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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. 5020

12 **ESTEVEN D. BARR II**
13 **12771 Indian Street #4**
14 **Moreno Valley, CA 92553**

A C C U S A T I O N

15 **Pharmacy Technician Registration**
16 **No. TCH 78583**

Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about October 4, 2007, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 78583 to Esteven D. Barr II (Respondent). The Pharmacy Technician
24 Registration was in full force and effect at all times relevant to the charges brought herein and will
25 expire on March 31, 2015, unless renewed.

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1 **JURISDICTION**

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

5 4. Section 4300(a) of the Code states that “[e]very license issued may be suspended or
6 revoked.”

7 5. Section 4300.1 states:

8 The expiration, cancellation, forfeiture, or suspension of a board-issued
9 license by operation of law or by order or decision of the board or a court of law, the
10 placement of a license on a retired status, or the voluntary surrender of a license by a
11 licensee shall not deprive the board of jurisdiction to commence or proceed with any
12 investigation of, or action or disciplinary proceeding against, the licensee or to render
13 a decision suspending or revoking the license.

14 6. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
15 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
16 disciplinary action during the period within which the license may be renewed, restored, reissued
17 or reinstated.

18 **STATUTORY PROVISIONS**

19 7. Section 482 of the Code states:

20 Each board under the provisions of this code shall develop criteria to
21 evaluate the rehabilitation of a person when:

22

23 (b) Considering suspension or revocation of a license under Section 490.

24 Each board shall take into account all competent evidence of rehabilitation
25 furnished by the applicant or licensee.

26 8. Section 490 of the Code states:

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

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

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

13 (d) The Legislature hereby finds and declares that the application of this
14 section has been made unclear by the holding in *Petropoulos v. Department of Real*
15 *Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a
16 significant number of statutes and regulations in question, resulting in potential harm
17 to the consumers of California from licensees who have been convicted of crimes.
18 Therefore, the Legislature finds and declares that this section establishes an
19 independent basis for a board to impose discipline upon a licensee, and that the
20 amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session
21 do not constitute a change to, but rather are declaratory of, existing law.

22 9. Section 493 of the Code states:

23 Notwithstanding any other provision of law, in a proceeding conducted by
24 a board within the department pursuant to law to deny an application for a license or
25 to suspend or revoke a license or otherwise take disciplinary action against a person
26 who holds a license, upon the ground that the applicant or the licensee has been
27 convicted of a crime substantially related to the qualifications, functions, and duties of
28 the licensee in question, the record of conviction of the crime shall be conclusive
evidence of the fact that the conviction occurred, but only of that fact, and the board
may inquire into the circumstances surrounding the commission of the crime in order
to fix the degree of discipline or to determine if the conviction is substantially related
to the qualifications, functions, and duties of the licensee in question.

19 As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,'
20 and 'registration.'

21 10. Section 4301 of the Code states:

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

26

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

. . . .

1 (l) The conviction of a crime substantially related to the qualifications, functions,
2 and duties of a licensee under this chapter. The record of conviction of a violation of
3 Chapter 13 (commencing with Section 801) of Title 21 of the United States Code
4 regulating controlled substances or of a violation of the statutes of this state regulating
5 controlled substances or dangerous drugs shall be conclusive evidence of
6 unprofessional conduct. In all other cases, the record of conviction shall be conclusive
7 evidence only of the fact that the conviction occurred. The board may inquire into the
8 circumstances surrounding the commission of the crime, in order to fix the degree of
9 discipline or, in the case of a conviction not involving controlled substances or
10 dangerous drugs, to determine if the conviction is of an offense substantially related to
11 the qualifications, functions, and duties of a licensee under this chapter. A plea or
12 verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a
13 conviction within the meaning of this provision. The board may take action when the
14 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal
15 or when an order granting probation is made suspending the imposition of sentence,
16 irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing
17 the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or
18 setting aside the verdict of guilty, or dismissing the accusation, information, or
19 indictment.

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21 11. Section 4022 of the Code states

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

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

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

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

REGULATORY PROVISIONS

12. Title 16, California Code of Regulations, section 1769, states:

. . . .

(b) When considering the suspension or revocation of a facility or a personal
license on the ground that the licensee or the registrant has been convicted of a crime,
the board, in evaluating the rehabilitation of such person and his present eligibility for a
license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

1 (4) Whether the licensee has complied with all terms of parole, probation,
restitution or any other sanctions lawfully imposed against the licensee.

2 (5) Evidence, if any, of rehabilitation submitted by the licensee.

3 13. Title 16, California Code of Regulations, section 1770, states:

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

8 **COST RECOVERY**

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

15 **DRUGS**

16 15. Amphetamine is a Schedule II controlled substance pursuant to Health and Safety
17 Code section 11055, subdivision (d), and a dangerous drug pursuant to Business and Professions
18 Code section 4022.

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(September 24, 2013 Criminal Conviction for DUI and for Being Under the** 21 **Influence of a Controlled Substance on July 29, 2013)**

22 16. Respondent has subjected his license to discipline under sections 490 and 4301,
23 subdivision (l) of the Code, in that he was convicted of a crime that is substantially related to the
24 qualifications, duties and functions of a pharmacy technician. The circumstances are as follows:

25 a. On or about September 24, 2013, in a criminal proceeding entitled *People of the*
26 *State of California v. Esteven Delano Barr, II*, in the Superior Court of California, County of
27 Riverside, case number RIM1313402, Respondent was convicted on his plea of guilty of violating
28 Vehicle Code sections 23152(b) (driving with a blood alcohol concentration of 0.08 percent or

1 more [0.22 percent BAC]), and Health and Safety Code section 11550(a) (under the influence of a
2 controlled substance), misdemeanors. Pursuant to a plea bargain, a count for violating Vehicle
3 Code section 23152(a) (DUI), was dismissed.

4 b. As a result of the conviction, the Court placed Respondent on 3 years summary
5 probation and sentenced him to 90 days in the county jail, with one day credit for time served and
6 the remainder 89 days to be served in the Work Release Program. The Court also ordered that
7 Respondent pay various fines and fees, not drive with any measurable amount of alcohol or drugs
8 in blood or within 6 hours of consuming alcohol or drugs, submit to any blood, breath, or urine
9 test as requested by the arresting officer, not drive unless properly licensed nor without insurance
10 or valid registration, attend and complete a 9-month First Offender DUI Program, submit to tests
11 of blood, saliva, breath, urine, combination and reasonable physical tests requested by probation
12 officer or law enforcement for the detection of alcohol, submit to search and seizure, and enroll in
13 and complete a MADD Victim Impact Panel.

14 c. The circumstances surrounding the conviction are that on July 9, 2013, at
15 approximately 5:00 a.m., Riverside County Sheriff's Deputies were dispatched to a call of a
16 suspicious vehicle call at Indian Street in Moreno Valley, California. When Deputies arrived, they
17 observed a male sitting in the driver's seat of the vehicle with the engine turned on, the vehicle in
18 drive, and the brake depressed. The male driver (Respondent) was asleep and did not initially
19 wake up to Deputies' knocking on the driver's side window. The vehicle was stopped in the
20 middle of the street at approximately a 45 degree angle to the direction of traffic. When
21 Respondent woke up, he took the foot off the brake and the vehicle rolled forward and grazed the
22 driver's side rear light of another vehicle, cracking it and shattering the front driver's side window.
23 Respondent told the Deputies that he drank three 40oz bottles of 211 brand malt liquor earlier
24 that morning. Deputies could smell a strong odor of alcohol emitting from Respondent's breath
25 and observed that his eyes were bloodshot and watery. When Respondent exited the vehicle, he
26 staggered while he walked and swayed while he stood. The Deputies had Respondent perform a
27 series of field sobriety tests, which he failed. Respondent provided a breath sample at 6:18 a.m.,
28 which registered a blood alcohol concentration of 0.20 percent. Respondent was arrested and

1 transported to the Moreno Valley Station where a forensic nurse performed a blood draw at 7:05
2 a.m. The blood analysis revealed that Respondent's blood alcohol concentration was 0.22 percent,
3 and tested positive for methamphetamine (84 ng/ml) and other amphetamines (5ng/ml).

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Unprofessional Conduct - Use of Alcohol and/or Drugs to an Extent or Manner Dangerous**
6 **or Injurious to Self or Others)**

7 17. Respondent is subject to disciplinary action under section 4301(h) of the Code in that
8 he used alcohol and/or drugs or controlled substances to an extent or in a manner dangerous or
9 injurious to himself or others, as is more fully detailed at paragraph 15, above, which is
10 incorporated here by reference.

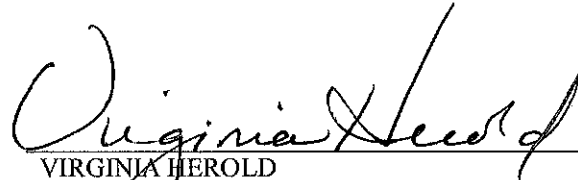
11 **PRAYER**

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

- 14 1. Revoking or suspending Pharmacy Technician Registration Number TCH 78583,
15 issued to Esteven D. Barr II;
- 16 2. Ordering Esteven D. Barr II to pay the Board of Pharmacy the reasonable costs of the
17 investigation and enforcement of this case, pursuant to Business and Professions Code section
18 125.3;
- 19 3. Taking such other and further action as deemed necessary and proper.

20
21
22 DATED: _____

5/8/14



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

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