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

10 In the Matter of the Accusation Against:

Case No. 4442

11 **AARON MICHAEL IMPASTATO**

12 8429 Orchard Street
13 Alta Loma, CA 91701

A C C U S A T I O N

14 Pharmacy Technician License No. TCH 88443

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 January 16, 2009, the Board of Pharmacy issued Pharmacy Technician
22 License Number TCH 88443 to Aaron Michael Impastato ("Respondent"). The Pharmacy
23 Technician License was in full force and effect at all times relevant to the charges brought herein
24 and will expire on November 30, 2012, unless renewed.

25 **JURISDICTION AND STATUTORY PROVISIONS**

26 3. This Accusation is brought before the Board of Pharmacy ("Board"), Department of
27 Consumer Affairs, under the authority of the following laws. All section references are to the
28 Business and Professions Code ("Code") unless otherwise indicated.

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

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

7 6. Section 4301 of the Code states, in pertinent part:

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

11 ...

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

14 ...

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

18 ...

19 (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.

20 ...

21 (l) The conviction of a crime substantially related to the qualifications,
22 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
23 States Code regulating controlled substances or of a violation of the statutes of this
state regulating controlled substances or dangerous drugs shall be conclusive
24 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
25 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
26 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
27 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
28 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

1 suspending the imposition of sentence, irrespective of a subsequent order under
2 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
3 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
4 dismissing the accusation, information, or indictment.

5 ...

6 (o) Violating or attempting to violate, directly or indirectly, or assisting in
7 or abetting the violation of or conspiring to violate any provision or term of this
8 chapter or of the applicable federal and state laws and regulations governing
9 pharmacy, including regulations established by the board or by any other state or
10 federal regulatory agency.

11 (p) Actions or conduct that would have warranted denial of a license.”

12 7. Section 490 of the Code states, in pertinent part:

13 “(a) In addition to any other action that a board is permitted to take
14 against a licensee, a board may suspend or revoke a license on the ground that the
15 licensee has been convicted of a crime, if the crime is substantially related to the
16 qualifications, functions, or duties of the business or profession for which the license
17 was issued.

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

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

8. Section 4060 of the Code states:

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

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

1 9. Section 480 of the Code states:

2 “(a) A board may deny a license regulated by this code on the grounds
3 that the applicant has one of the following:

4 (1) Been convicted of a crime. A conviction within the meaning of this
5 section means a plea or verdict of guilty or a conviction following a plea of nolo
6 contendere. Any action that a board is permitted to take following the establishment
7 of a conviction may be taken when the time for appeal has elapsed, or the judgment
8 of conviction has been affirmed on appeal, or when an order granting probation is
9 made suspending the imposition of sentence, irrespective of a subsequent order under
10 the provisions of Section 1203.4 of the Penal Code.

11 (2) Done any act involving dishonesty, fraud, or deceit with the intent to
12 substantially benefit himself or herself or another, or substantially injure another.

13 (3) (A) Done any act that if done by a licentiate of the business or
14 profession in question, would be grounds for suspension or revocation of license.

15 (B) The board may deny a license pursuant to this subdivision only if the
16 crime or act is substantially related to the qualifications, functions, or duties of the
17 business or profession for which application is made.

18 (b) Notwithstanding any other provision of this code, no person shall be
19 denied a license solely on the basis that he or she has been convicted of a felony if he
20 or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing
21 with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been
22 convicted of a misdemeanor if he or she has met all applicable requirements of the
23 criteria of rehabilitation developed by the board to evaluate the rehabilitation of a
24 person when considering the denial of a license under subdivision (a) of Section 482.

25 (c) A board may deny a license regulated by this code on the ground that
26 the applicant knowingly made a false statement of fact required to be revealed in the
27 application for the license.”

28 10. Section 493 of the Code states:

 “Notwithstanding any other provision of law, in a proceeding conducted
by a 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 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, and
the board 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 related to the qualifications, functions, and duties of the licensee in
question.

 As used in this section, ‘license’ includes ‘certificate,’ ‘permit,’
‘authority,’ and ‘registration.’”

REGULATORY PROVISION

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

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

8 **DRUG DEFINITIONS**

9 12. Oxycontin [Oxycodone] is used for severe pain and is a dangerous drug pursuant to
10 Business and Professions Code section 4022 and is a Schedule II Controlled Substance pursuant
11 to Health and Safety Code section 11055(b)(1)(M).

12 13. Heroin is a dangerous drug pursuant to Business and Professions Code section 4022
13 and is a Schedule I Controlled Substance pursuant to Health and Safety Code section
14 11054(c)(11).

15 **COST RECOVERY**

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

20 **FIRST CAUSE FOR DISCIPLINE**

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

22 15. Respondent is subject to disciplinary action under section 490 and section 4301,
23 subdivision (l) of the Code in conjunction with California Code of Regulations, title 16, section
24 1770 in that he was convicted of a substantially related crime, as follows:

25 16. On or about February 22, 2011, Respondent pled guilty to one felony count of
26 violating Health and Safety Code section 11351 [possess/purchase for sale narcotic/controlled
27 substance] in the criminal proceeding entitled *The People of the State of California v. Aaron*
28 *Michael Impastato* (Super. Ct. of California, County of San Bernardino, 2010, Case No,
FWV1002299). On or about April 5, 2011, the court sentenced Respondent to serve 180 days in
a San Bernardino County Jail facility, register as a drug offender with the appropriate city or

1 county law enforcement agency pursuant to Health and Safety Code section 11590/11594 and
2 placed Respondent on formal probation for a period of 36 months, with terms and conditions.

3 17. The circumstances underlying the conviction are that on or about July 9, 2010,
4 County of San Bernardino Sheriff's Department Officers served a search warrant on a residence
5 in which Respondent resided. On or about that day, Officers found 16 80mg pills of Oxycontin¹,
6 a metal spoon with Heroin/Oxycontin residue, 18 cotton balls containing suspected Heroin, 3
7 hypodermic needles, a glass pipe containing suspected heroin residue and several other
8 prescription pills in a bedroom identified as Respondent's. Officers also found a handwritten
9 price list for Oxycontin, numerous prescription receipts for Oxycontin and various prescription
10 drugs. On or about July 20, 2010, Officers interviewed Respondent. The Respondent told
11 officers that the drug paraphernalia found on the home belongs to him from when he used to
12 inject Heroin. The Respondent also told officers that he has been selling Oxycontin for
13 approximately two months. The Respondent stated that he sells both the Oxycontin prescribed to
14 himself and the Oxycontin prescribed to his brother. Advised that taking Oxycontin for the past
15 year and is addicted to the drug. Normally consumes the drug orally but last injected himself 1
16 week prior.

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Unprofessional Conduct)**

19 18. Respondent is subject to disciplinary action under section 4301 of the Code on the
20 grounds of unprofessional conduct in that Respondent possessed drug paraphernalia, Heroin, sold
21 Oxycontin and is addicted to Oxycontin. The conduct is described in more particularity in
22 paragraph 17 above, inclusive and hereby incorporated by reference.

23 **THIRD CAUSE FOR DISCIPLINE**

24 **(Violation of Statutes Governing Controlled Substances/Dangerous Drugs)**

25 19. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the
26 Code in that Respondent violated California statutes regulating controlled substances and

27 ¹ Found inside a prescription bottle issued to Respondent's brother which was filled on July 2,
28 2010, for a total quantity of 180 pills.

1 dangerous drugs. Specifically, on or about February 22, 2011, Respondent pled guilty to one
2 felony count of violating Health and Safety Code section 11351 [possess/purchase for sale
3 narcotic/controlled substance] in the criminal proceeding entitled *The People of the State of*
4 *California v. Aaron Michael Impastato* (Super. Ct. of California, County of San Bernardino,
5 2010, Case No, FWV1002299). On or about April 5, 2011, the court sentenced Respondent to
6 serve 180 days in a San Bernardino County Jail facility and placed Respondent on probation for a
7 period of 36 months, with terms and conditions. The conviction is described in more particularity
8 in paragraph 16 above, inclusive and hereby incorporated by reference.

9 20. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the
10 Code in that Respondent violated California statutes regulating controlled substances and
11 dangerous drugs. Specifically, Respondent possessed Oxycontin prescribed to his brother in
12 violation of section 4060 of the Code. The possession is described in more particularity in
13 paragraph 17 above, inclusive and hereby incorporated by reference.

14 **FOURTH CAUSE FOR DISCIPLINE**

15 **(Self-Administration Dangerous Drugs)**

16 21. Respondent is subject to disciplinary action under section 4301, subdivision (h) in
17 that Respondent administered to himself, Oxycontin and Heroin to an extent or in a manner as to
18 be dangerous or injurious to himself, others or the public. The conduct is described in more
19 particularity in paragraph 17 above, inclusive and hereby incorporated by reference.

20 **FIFTH CAUSE FOR DISCIPLINE**

21 **(Act Involving Dishonesty)**

22 22. Respondent is subject to disciplinary action under section 4301, subdivision (f) of the
23 Code in that Respondent committed acts involving dishonesty when he sold Oxycontin knowing
24 it was illegal to do so. The acts are described in more particularity in paragraph 17 above,
25 inclusive and hereby incorporated by reference.

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1 **SIXTH CAUSE FOR DISCIPLINE**

2 **(Actions Warranting Denial of Licensure)**

3 23. Respondent is subject to disciplinary action under section 4301, subdivision (p) of the
4 Code as defined in section 480, subdivision (a)(1) of the Code in conjunction with California
5 Code of Regulations, title 16, section 1770, in that Respondent was convicted of a crime
6 substantially related to the qualifications, functions and duties of a pharmacy technician. The
7 conviction is described in more particularity in paragraph 16 above, inclusive and hereby
8 incorporated by reference.

9 24. Respondent is subject to disciplinary action under section 4301, subdivision (p) of the
10 Code as defined in section 480, subdivision (a)(2) of the Code in that Respondent committed an
11 act involving dishonesty when he sold Oxycontin knowing it is illegal to do so. The dishonest act
12 is described in more particularity in paragraph 17 above, inclusive and hereby incorporated by
13 reference.

14 **SEVENTH CAUSE FOR DISCIPLINE**

15 **(Violate Provisions of the Licensing Chapter)**

16 25. Respondent is subject to disciplinary action under section 4301, subdivision (o) of the
17 Code in that Respondent violated provisions of the Pharmacy Law. The violations are described
18 in more particularity in paragraphs 15 through 24 above, inclusive and hereby incorporated by
19 reference.

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PRAYER

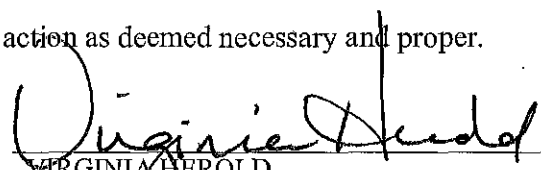
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Pharmacy Technician License Number TCH 88443, issued to Aaron Michael Impastato;

2. Ordering Aaron Michael Impastato 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;

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

DATED: 1/18/13



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

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