

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 MARICHELLE S. TAHIMIC
Deputy Attorney General
4 State Bar No. 147392
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-3154
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

12 **CHRISTINA IVY MORELAND**
13 **2190 Ellington Drive**
Corona, CA 92880

14 **Pharmacy Technician Registration No. TCH**
15 **86174**

16 Respondent.

Case No. 3900

A C C U S A T I O N

17
18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 22 2. On or about September 24, 2008, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 86174 to Christina Ivy Moreland (Respondent). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought
25 herein and will expire on July 31, 2012, unless renewed.

26 ///

27 ///

28 ///

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 4300 of the Code states:

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

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

9 (1) Suspending judgment.

10 (2) Placing him or her upon probation.

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

12 (4) Revoking his or her license.

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

15 ...

16 (e) The proceedings under this article shall be conducted in accordance with
17 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the
18 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.

19 5. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
20 surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
21 disciplinary action during the period within which the license may be renewed, restored, reissued
22 or reinstated.

23 **STATUTORY PROVISIONS AND REGULATIONS**

24 6. Section 482 of the Code states:

25 Each board under the provisions of this code shall develop criteria to
26 evaluate the rehabilitation of a person when:

27 (a) Considering the denial of a license by the board under Section 480; or

28 (b) Considering suspension or revocation of a license under Section 490.

1 Each board shall take into account all competent evidence of rehabilitation
furnished by the applicant or licensee."

2 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or
3 revoke a license on the ground that the licensee has been convicted of a crime substantially
4 related to the qualifications, functions, or duties of the business or profession for which the
5 license was issued.

6 8. Section 493 of the Code states:

7 Notwithstanding any other provision of law, in a proceeding conducted by a
8 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
9 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
10 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
11 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
12 related to the qualifications, functions, and duties of the licensee in question.

13 As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
'registration.'

14 9. Section 4060 of the Code states:

15 No person shall possess any controlled substance, except that furnished to a
16 person upon the prescription of a physician, dentist, podiatrist, optometrist,
veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
17 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 a physician assistant
18 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
19 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,
20 wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist,
veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or
21 physician assistant, when in stock in containers correctly labeled with the name and
address of the supplier or producer.

22 Nothing in this section authorizes a certified nurse-midwife, a nurse
23 practitioner, a physician assistant, or a naturopathic doctor, to order his or her own
stock of dangerous drugs and devices.

24 10. Section 4301 of the Code states:

25 The board shall take action against any holder of a license who is guilty of
26 unprofessional conduct or whose license has been procured by fraud or
misrepresentation or issued by mistake. Unprofessional conduct shall include, but is
27 not limited to, any of the following:

28 ...

1 (g) Knowingly making or signing any certificate or other document that
falsely represents the existence or nonexistence of a state of facts.

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

6 ...

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

8 ...

9 (l) The conviction of a crime substantially related to the qualifications,
10 functions, and duties of a licensee under this chapter. The record of conviction of a
11 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
12 States Code regulating controlled substances or of a violation of the statutes of this
13 state regulating controlled substances or dangerous drugs shall be conclusive
14 evidence of unprofessional conduct. In all other cases, the record of conviction
15 shall be conclusive evidence only of the fact that the conviction occurred. The
16 board may inquire into the circumstances surrounding the commission of the crime,
17 in order to fix the degree of discipline or, in the case of a conviction not involving
18 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....

19 11. Title 16, of the Code of Regulations, section 1769, subdivision (b) sets forth the
20 following factors to consider with regard to evidence of rehabilitation:

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

- 24 (1) Nature and severity of the act(s) or offense(s).
25 (2) Total criminal record.
26 (3) The time that has elapsed since commission of the act(s) or
offense(s).
27 (4) Whether the licensee has complied with all terms of parole,
probation, restitution or any other sanctions lawfully imposed against the licensee.
28 (5) Evidence, if any, of rehabilitation submitted by the licensee.

27 ///

28 ///

1 12. California Code of Regulations, title 16, section 1770, states:

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

6 **DRUGS**

7 13. Marijuana is a Schedule I controlled substance under Health and Safety Code section
8 11054(d)(13) and is a dangerous drug pursuant to Business and Professions Code section 4022

9 **COST RECOVERY**

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

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Knowingly Making or Signing Document That Falsely Represents the Facts)**

16 15. Respondent is subject to disciplinary action under Code section 4301, subdivision (g),
17 for knowingly making or signing a document that falsely represents the facts or nonexistence of
18 facts in that Respondent's application for licensure as a Pharmacy Technician falsely represented
19 the nature of criminal proceeding against her. The circumstances are as follows:

20 16. On or about August 15, 2008, Respondent signed her application for licensure as a
21 Pharmacy Technician under penalty of perjury. In response to the question whether Respondent
22 had ever been convicted or pled no contest to a violation of any law, Respondent said "Yes". If
23 her response was "Yes", the application required her to attach an explanation including the type
24 of violation, the date, circumstances, location and the complete penalty received. In her
25 explanation to the Board, Respondent stated:

26 I received a misdemeanor charge for D.U.I. on October 4, 2002. I completed
27 all the required classes and paid all associated fines. My [driver's] license was not
28 suspended because the judge ruled in my favor against the police. I have never been
in trouble before or after this incident. My life is on track and going great. My
biggest concern has now become my career. Please don't let this six year old

1 mistake get in the way of my future.

2 17. Respondent's application for licensure was not formally investigated and the details
3 of the DUI charge of October 4, 2002 were not known by the Board. Those details follow.

4 18. On or about February 23, 2003, in *The People of the State of California v. Christina*
5 *Ivy Moreland*, Riverside Superior Court, Case No. RIM424692, Respondent was convicted on her
6 guilty plea of violation of Vehicle Code Section 23152(b), driving under the influence of alcohol
7 with a blood alcohol content of 0.08% or greater. Breath tests at the incident scene indicated
8 Respondent's blood alcohol content was 0.17%. Contrary to Respondent's statement to the
9 Board, as a result of the conviction Respondent was sentenced to 36 months probation, ordered to
10 pay fines and fees of \$1552.00, attend a First Offender DUI program, and her license was
11 restricted for a period of 3 months, except travel to/from work, within the scope of her
12 employment and to/from an alcohol treatment program.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(April 22, 2010 Conviction of Possession of a Controlled Substance on January 23, 2010)**

15 19. Respondent is subject to disciplinary action under Code sections 482, 490 and 4301,
16 subdivision (I), for conviction of a crime that is substantially related to the qualifications,
17 functions and duties of a pharmacy technician. The circumstances are as follows.

18 20. On or about April 22, 2010, in *The People of the State of California v. Christina Ivy*
19 *Moreland*, Riverside Superior Court, Case No. RIM10003717, Respondent was convicted on her
20 guilty plea to violation of Health and Safety Code 11357(b), possession of less than 1 ounce of
21 marijuana, a misdemeanor.

22 21. As a result of the conviction, Respondent was ordered to pay a \$160 fine.

23 22. The circumstances that led to the conviction are as follows. On January 23, 2010, at
24 about 0430 hours, an officer of the Corona Police Department observed a vehicle traveling at a
25 speed of 50 mph in a 40 mph zone. Because of the fog in the area, the officer conducted a traffic
26 stop. Upon contacting Respondent, the officer smelled a strong odor of perfume coming from the
27 interior of the vehicle. With the smell of perfume, the officer could also smell what the officer
28 believed to be marijuana. When asked whether she had anything illegal in the car, Respondent

1 stated that she did not. Respondent consented to a search of her vehicle. During the search of the
2 vehicle, the officer found a green plastic bottle underneath the driver's seat. Inside the bottle was
3 a green, leafy substance believed to be marijuana. Respondent stated the bottle contained
4 "weed". She denied having a prescription for marijuana. Respondent was cited for violation of
5 Health and Safety Code section 11357(b). At the police station, the officer weighed the
6 marijuana. It weighed 4 grams. The officer tested it with the NARK test kit, which returned a
7 positive result for marijuana.

8 **THIRD CAUSE FOR DISCIPLINE**

9 **(Unprofessional Conduct-Violation of Law on January 23, 2010)**

10 23. Respondent is subject to disciplinary action under Code section 4301, subdivision (j),
11 in conjunction with section 4060, for unprofessional conduct in violating the laws of this state in
12 that Respondent violated the laws of the state of California when she possessed a controlled
13 substance, marijuana, without a prescription, as set forth more fully in paragraphs 19-22, above,
14 and incorporated by this reference as though set forth in full herein.

15 **FOURTH CAUSE FOR DISCIPLINE**

16 **(Self-Administration of Controlled Substance on September 16, 2009)**

17 24. Respondent is subject to disciplinary action under Code section 4301, subdivision (h) for
18 unprofessional conduct in administering a controlled substance to herself to the extent or in a
19 manner as to be dangerous or injurious to herself or to any other person or to the public. The
20 circumstances are as follows.

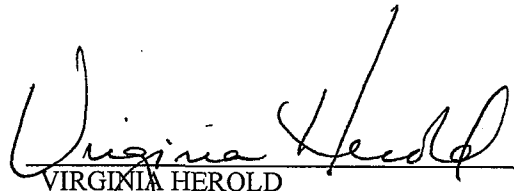
21 25. On or about September 16, 2009, at 0332 hours, an officer of the California Highway
22 Patrol made a traffic stop after observing that Respondent's vehicle was traveling at a speed of 80
23 mph on SR-91. When the officer made contact with Respondent through an open window, the
24 officer smelled the strong odor of marijuana coming from the vehicle. The officer asked
25 Respondent how long it had been since she smoked last and Respondent replied, "Way, way
26 earlier today." The officer observed that Respondent's eyes were red. Respondent told the
27 officer that she just got off of work at a pharmacy. Respondent denied having any marijuana in
28 her car.

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 Christina Ivy Moreland 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; and,

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

DATED: 2/25/11



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

SD2010703192
10663313.doc