance, except that furnished to a person upon  
22 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor  
23 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified  
24 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a  
25 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,  
26 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of  
27 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not  
28 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,

1 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified  
2 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly  
3 labeled with the name and address of the supplier or producer.”

4 7. Section 4300 provides, in pertinent part, that every license issued by the Board is  
5 subject to discipline, including suspension or revocation.

6 8. Section 4301 states, in pertinent part:

7 “The Board shall take action against any holder of a license who is guilty of unprofessional  
8 conduct ... Unprofessional conduct shall include, but is not limited to, any of the following:

9 ....

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

12 ....

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

17 **CONTROLLED SUBSTANCE**

18 9. “Marijuana,” is a Schedule I controlled substance as designated by Health and Safety  
19 Code section 11054, subdivision (d) (13) and is categorized as dangerous drug pursuant to section  
20 4022.

21 **COST RECOVERY**

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

26 ///

27 ///

28 ///

1 FIRST CAUSE FOR DISCIPLINE

2 (Possession of a Controlled Substance)

3 11. Respondent is subject to disciplinary action under section 4301, subdivisions (j) and  
4 (o), in conjunction with Health and Safety Code section 11054, subdivision (d)(13), for violating  
5 section 4060, in that Respondent was found to be in possession of marijuana, a controlled  
6 substance. The underlying circumstances thereof are as follows: On or about January 27, 2010,  
7 Respondent was sitting in the front passenger seat of a vehicle that was parked behind a shopping  
8 complex. Another male individual ("J.S.") was sitting in the driver's seat of that same vehicle.  
9 While on routine patrol in a black and white marked police vehicle, two officers from the Los  
10 Angeles Police Department stopped and asked Respondent and J.S. what they were doing. J.S.  
11 responded by admitting that he and Respondent were "about to smoke some weed". The officers  
12 then exited their squad car and proceeded to walk over to J.S. and Respondent, who were still  
13 seated in their vehicle. At such time, one of the officers detected a strong odor of marijuana  
14 emitting from the interior of J.S. and Respondent's vehicle. One of the officers then observed  
15 what turned out to be a considerable amount of marijuana stored in a clear plastic container and a  
16 black digital scale lying on the passenger-side floorboard next to Respondent's feet. Thereafter,  
17 Respondent admitted to the officers that the marijuana and the black digital scale belonged to  
18 him. Respondent was then arrested for violating Health and Safety Code section 11359  
19 (possession of marijuana for sale) and Health and Safety Code section 11357, subdivision (b)  
20 (possession of marijuana, less than one ounce).

21 PRAYER

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

24 1. Revoking or suspending Pharmacy Technician Registration Number TCH 74159,  
25 issued to Nelson Grodoaldo Portillo;

26 ///

27 ///

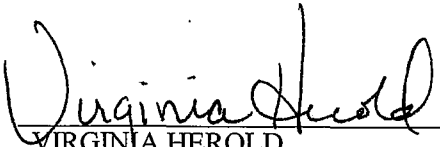
28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

2. Ordering Nelson Grodoaldo Portillo to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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

DATED: 5/27/11



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

LA2010600794