

1 KAMALA D. HARRIS  
Attorney General of California  
2 JANICE K. LACHMAN  
Supervising Deputy Attorney General  
3 KRISTINA T. JANSEN  
Deputy Attorney General  
4 State Bar No. 258229  
1300 I Street, Suite 125  
5 P.O. Box 944255  
Sacramento, CA 94244-2550  
6 Telephone: (916) 324-5403  
Facsimile: (916) 327-8643  
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 4684

12 **BRANDON DEVLIN**  
13 **2492 Gibson Avenue**  
**Clovis, California 93611**

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

14 **Pharmacy Technician Registration No. TCH**  
15 **91611**

16 Respondent.

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.

22 2. On or about June 5, 2009, the Board of Pharmacy issued Pharmacy Technician  
23 Registration Number TCH 91611 to Brandon Devlin (Respondent). The Pharmacy Technician  
24 registration expired on June 30, 2011 and has not yet been renewed.

25 **JURISDICTION**

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 unless otherwise indicated.

1           4.     Section 4300.1 of the Code states in pertinent part that the expiration of a board-  
2 issued license shall not deprive the board of jurisdiction to commence or proceed with any action  
3 or disciplinary proceeding against the licensee.

4           5.     Section 4301 of the Code states in pertinent part that the board shall take action  
5 against any holder of a license who is guilty of unprofessional conduct. Unprofessional conduct  
6 shall include, but is not limited to, any of the following:

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

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

14           (l) The conviction of a crime substantially related to the qualifications, functions, and  
15 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
16 (commencing with Section 801) of Title 21 of the United States Code regulating controlled  
17 substances or of a violation of the statutes of this state regulating controlled substances or  
18 dangerous drugs shall be conclusive evidence of unprofessional conduct.

19           6.     California Health and Safety Code section 11550(a) provides in pertinent part that no  
20 person shall use, or be under the influence of any controlled substance which is... specified in  
21 paragraph (1) or (2) of subdivision (d)... of Health and Safety Code section 11055. Paragraph (2)  
22 of subdivision (d) of Health and Safety Code section 11055 states "Methamphetamine, its salts,  
23 isomers, and salts of its isomers."

24           7.     California Penal Code section 25850(a) states: "A person is guilty of carrying a  
25 loaded firearm when the person carries a loaded firearm on the person or in a vehicle while in any  
26 public place or in any public street in an incorporated city..."

27     ///

28     ///

1 **COST RECOVERY**

2 8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
3 administrative law judge to direct a licentiate found to have committed a violation or violations of  
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
5 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being  
6 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
7 included in a stipulated settlement.

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(Unlawful Self-Administration of Controlled Substance)**

10 9. Respondent is subject to disciplinary action under section 4301, subdivision (h),  
11 unprofessional conduct by administering a controlled substance to himself in a manner as to be  
12 dangerous or injurious to himself and without lawful authority therefor. The circumstances are  
13 that on or about April 4, 2012, at approximately 11:45 p.m. Respondent was observed by Officer  
14 Jason Smoak of the Clovis Police Department walking on a sidewalk wearing a sleeveless shirt  
15 despite the temperature at that time being approximately 50 degrees. Upon speaking with  
16 Respondent, Officer Smoak observed that Respondent spoke rapidly, his fingers were twitching  
17 uncontrollably, and his pupils were dilated. In Officer Smoak's training and experienced, he  
18 recognized these signs as possible use of a controlled substance. Officer Smoak asked  
19 Respondent if he would participate in preliminary tests to ascertain whether Respondent was  
20 impaired. Respondent agreed. Officer Smoak checked Respondent's pupils and took  
21 Respondent's pulse several times, which was 128, 130, and 132 beats per minute. At that time  
22 Respondent was arrested for being under the influence of methamphetamine. Respondent then  
23 admitted to Officer Smoak that he had smoked crystal meth that day. Respondent stated that he  
24 was addicted to heroin and trying to quit, and a friend had told him that smoking meth would help  
25 him get off heroin. A blood test was done and Respondent tested positive for methamphetamine.

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**  
**(Violation of Statute Regulating Controlled Substances)**

10. Respondent is subject to disciplinary action under section 4301, subsection (j) violation of California Health and Safety Code section 11550(a), being under the influence of a controlled substance, to wit, methamphetamine as set forth in paragraph 10, above.

**THIRD CAUSE FOR DISCIPLINE**  
**(Substantially Related Criminal Conviction)**

11. Respondent is subject to disciplinary action under section 4301, subsection (l) of the Code in that on or about December 4, 2012, in Fresno County Superior Court, Case Number M12000946 Respondent pled guilty to Penal Code section 25850(a), a misdemeanor<sup>1</sup>, a crime substantially related to the qualifications, functions and duties of being a pharmacy technician. The circumstances of the crime are that on or about November 4, 2011, Officer Ryan Wade observed Respondent driving a vehicle with two passengers. Respondent flicked ash from his cigarette out of his window. Officer Wade therefore performed a traffic stop on the vehicle. Officer Wade asked if anyone in the vehicle was on probation or parole. One of the passengers was on parole for illegal transportation of narcotics, and therefore his person and the vehicle were subject to search and seizure. Based on this information, Officer Wade decided to search the vehicle. Respondent then informed Officer Wade that there was a loaded handgun in the trunk of the vehicle. Officer Wade found the handgun, a black and silver Ruger P95 with 7 rounds in the magazine. The magazine was inserted into the handgun and the handgun was wrapped in a blue shirt, and concealed in the trunk by the spare tire. Respondent admitted to Officer Wade that he knew it was illegal to carry a loaded weapon in his vehicle.

**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:

///

<sup>1</sup> Pursuant to Fresno County Superior Court docket records, in exchange for Respondent pleading guilty in this case, the other case (described in paragraph 10 above) was dismissed.

1           1.    Revoking or suspending Pharmacy Technician Registration Number TCH 91611,  
2 issued to Brandon Devlin

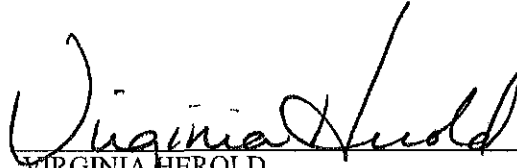
3           2.    Ordering Brandon Devlin to pay the Board of Pharmacy the reasonable costs of the  
4 investigation and enforcement of this case, pursuant to Business and Professions Code section  
5 125.3;

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

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DATED:

7/19/13



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

SA2013111227  
11096427.doc