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7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 4916

11 **LAKE COUNTY TRIBAL HEALTH**
12 **PHARMACY**
13 **925 Bevins Court**
Lakeport, CA 95453

A C C U S A T I O N

14 **Pharmacy Permit No. PHY 51235**

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 March 19, 2013, the Board of Pharmacy issued Pharmacy License
22 Number PHY 51235 to Lake County Tribal Health Consortium, Inc., dba Lake County Tribal
23 Health Pharmacy (Respondent). The Pharmacy License was in full force and effect at all times
24 relevant to the charges brought herein and will expire on March 1, 2017, unless renewed. Ernesto
25 Padilla is and has been the Director for the corporation/licensee since March 19, 2013.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
28 Consumer Affairs, under the authority of the following laws. All section references are to the

1 Business and Professions Code (Code) unless otherwise indicated.

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

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

7 6. Section **4300.1** of the Code provides that the expiration, cancellation, forfeiture, or
8 suspension of a Board-issued license, the placement of a license on a retired status, or the
9 voluntary surrender of a license by a licensee, shall not deprive the Board of jurisdiction to
10 commence or proceed with any investigation of, or action or disciplinary proceeding against, the
11 licensee or to render a decision suspending or revoking the license.

12 **STATUTORY AND REGULATORY PROVISIONS**

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

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

17 ...

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

21 ...

22 (l) The conviction of a crime substantially related to the qualifications, functions, and
23 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
24 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
25 substances or of a violation of the statutes of this state regulating controlled substances or
26 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
27 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
28 The board may inquire into the circumstances surrounding the commission of the crime, in order

1 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
2 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
3 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
4 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
5 of this provision. The board may take action when the time for appeal has elapsed, or the
6 judgment of conviction has been affirmed on appeal or when an order granting probation is made
7 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
8 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
9 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
10 indictment.

11 ...
12 8. Section 4302 of the Code states:

13 The board may deny, suspend, or revoke any license of a corporation where conditions exist
14 in relation to any person holding 10 percent or more of the corporate stock of the corporation, or
15 where conditions exist in relation to any officer or director of the corporation that would
16 constitute grounds for disciplinary action against a licensee.

17 COST RECOVERY

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

22 CAUSE FOR DISCIPLINE

23 (Criminal Conviction)

24 10. Respondent is subject to discipline under Code section 4301, subsections (f) and (l),
25 and Code section 4302 in that Ernesto Padilla, Jr., Respondent's Director, has been convicted of a
26 crime substantially related to the qualifications, functions, and duties of a licensee. The
27 circumstances are as follows:

28 11. On or about May 20, 2016, in San Bernardino Superior Court case number

1 FSB1501629, Ernesto Padilla, Jr. was convicted of having violated California Penal Code section
2 21310 (carrying concealed dirk or dagger), and admitted pursuant to Penal Code section
3 186.22(b)(1)(A) that he committed the offense for the benefit of, at the direction of, or in
4 association with a criminal street gang. The conviction was based on an incident which occurred
5 on or about January 10, 2015 during which Respondent, while dressed in gang regalia, facilitated
6 a gang meeting by directing members to the meeting location. Respondent was found to be
7 armed at that time with a large buck knife, a smaller knife in his pocket and a dagger concealed in
8 his jacket.

9 **PRAYER**

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

- 12 1. Revoking or suspending Pharmacy Permit Number PHY 51235, issued to Respondent
13 Lake County Tribal Health Consortium, Inc., dba Lake County Tribal Health Pharmacy;
14 2. Ordering Respondent to pay the Board of Pharmacy the reasonable costs of the
15 investigation and enforcement of this case, pursuant to Business and Professions Code section
16 125.3; and,
17 3. Taking such other and further action as deemed necessary and proper.

18
19 DATED: 12/16/16



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