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

11 In the Matter of the Accusation Against:

Case No. 3981

12 **MICHELLE R. FLOREZ**

OAH No. 2011120762

13 **15 Lang Street**
14 **San Juan Bautista, CA 95045**

**NOTICE OF WITHDRAWAL OF
ACCUSATION**

15 **Pharmacy Technician Registration No.**
16 **61364**

17 Respondent.

18
19 **TO ALL INTERESTED PARTIES:**

20 **PARTIES**

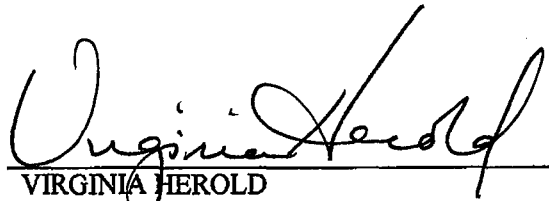
21 1. On or about November 1, 2011, Virginia Herold, Executive Officer of the Board of
22 Pharmacy, Department of Consumer Affairs (Board), filed Accusation No. 3981 solely in her
23 official capacity.

24 2. The Board, on or about April 26, 2005, issued Pharmacy Technician Registration
25 Number 61364 to Michelle R. Florez (Respondent). The Pharmacy Technician Registration was
26 in full force and effect at all times relevant to the charges brought in the Accusation and will
27 expire on December 31, 2012, unless renewed.

1 3. The basis for withdrawing the pending Accusation in Case No. 3981 is that during
2 preparation for hearing it was discovered that certain essential evidence associated with the case
3 is no longer available and the evidence that is available is unlikely to establish a violation by clear
4 and convincing evidence.

5 4. WHEREFORE, IN THE INTEREST OF JUSTICE, Accusation No. 3981 is hereby
6 withdrawn without prejudice.

7
8 DATED: 6/29/12



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

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

12 In the Matter of the Accusation Against:

Case No. 3981

13 **MICHELLE R. FLOREZ**
14 **15 Lang Street**
San Juan Bautista, CA 95045
Pharmacy Technician Registration No. TCH 61364

ACCUSATION

15 Respondent.

16
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 April 26, 2005, the Board of Pharmacy issued Pharmacy Technician
22 License Number TCH 61364 to Michelle R. Florez (Respondent). The Pharmacy Technician
23 License was in full force and effect at all times relevant to the charges brought in this Accusation
24 and will expire on December 31, 2012, unless renewed.

JURISDICTION

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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, whose default
8 has been entered or whose case has been heard by the board and found guilty, by any of the
9 following methods:

10 “(1) Suspending judgment.

11 “(2) Placing him or her upon probation.

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

13 “(4) Revoking his or her license.

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

16 ...

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

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

STATUTORY PROVISIONS/REGULATIONS

6. 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:

“(a) Gross immorality.

...

“(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.”

7. California Health and Safety Code Section 11378 (Possession for Sale) states:

“Except as otherwise provided in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses for sale any controlled substance which is (1) classified in Schedule III, IV, or V and which is not a narcotic drug, except subdivision (g) of Section 11056, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), (20), (21), (22), and (23) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f), except paragraph (3) of subdivision (e) and subparagraphs (A) and (B) of paragraph (2) of subdivision (f), of Section 11055, shall be punished by imprisonment in the state prison.”

8. California Health and Safety Code Section 11370.1, subdivision (a), states:

“(a) Notwithstanding Section 11350 or 11377 or any other provision of law, every person who unlawfully possesses any amount of a substance containing cocaine base, a substance containing cocaine, a substance containing heroin, a substance containing methamphetamine, a crystalline substance containing phencyclidine, a liquid substance containing phencyclidine, plant material containing phencyclidine, or a hand-rolled cigarette treated with phencyclidine while armed with a loaded, operable firearm is guilty of a felony punishable by imprisonment in the state prison for two, three, or four years.

1 "As used in this subdivision, "armed with" means having available for immediate offensive
2 or defensive use."

3 DRUGS

4 9. Methamphetamine is a Schedule II controlled substance as designated by Health and
5 Safety Code section 11055, subdivision (d)(2).

6 COST RECOVERY

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

11 **FIRST CAUSE FOR DISCIPLINE**
12 **(Violation of Statutes Regarding Controlled Substances)**
13 **(Bus. & Prof Code § 4301(j))**

14 11. Respondent has subjected her Pharmacy Technician License to disciplinary action
15 under Code section 4301, subdivision (j), in that she violated California Health and Safety Code
16 sections 11378 and 11370.1, subdivision (a). On or about April 13, 2010, Respondent sold
17 Methamphetamine with her boyfriend, M. M., in Watsonville, California. Respondent and M. M.
18 sold the drugs out of a window in their bedroom. The bedroom contained loaded and accessible
19 firearms. The circumstances are as follows:

20 12. On or about 3:00 p.m., on April 13, 2010, law enforcement officers of the Santa Cruz
21 County Anti-Crime Team (SCCACT) and Santa Cruz Auto Theft Reduction and Enforcement
22 Team (SCARE) set up surveillance of a residence located at 406 Jefferson Street in Watsonville,
23 CA. Respondent and M.M. both lived together in the bedroom in the southwestern section of this
24 residence (Southwest bedroom).¹ The surveillance was in response to an anonymous crime tip
25 regarding possible narcotic sales at this location. During the surveillance, SCCACT Agent Delfin
26 observed M. M. and Respondent through a window in the Southwest bedroom. On at least four
27 occasions during a short period of time, Agent Delfin observed unknown people approach the

28 ¹ M. M.'s father, and another woman also lived in the house but occupied a different
bedroom.

1 window of the Southwest bedroom and speak with both M. M. and Respondent. During this time,
2 there were people coming and going from the residence, spending only a short period of time
3 there. This activity was consistent with the anonymous crime tip and with possible narcotic sales.

4 13. At or about 6:45 p.m., on April 13, 2011, law enforcement personnel from SCCACT,
5 SCARE, and the Watsonville Police Department served a search warrant at 406 Jefferson Street
6 in Watsonville. Respondent was not on the premises at the time. During the search, officers
7 forced open the door to the Southwest bedroom because the door was locked. On top of a desk in
8 the room, officers found 2.4 grams of Methamphetamine, three digital scales, packaging material,
9 a black bowl with Methamphetamine residue, and a loaded Smith and Wesson .38 caliber
10 handgun. In a black case between the desk and the bed, officers found 29.6 grams of
11 Methamphetamine and methamphetamine smoking pipes. M. M. opened a safe in the room for
12 officers which contained a loaded .25 caliber handgun and several bindles of prescription pills
13 (Vicodin).

14 14. During the search of the Southwest bedroom, the officers found numerous items of
15 Respondent, including her books and laptop computer which were on the desk next to the drugs,
16 scale, and loaded gun. All these items were in plain view. At about 8:45 p.m., Respondent
17 returned to the residence, and when questioned about the Southwest bedroom, she explained that
18 she had been staying in the bedroom every night for at least the last two years with her boyfriend,
19 M. M. She told officer she left the residence at about 6:00 p.m. that night to go to school.
20 Respondent indicated that she knew about the handgun on the desk and that it belonged to M. M.,
21 but denied knowing anything about the drugs or drug sales. Based on the surveillance of M. M.
22 and Respondent dealing with people through the open window, the proximity of the evidence to
23 the personal property of both M. M. and Respondent, Respondent and M. M. were arrested for
24 violations of Health and Safety Code sections 11378 (possession of controlled substances for
25 sale) and 11370.1 (possession of Methamphetamine while armed with a loaded firearm). Officers
26 located in the house other firearms that belonged to M. M.'s father, a convicted felon. He was
27 also arrested for being a felon in possession of firearms.

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SECOND CAUSE FOR DISCIPLINE
(Gross immorality)
(Bus. & Prof Code § 4301(a))

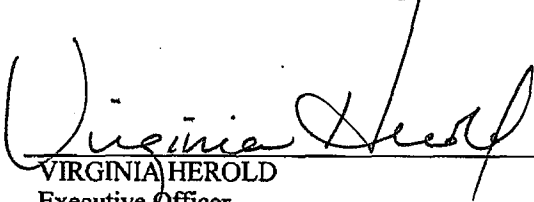
15. Respondent has subjected her Pharmacy Technician License to disciplinary action under Code section 4301, subdivision (a), in that she acted with gross immorality when she sold Methamphetamine with her boyfriend, M. M., on April 13, 2010. The circumstances of Respondent's activity in the selling of Methamphetamine with her boyfriend on April 13, 2010 are explained in paragraphs 11, 12, 13, and 14, above.

PRAYER

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

1. Revoking or suspending Pharmacy Technician License Number TCH 61364, issued to Michelle R. Florez;
2. Ordering Michelle R. Florez to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, under Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: 11/1/11


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

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