

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 ANTOINETTE B. CINCOTTA
Deputy Attorney General
4 State Bar No. 120482
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2095
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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. 4590

12 **GARRETT MICHAEL NOBLETT**
13 **17461 El Camino Road**
14 **Madera, CA 93636**

ACCUSATION

15 **Pharmacy Technician Registration No. TCH 98001**

16 Respondent.

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 (Board), Department of Consumer Affairs.

21 2. On or about January 7, 2010, the Board issued Pharmacy Technician Registration
22 No. TCH 98001 to Garrett Michael Noblett (Respondent). The registration will remain in effect
23 until September 30, 2013, unless renewed.

24 **JURISDICTION**

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

27 4. Section 4300 of the Code states:

28 "(a) Every license issued may be suspended or revoked.

1 (b) The board shall discipline the holder of any license issued by the board, whose default
 2 has been entered or whose case has been heard by the board and found guilty, by any of the
 3 following methods:

4 "(1) Suspending judgment.

5 "(2) Placing him or her upon probation.

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

7 "(4) Revoking his or her license.

8 "(5) Taking any other action in relation to disciplining him or her as the board in its
 9 discretion may deem proper.

10 "..."

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

16 5. Section 4300.1 of the Code states:

17 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by
 18 operation of law or by order or decision of the board or a court of law, the placement of a license
 19 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
 20 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
 21 proceeding against, the licensee or to render a decision suspending or revoking the license."

22 **STATUTORY AUTHORITIES**

23 6. Section 4022 of the Code states

24 "'Dangerous drug' or 'dangerous device' means any drug or device unsafe for self-use in
 25 humans or animals, and includes the following:

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

1 (b) Any device that bears the statement: 'Caution: federal law restricts this device to sale
2 by or on the order of a _____,' 'Rx only,' or words of similar import, the blank to be filled
3 in with the designation of the practitioner licensed to use or order use of the device.

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

6 7. Section 4301 of the Code states:

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

10 ". . . .

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

13 ". . . .

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

18 ". . . .

19 8. Section 4060 of the Code states:

20 "No person shall possess any controlled substance, except that furnished to a person upon
21 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
22 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
23 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
24 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
25 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
26 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
27 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
28 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified

1 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
2 labeled with the name and address of the supplier or producer.

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

6 9. Health and Safety Code section 11357 provides"

7 "(a) Except as authorized by law, every person who possesses any concentrated cannabis
8 shall be punished by imprisonment in the county jail for a period of not more than one year or by
9 a fine of not more than five hundred dollars (\$500), or by both such fine and imprisonment, or
10 shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code.

11 "(b) Except as authorized by law, every person who possesses not more than 28.5 grams of
12 marijuana, other than concentrated cannabis, is guilty of an infraction punishable by a fine of not
13 more than one hundred dollars (\$100).

14 "(c) Except as authorized by law, every person who possesses more than 28.5 grams of
15 marijuana, other than concentrated cannabis, shall be punished by imprisonment in a county jail
16 for a period of not more than six months or by a fine of not more than five hundred dollars
17 (\$500), or by both such fine and imprisonment.

18 "(d) Except as authorized by law, every person 18 years of age or over who possesses not
19 more than 28.5 grams of marijuana, other than concentrated cannabis, upon the grounds of, or
20 within, any school providing instruction in kindergarten or any of grades 1 through 12 during
21 hours the school is open for classes or school-related programs is guilty of a misdemeanor and
22 shall be punished by a fine of not more than five hundred dollars (\$500), or by imprisonment in a
23 county jail for a period of not more than 10 days, or both.

24 "(e) Except as authorized by law, every person under the age of 18 who possesses not more
25 than 28.5 grams of marijuana, other than concentrated cannabis, upon the grounds of, or within,
26 any school providing instruction in kindergarten or any of grades 1 through 12 during hours the
27 school is open for classes or school-related programs is guilty of a misdemeanor and shall be
28 subject to the following dispositions:

1 “(1) A fine of not more than two hundred fifty dollars (\$250), upon a finding that a first
2 offense has been committed.

3 “(2) A fine of not more than five hundred dollars (\$500), or commitment to a juvenile hall,
4 ranch, camp, forestry camp, or secure juvenile home for a period of not more than 10 days, or
5 both, upon a finding that a second or subsequent offense has been committed.”

6 **COSTS**

7 10. Section 125.3 of the Code states, in pertinent 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 **REGULATIONS**

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

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

19 **DRUGS**

20 12. Lysergic acid diethylamide, also known as LSD, is a Schedule I controlled substance
21 pursuant to Health and Safety Code section 11054, subdivision (d).

22 13. Concentrated cannabis, also known as hashish, is the separated resin, whether crude
23 or purified, obtained from marijuana, pursuant to Health and Safety Code section 11006.5, and
24 marijuana is a Schedule I controlled substance pursuant to Health and Safety Code section 11054,
25 subdivision (d).

26 14. Adderall is the brand name for dextroamphetamine and amphetamine, a Schedule II
27 controlled substance pursuant to Health and Safety Code section 11055, subdivision (d), and a
28

1 dangerous drug pursuant to Business and Professions Code section 4022. It is an amphetamine
2 salts used for attention-deficit hyperactivity disorder and narcolepsy.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct – Illegal Possession of Controlled Substances)**

5 15. Respondent is subject to disciplinary action for unprofessional conduct under section
6 4301, subdivision (o) in possessing controlled substances without a prescription in violation of
7 section 4060. The circumstances are as follows:

8 16. On or about October 31, 2012, officers from the University of California Irvine (UCI)
9 Police Department interviewed Respondent as part of an investigation concerning allegations that
10 Respondent provided another UCI student with substances which caused him to act crazy and
11 hurt himself requiring hospitalization. While at the hospital, the UCI student's blood tested
12 consistent with Bath Salts and methamphetamine. Upon arrival at Respondent's apartment, the
13 officers saw an orange prescription bottle with several different types of pills inside it in the back
14 seat of Respondent's vehicle, and visible through the back passenger window. Respondent
15 confirmed that he owned the vehicle, and authorized the officers to search it. The officers found
16 100 dosage units of LSD, 6.4 grams of concentrated hashish, and 419 Adderall tablets inside an
17 orange Walgreens prescription bottle in Respondent's vehicle. Respondent admitted to the
18 officers that the drugs were his. The officers also found two prescription bottles containing
19 Lidocaine and Lorazepam prescribed to another family member, and a prescription bottle
20 containing Amphetamine salts prescribed to K.E.T. The officers also found a notebook inside the
21 vehicle which had the words, "Money Ideas" and discussed selling illegal narcotics. Respondent
22 confirmed the notebook was his. On one page, titled "money ideas", listed the following: "Buy
23 sheet acid – sell"; "Get major information on drug scene, manufacturing"; "Meth laced weed,
24 force sell at 50-80"; and "Grow poppy lace weed sell 50-90."

25 ///

26 ///

27 ///

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

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Possession of Concentrated Cannabis/Hashish)

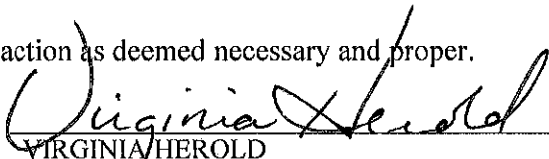
17. Respondent is subject to disciplinary action for unprofessional conduct under section 4301, subdivision (j) in possessing concentrated cannabis/hashish in violation of Health and Safety Code section 11357, as set forth in paragraph 16, above, which is incorporated here by this reference.

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 registration number TCH 98001 issued to Garrett Michael Noblett;
2. Ordering Garrett Michael Noblett 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; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 9/6/13



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

SD2013705044
70732979.doc