

1 KAMALA D. HARRIS
Attorney General of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 GLORIA A. BARRIOS
Supervising Deputy Attorney General
4 State Bar No. 94811
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2540
6 Facsimile: (213) 897-2804

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. 3980

12 **ALMA DELIA VASQUEZ**
12 12050 Rockridge Drive
13 Fontana, CA 92337

A C C U S A T I O N

14 Pharmacy Technician Registration
15 No. TCH 75523

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 June 11, 2007, the Board of Pharmacy (Board) issued Pharmacy
22 Technician Registration No. TCH 75523 to Alma Delia Vasquez (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 January 31, 2013, unless renewed.

25 **JURISDICTION**

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

28 ///

STATUTORY PROVISIONS

1
2 4. Section 118, subdivision (b), provides in pertinent part, that the expiration of a license
3 shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period
4 within which the license may be renewed, restored, reissued or reinstated.

5 5. Section 490 states, in pertinent part:

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

10 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
11 discipline a licensee for conviction of a crime that is independent of the authority granted under
12 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
13 of the business or profession for which the licensee's license was issued.

14 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
15 conviction following a plea of nolo contendere. Any action that a board is permitted to take
16 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
17 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
18 made suspending the imposition of sentence, irrespective of a subsequent order under the
19 provisions of Section 1203.4 of the Penal Code. "

20 6. Section 492 states, in pertinent part:

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

1 7. Section 4060 states, in pertinent part:

2 “No person shall possess any controlled substance, except that furnished to a person upon
3 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
4 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-
5 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician
6 assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a
7 pharmacist pursuant to either Section 4052.1 or 4052.2. This section shall not apply to the
8 possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist,
9 physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-
10 midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled
11 with the name and address of the supplier or producer.”

12 8. Section 4300 provides in pertinent part, that every license issued by the Board is
13 subject to discipline, including suspension or revocation.

14 9. Section 4301 states, in pertinent part:

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

18

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

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

26

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

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

....

"(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.

....

"(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."

REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1770 states, in pertinent part:

"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

1 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
2 licensee or registrant to perform the functions authorized by his license or registration in a manner
3 consistent with the public health, safety, or welfare."

4 **COST RECOVERY**

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

9 **CONTROLLED SUBSTANCE**

10 12. "Cocaine," is a Schedule II controlled substance, as designated by Health and Safety
11 Code section 11055(b)(6) and it is categorized as a dangerous drug according to section 4022.

12 **FIRST CAUSE FOR DISCIPLINE**

13 **(Conviction of Substantially Related Crime)**

14 13. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and
15 490, in conjunction with California Code of Regulations, title 16, section 1770, in that
16 Respondent has been convicted of a crime substantially related to the qualifications, functions or
17 duties of a pharmacy technician. On or about June 27, 2002, after pleading nolo contendere,
18 Respondent was convicted of one misdemeanor count of violating Penal Code section 484,
19 subdivision (a) [484 [petty theft] in the criminal proceeding entitled *The People of the State of*
20 *California v. Alma Delia Vasquez* (Super. Ct. Santa Barbara County, 2002, No. 1077492). The
21 Court sentenced Respondent to serve 1 day in Santa Barbara County Jail and placed her on 12
22 months probation, with terms and conditions. The circumstances surrounding the conviction are
23 that on or about May 10, 2002, Respondent stole, took and carried away personal property of
24 another, to wit: K-Mart.

25 **SECOND CAUSE FOR DISCIPLINE**

26 **(Illegal Possession of a Controlled Substance)**

27 14. Respondent is subject to disciplinary action under section 4301, subdivisions (j) and
28 (o), for violating section 4060, in that Respondent was found to be in possession of a controlled

1 substance. On or about August 30, 2010, during an investigation of a domestic disturbance
2 involving intoxication and drug possession, by the Fontana Police Department, Respondent was
3 contacted. While speaking to Respondent, the officer detected a strong odor of an alcoholic
4 beverage emitting from her breath and person. She was observed to have bloodshot, watery eyes,
5 and slurred speech. Respondent fidgeted with her hands, her head, and licked her lips rapidly.
6 Respondent's boyfriend refused to let Respondent inside his house, due to her level of
7 intoxication and bindle of drugs that he found inside her purse. When asked if the bindle was
8 hers, Respondent admitted that it belonged to her and acknowledged that it was cocaine.
9 Respondent was subsequently arrested for violating Health and Safety Code section 11350,
10 subdivision (a) [possession of a controlled substance].

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Dangerous Use of Alcoholic Beverages or Controlled Substance)**

13 15. Respondent is subject to disciplinary action under section 4301, subdivisions (h) and
14 (j), in that on or about August 30, 2010, Respondent used alcoholic beverages or controlled
15 substance to an extent or in a manner dangerous or injurious to herself, another person, or the
16 public. Complainant refers to, and by this reference incorporates, the allegations set forth above
17 in paragraph 14, as though set forth fully.

18 **FOURTH CAUSE FOR DISCIPLINE**

19 **(Knowingly Made a False Statement of Fact to Licensing Authority)**

20 16. Respondent is subject to disciplinary action under section 4301, subdivision (g), in
21 that Respondent knowingly made a false statement of fact to the Board by failing to disclose her
22 2002 conviction case against her, on her initial application for licensure. Complainant refers to,
23 and by this reference incorporates, the allegations set forth above in paragraph 13, as thought set
24 forth fully.

25 ///

26 ///

27 ///

28 ///

PRAAYER

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

1. Revoking or suspending Pharmacy Technician Registration No. TCH 75523, issued to Respondent.
2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED:

1/2/12

Virginia Herold

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

LA2011501448
51007655.docx
jgz/mc (11/1/11)