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

11 In the Matter of the Accusation Against:

Case No. 4057

12 **THEOPHILUS C. OKAI**
13 **8674 Harrison Way**
14 **Buena Park, CA 90620**

ACCUSATION

15 **Pharmacy Technician Registration No. TCH**
16 **49903**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

21 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
22 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

23 2. On or about May 13, 2005, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 49903 to Theophilus C. Okai (Respondent). The Pharmacy
25 Technician Registration was in full force and effect at all times relevant to the charges brought
26 herein and will expire on April 30, 2013, unless renewed.
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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 118, subdivision (b), of the Code provides that the suspension, expiration,
6 surrender, cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
7 disciplinary action during the period within which the license may be renewed, restored, reissued
8 or reinstated.

9 5. Section 4300, subdivision (a) of the Code states in pertinent part that "[e]very license
10 issued may be suspended or revoked."

11 **STATUTORY/REGULATORY PROVISIONS**

12 6. Section 482 of the Code states:

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

15 ...
16 (b) Considering suspension or revocation of a license under Section 490.

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

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

23 8. Section 493 of the Code states:

24
25 Notwithstanding any other provision of law, in a proceeding conducted by a
26 board within the department pursuant to law to deny an application for a license or
27 to suspend or revoke a license or otherwise take disciplinary action against a
28 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,

1 and the board may inquire into the circumstances surrounding the commission of
2 the crime in order to fix the degree of discipline or to determine if the conviction is
3 substantially related to the qualifications, functions, and duties of the licensee in
4 question.

5 As used in this section, "license" includes "certificate," "permit,"
6 "authority," and "registration."

7 9. Section 4301 of the Code states:

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

12 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
13 deceit, or corruption, whether the act is committed in the course of relations as a
14 licensee or otherwise, and whether the act is a felony or misdemeanor or not.

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

17 (l) The conviction of a crime substantially related to the qualifications,
18 functions, and duties of a licensee under this chapter. The record of conviction of
19 a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
20 States Code regulating controlled substances or of a violation of the statutes of this
21 state regulating controlled substances or dangerous drugs shall be conclusive
22 evidence of unprofessional conduct. In all other cases, the record of conviction
23 shall be conclusive evidence only of the fact that the conviction occurred. The
24 board may inquire into the circumstances surrounding the commission of the
25 crime, in order to fix the degree of discipline or, in the case of a conviction not
26 involving controlled substances or dangerous drugs, to determine if the conviction
27 is of an offense substantially related to the qualifications, functions, and duties of a
28 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.

1 10. California Code of Regulations, title 16, section 1769, states:

2
3 (b) When considering the suspension or revocation of a facility or a
4 personal license on the ground that the licensee or the registrant has been
5 convicted of a crime, the board, in evaluating the rehabilitation of such person and
6 his present eligibility for a license will consider the following criteria:

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

13 11. California Code of Regulations, title 16, section 1770, states:

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

21 COST RECOVERY

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

26 FIRST CAUSE FOR DISCIPLINE

27 (February 9, 2009 Conviction for Unauthorized Access to Computers, Computer Systems
28 and Data on February 27, 2008)

13 Respondent is subject to disciplinary action under sections 490 and 4301(l) of the
14 Code in that he was convicted of a crime that is substantially related to the qualifications, duties
15 and functions of a pharmacy technician. The circumstances are as follows:

1 a. On or about February 9, 2009, in a criminal proceeding entitled *The People of*
2 *the State of California v. Theophilus Cecil Okai*, in Los Angeles County Superior Court, case no.
3 BA345920, Respondent was convicted on his plea of nolo contendere for violating Penal Code
4 section 502(C)(1), unauthorized access to computers, computer systems and computer data, a
5 felony. The Court found that Respondent was guilty.

6 b. As a result of the conviction, on or about February 9, 2009, Respondent was
7 sentenced to three years formal probation and ordered to perform two hundred hours of
8 community service, to resign as a smog technician, to pay restitution to the Bureau of Automotive
9 Repair and to pay a restitution fine.

10 c. The facts that led to the conviction were that on or about February 27, 2008,
11 representatives of the Bureau of Automotive Repair conducted a video surveillance operation of
12 the smog check facility which employed Respondent. The surveillance video and information
13 obtained from the Bureau of Automotive Repair's vehicle information database revealed that
14 Respondent issued an electronic smog certificate of compliance, certifying that he had tested and
15 inspected a 1992 Mercedes and that the Mercedes was in compliance with applicable laws and
16 regulations. However, Respondent had conducted the inspection using clean-piping methods,¹
17 resulting in the issuance of a fraudulent certificate of compliance for the Mercedes.

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(Unprofessional Conduct-Knowingly Making Documents that Falsely Represents**
20 **Existence or Nonexistence of Facts)**

21 14. Respondent is subject to disciplinary action under section 4301(g) of the Code in that
22 Respondent knowingly made or signed a certificate or other document that falsely represented the
23 existence or nonexistence of a state of facts as set forth in paragraph 13 above, and paragraphs
24 15-16 below. The circumstances are as follows.

25
26 ¹ Pursuant to California Code of Regulations, title 16, section 3340.1 "clean piping"
27 means the use of a sample of the exhaust emissions of one vehicle in order to cause the Test
28 Analyzer System or Emissions Inspection System to issue a certificate of compliance for another
vehicle.

1 15. On or about February 27, 2008 and March 11, 2008, representatives of the Bureau of
2 Automotive Repair conducted a video surveillance operation of Respondent's former employer's
3 smog check facility. The surveillance video and information obtained from the Bureau's vehicle
4 information database revealed that Respondent issued electronic smog certificates of compliance,
5 certifying that he had tested and inspected a 1992 Mercedes and a 1994 BMW and that those
6 vehicles were in compliance with applicable laws and regulations. However, Respondent
7 conducted the inspections using clean-piping methods, resulting in the issuance of fraudulent
8 certificates of compliance for those vehicles.

9 16. On or about July 28, 2008, the Bureau of Automotive Repair brought an accusation
10 against Respondent for violations of Health & Safety Code sections 44072.2(a), 44072.2(c) and
11 44072.2(d). In the Decision dated October 29, 2009, which became effective December 8, 2009,
12 the Bureau of Automotive Repair accepted and adopted the Stipulated Settlement and
13 Disciplinary Order as to Respondent in the disciplinary action entitled *In the Matter of the*
14 *Accusation Against: Auto Smog Masters, etc.*, Case no. 79/09-06. In that Stipulated Settlement
15 and Disciplinary Order, Respondent's Advanced Emission Specialist Technician License No. EA
16 017417 was revoked and Respondent admitted the truth of each and every charge and allegation
17 in Accusation No. 79/09-06.

18 **THIRD CAUSE FOR DISCIPLINE**

19 **(Unprofessional Conduct-Commission of Acts involving Dishonesty, Fraud or Deceit)**

20 17. Respondent is subject to disciplinary action under section 4301(f) of the Code in that
21 Respondent committed acts involving dishonesty, fraud or deceit as set forth in paragraphs 13, 15
22 and 16 above.

23 **DISCIPLINARY CONSIDERATIONS**

24 18. Pursuant to title 16, California Code of Regulations, section 1769(b)(2), to determine
25 the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that before
26 Respondent was licensed as a pharmacy technician, on or about October 22, 1997, in criminal
27 proceedings entitled *The People of the State of California v. Theophilus Cecil Okai*, in Los
28 Angeles County Superior Court, case numbers BA109266 and BA146176, Respondent was

1 convicted on his plea of guilty for violating Penal Code section 502(c)(1), unauthorized access to
2 computers; Vehicle Code section 4463(a)(1), uttering a false certificate; and Health & Safety
3 Code section 44059, perjury by false statements or entries, felonies. As a result of his
4 convictions, Respondent was sentenced to jail and ordered to pay all applicable fines. These
5 convictions were disclosed on Respondent's application for licensure as a pharmacy technician.

6 19. Complainant further alleges that before Respondent was licensed as a pharmacy
7 technician, on or about July 16, 1999, pursuant to the Default Decision in the disciplinary action
8 entitled *In the Matter of the Accusation Against: Auto Smog Master IV, etc.*, Case no. 79/97-3, the
9 Director of the Department of Consumer Affairs permanently invalidated Automotive Repair
10 Dealer Registration Number AJ 162891 and revoked Smog Check Station License Number RJ
11 162891, both of which were issued to Respondent as owner of Auto Smog Masters IV.
12 Respondent was found to have committed fraud in violation of Code sections 9884.7(1)(a) and
13 9884.7(1)(d) and Health & Safety Code sections 44012, 44012(a), 44015(a) 44059, 44072.2(a)
14 and 44072.2(d), by conducting smog inspections on nine vehicles using clean-piping methods in
15 order to issue fraudulent smog certificates for those vehicles.

16 **PRAYER**

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

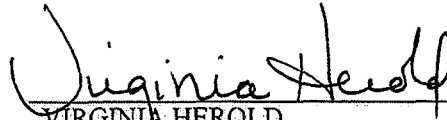
19 1. Revoking or suspending Pharmacy Technician Registration Number TCH 49903,
20 issued to Theophilus Cecil Okai;

21 2. Ordering Theophilus Cecil Okai to pay the Board of Pharmacy the reasonable costs of
22 the investigation and enforcement of this case, pursuant to Business and Professions Code section
23 125.3;

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

DATED: 9/23/11



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

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