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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. 4475

11 **STEVEN JOSEPH GUTIERREZ**  
12 **407 Pintail Drive**  
13 **Suisun City, CA 94585**

**A C C U S A T I O N**

14 **Pharmacy Technician License No. TCH 43751**

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 October 16, 2002, the Board of Pharmacy issued Pharmacy Technician  
22 License No. TCH 43751 to Steven Joseph Gutierrez (Respondent). The License was in full force  
23 and effect at all times relevant herein and will expire on August 30, 2014, unless renewed.

24 JURISDICTION

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

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1 4. Section 4011 of the Code provides that the Board shall administer and enforce both  
2 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances  
3 Act [Health & Safety Code, § 11000 et seq.].

4 5. Section 4300(a) of the Code provides that every license issued by the Board may be  
5 suspended or revoked.

6 6. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration,  
7 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a  
8 disciplinary action during the period within which the license may be renewed, restored, reissued  
9 or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not  
10 renewed within three years following its expiration may not be renewed, restored, or reinstated  
11 and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of  
12 the Code provides that any other license issued by the Board may be canceled by the Board if not  
13 renewed within 60 days after its expiration, and will require a new application.

#### 14 STATUTORY AND REGULATORY PROVISIONS

15 7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action  
16 against any holder of a license who is guilty of “unprofessional conduct,” defined to include, but  
17 not be limited to, any of the following:

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

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

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

1 8. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous  
2 drug or dangerous device except upon the prescription of an authorized prescriber.

3 9. Section 4060 of the Code provides, in pertinent part, that no person shall possess any  
4 controlled substance, except that furnished upon a valid prescription/drug order.

5 10. Health and Safety Code section 11170 provides that no person shall prescribe,  
6 administer, or furnish a controlled substance for himself or herself.

7 11. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess  
8 any controlled substance listed in Schedule II (Health and Safety Code section 11055),  
9 subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

10 12. Health and Safety Code section 11357, in pertinent part, makes it unlawful for any  
11 person to possess **marijuana** or concentrated cannabis.

12 12. Health and Safety Code section 11550, in pertinent part, makes it unlawful for any  
13 person to use or be under the influence of any controlled substance in Schedule II (Health and  
14 Safety Code section 11055), subdivision (d)(1) or (d)(2), or any narcotic drug in Schedules III-V,  
15 except when administered by or under the direction of an authorized licensee.

16 COST RECOVERY

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

20 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

21 14. Section 4021 of the Code states:

22 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section  
23 11053) of Division 10 of the Health and Safety Code.”

24 15. Section 4022 of the Code states, in pertinent part:

25 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use,  
26 except veterinary drugs that are labeled as such, and includes the following:

27 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without  
28 prescription,’ ‘Rx only,’ or words of similar import.

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2 ...  
3 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on  
4 prescription or furnished pursuant to Section 4006.”

5 16. **Marijuana** is a Schedule I controlled substance as designated by Health and Safety  
6 Code section 11054(d)(13), and a dangerous drug as designated by Business and Professions  
Code section 4022. It is a hallucinogenic drug.

7 17. **Norco, Vicodin, Vicodin ES, Lortab, and Lorcet** are among the brand names for  
8 compounds of varying dosages of acetaminophen (aka APAP) and **Hydrocodone**, a Schedule III  
9 controlled substance as designated by Health and Safety Code section 11056(e)(4) and dangerous  
10 drug as designated by Business and Professions Code section 4022. The varying compounds are  
11 also known generically as **Hydrocodone with APAP**. These are all narcotic drugs.

#### 12 FACTUAL BACKGROUND

13 18. On or about August 10, 2011, officer(s) from the Napa (CA) Police Department saw  
14 Respondent driving a car from from which the smell of **marijuana** was detectable. The officer(s)  
15 followed Respondent until he parked the car. When questioned, Respondent admitted to having  
16 **marijuana** in the car, and admitted to not having a medical marijuana card. A subsequent search  
17 of Respondent’s person revealed approximately one hundred (100) tablets of what Respondent  
18 admitted was **Vicodin**, in his pocket. Respondent admitted to not having a prescription for the  
19 **Vicodin**. A further search of the car revealed another two (2) tablets, an orange medicine bottle  
20 containing a green leafy substance, and a case containing a glass smoking pipe. All of the tablets  
21 were subsequently identified as generic **Norco** or generic **Vicodin**, the green leafy substance was  
22 identified as **marijuana**, and the pipe was identified as one used for smoking **marijuana**. During  
23 the interaction, Respondent admitted to smoking **marijuana** and consuming **Vicodin**.

#### 24 FIRST CAUSE FOR DISCIPLINE

25 (Self-Administration of Controlled Substance(s))

26 19. Respondent is subject to discipline under section 4301(h) of the Code, and/or 4301(j)  
27 and/or (o) of the Code and Health and Safety Code section 11170, in that Respondent, as  
28 described in paragraph 18 above, administered a controlled substance to himself.

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SECOND CAUSE FOR DISCIPLINE

(Furnishing of Controlled Substance(s))

20. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section 4059 of the Code, and/or Health and Safety Code section 11170, in that Respondent, as described in paragraph 18 above, furnished to himself or another without a valid prescription, and/or conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.

THIRD CAUSE FOR DISCIPLINE

(Possession of Controlled Substance(s))

21. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section 4060 of the Code, and/or Health and Safety Code section(s) 11350 and/or 11357, in that Respondent, as described in paragraph 18 above, possessed, conspired to possess, and/or assisted in or abetted possession of, a controlled substance, without a prescription.

FOURTH CAUSE FOR DISCIPLINE

(Use/Being Under Influence of Controlled Substance(s))

22. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code, and/or Health and Safety Code section 11550, in that Respondent, as described in paragraph 18 above, used and/or was under the influence of, conspired to use/be under the influence of, and/or assisted in or abetted use/being under the influence of, a controlled substance..

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

23. Respondent is subject to discipline under section 4301 of the Code in that Respondent, as described in paragraphs 18 to 22 above, engaged in unprofessional conduct.

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:

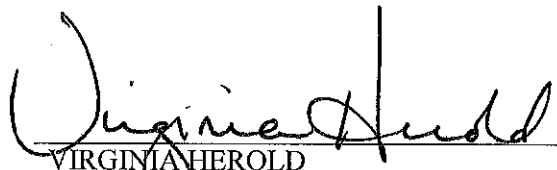
1. Revoking or suspending Pharmacy Technician License No. TCH 43751, issued to Steven Joseph Gutierrez (Respondent);

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- 2. Ordering Respondent to pay the Board 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 is 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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