

1 KAMALA D. HARRIS  
Attorney General of California  
2 GREGORY J. SALUTE  
Supervising Deputy Attorney General  
3 HELENE E. SWANSON  
Deputy Attorney General  
4 State Bar No. 130426  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 620-3005  
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**

12 In the Matter of the Accusation Against:

Case No. 4476

13 **GINA ANTOINETTE VINATIERI**  
27940 Solamint Road, #16-202  
Canyon Country, CA 91387

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

14 Pharmacy Technician Registration No. TCH  
121899

15 Respondent.

16  
17  
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about March 15, 2012, the Board issued Pharmacy Technician Registration No.  
23 TCH 121899 to Gina Antoinette Vinatieri (Respondent). The Pharmacy Technician Registration  
24 was in full force and effect at all times relevant to the charges brought herein and will expire on  
25 March 31, 2014, unless renewed.

26 **JURISDICTION**

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

1       4.     Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or  
2 suspension of a Board-issued license, the placement of a license on a retired status, or the  
3 voluntary surrender of a license by a licensee, shall not deprive the Board of jurisdiction to  
4 commence or proceed with any investigation of, or action or disciplinary proceeding against, the  
5 licensee or to render a decision suspending or revoking the license.

6   **STATUTORY PROVISIONS**

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

11       6.     Section 490 states, in pertinent part:

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

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

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

26       7.     Section 492 states:

27           "Notwithstanding any other provision of law, successful completion of any diversion  
28 program under the Penal Code, or successful completion of an alcohol and drug problem

1 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of  
2 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2  
3 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that  
4 division, from taking disciplinary action against a licensee or from denying a license for  
5 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a  
6 record pertaining to an arrest.

7 "This section shall not be construed to apply to any drug diversion program operated by any  
8 agency established under Division 2 (commencing with Section 500) of this code, or any  
9 initiative act referred to in that division."

10 8. Section 4060 of the Code states:

11 "No person shall possess any controlled substance, except that furnished to a person upon  
12 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor  
13 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified  
14 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a  
15 physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5,  
16 or a pharmacist pursuant to Section 4052.1 or 4052.2. This section shall not apply to the  
17 possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist,  
18 physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified  
19 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly  
20 labeled with the name and address of the supplier or producer.

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

24 9. Section 4300, subdivision (a), states that "[e]very license issued may be suspended or  
25 revoked."

26 //

27 //

28 //

1           10. Section 4301 states, in pertinent part:

2           "The board shall take action against any holder of a license who is guilty of unprofessional  
3 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

4 Unprofessional conduct shall include, but is not limited to, any of the following:

5           . . . .

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

9           . . . .

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

15          . . . .

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

18          . . . .

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

1 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning  
2 of this provision. The board may take action when the time for appeal has elapsed, or the  
3 judgment of conviction has been affirmed on appeal or when an order granting probation is made  
4 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of  
5 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
6 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
7 indictment. . . .”

### 8 REGULATORY PROVISION

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

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

### 16 DRUG STATUTES

17 12. Health and Safety Code section 11170 states that “[n]o person shall prescribe,  
18 administer, or furnish a controlled substance for himself.”

19 13. Health and Safety Code section 11173, subdivision (a), states that “[n]o person shall  
20 obtain or attempt to obtain controlled substances, or procure or attempt to procure the  
21 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,  
22 or subterfuge; or (2) by the concealment of a material fact.”

23 14. Health and Safety Code section 11350, subdivision (a), states:

24 “Except as otherwise provided in this division, every person who possesses (1) any  
25 controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of  
26 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or  
27 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section  
28 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic

1 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian  
2 licensed to practice in this state, shall be punished by imprisonment in the state prison.”

3 15. Health and Safety Code section 11377, subdivision (a), states:

4 “Except as authorized by law and as otherwise provided in subdivision (b) or Section  
5 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the  
6 Business and Professions Code, every person who possesses any controlled substance which is  
7 (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in  
8 subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d),  
9 (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2)  
10 or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section  
11 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to  
12 practice in this state, shall be punished by imprisonment in a county jail for a period of not more  
13 than one year or in the state prison or pursuant to subdivision (h) of Section 1170 of the Penal  
14 Code.”

#### 15 COST RECOVERY

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

#### 20 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

21 17. **Marijuana** (Cannabis) is a hallucinogenic Schedule I controlled substance as defined  
22 in Health and Safety Code section 11054 (d)(13) and is categorized as a dangerous drug pursuant  
23 to Business and Professions Code section 4022.

24 18. **Methamphetamine** is a Schedule II controlled substance as designated by Health and  
25 Safety Code section 11055, subdivision (d)(2), and is categorized as a dangerous drug pursuant to  
26 Business and Professions Code section 4022.

27 //

28 //

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Conviction of a Substantially-Related Crime)**

3 19. Respondent is subject to disciplinary action under Sections 490, 4300, and 4301,  
4 subdivision (l), in conjunction with California Code of Regulations, title 16, Section 1770, on the  
5 grounds of unprofessional conduct, in that Respondent was convicted of a crime substantially  
6 related to the qualifications, functions or duties of a registered pharmacy technician which to a  
7 substantial degree evidence her present or potential unfitness to perform the functions authorized  
8 by her registration in a manner consistent with the public health, safety, or welfare, as follows:

9 a. On or about May 10, 2012, after pleading *nolo contendere*, Respondent was  
10 convicted of one misdemeanor count of violating Health and Safety Code section 11357,  
11 subdivision (b) [possession of 28.5 grams of marijuana], in the criminal proceeding entitled *The*  
12 *People of the State of California v. Gina Antoinette Vinatieri* (Super. Ct. Los Angeles, 2012, No.  
13 2NW00922). The court ordered Respondent to pay a fine. The circumstances surrounding the  
14 conviction are as follows:

15 b. On or about May 8, 2012, a Los Angeles Sheriff's Department Officer, while on duty,  
16 was dispatched to investigate a suspicious vehicle parked with four occupants in the vehicle in the  
17 city of Stevenson Ranch, California. The officer made contact with the individuals in the vehicle  
18 and identified Respondent as the front seat passenger. The officer approached the vehicle,  
19 observed smoke filling the interior of the vehicle and smelled an odor of Marijuana emitting from  
20 the interior of the vehicle. During the search of the vehicle, the officer recovered a baggie of  
21 Marijuana from the center console. The officer also recovered from the front passenger  
22 floorboard, a make-up bag with a clear baggie inside, containing methamphetamine and a  
23 methamphetamine pipe. The occupants in the vehicle stated that the make-up bag and the  
24 contents inside belonged to Respondent. The driver stated to the officer that the Respondent was  
25 his girlfriend who was sitting in the front passenger seat, and that she had recently tried  
26 Methamphetamine. The Respondent admitted to the officer that she had previously used Cocaine  
27 and Methamphetamine. The Respondent further admitted to the officer that she had smoked  
28 Methamphetamine using a pipe and that the make-up bag recovered and the contents inside

1 belonged to her. Furthermore, the Respondent admitted to the officer that she had used  
2 Methamphetamine, "yesterday." The Respondent was subsequently arrested for violating Health  
3 and Safety Code sections 11377, subdivision (a) and 11364, subdivision (a).

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Illegal Possession of Controlled Substances)**

6 20. Respondent is subject to disciplinary action under Sections 4300 and 4301,  
7 subdivision (j), in conjunction with Section 4060, on the grounds of unprofessional conduct, in  
8 that on or about May 08, 2012, Respondent was found to be in possession of controlled substance  
9 and dangerous drug, without a valid prescription. Complainant refers to, and by this reference  
10 incorporates, the allegations set forth above in Paragraph 19, subparagraphs (a) and (b), inclusive,  
11 as though set forth fully.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Violating Drug Statutes)**

14 21. Respondent is subject to disciplinary action under Sections 4300 and 4301,  
15 subdivision (j), on the grounds of unprofessional conduct, for violating provisions of the Health  
16 and Safety Code as follows:

17 a. Health & Safety Codes section 11377, subdivision (a), by possessing Marijuana and  
18 Methamphetamine, controlled substances. Complainant refers to, and by this reference  
19 incorporates, the allegations set forth above in Paragraphs 19 through 20, inclusive, as though set  
20 forth fully.

21 **FOURTH CAUSE FOR DISCIPLINE**

22 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit and/or Corruption)**

23 22. Respondent is subject to disciplinary action under Sections 4300 and 4301,  
24 subdivision (f), on the grounds of unprofessional conduct, in that Respondent was convicted of a  
25 crime involving acts of moral turpitude, dishonesty, fraud, deceit and / or corruption.  
26 Complainant refers to, and by this reference incorporates, the allegations set forth above in  
27 Paragraphs 19 through 21, inclusive, as though set forth fully

28 //



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

**PRAYER**

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

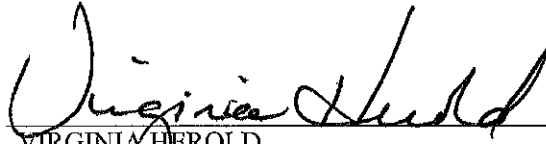
1. Revoking or suspending Pharmacy Technician License No. TCH 121899, issued to Gina Antoinette Vinatieri;

2. Ordering Gina Antoinette Vinatieri to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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

DATED:

7/19/13



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

LA2012508117  
51292184.docx