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

11
12 In the Matter of the Accusation Against:

Case No. 5053

13 **JORGE ANTONIO ARIZMENDI**
PENALOZA
14 **P.O. Box 1295**
Riverside, CA 92502

A C C U S A T I O N

15 **Pharmacy Technician Registration No. TCH**
16 **117176**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

- 21 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
22 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 23 2. On or about January 5, 2012, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 117176 to Jorge Antonio Arizmendi Penaloza (Respondent). The
25 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges
26 brought herein and will expire on September 30, 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 unless otherwise indicated.

5 4. Section 4300 of the Code states:

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

7 ...

8 5. Section 4300.1 of the Code states:

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

13 **STATUTORY PROVISIONS**

14 6. Section 477 of the Code states:

15 As used in this division:

16 (a) 'Board' includes 'bureau,' 'commission,' 'committee,' 'department,'
17 'division,' 'examining committee,' 'program,' and 'agency.'

18 (b) 'License' includes certificate, registration or other means to engage in
19 a business or profession regulated by this code.

20 7. Section 482 of the Code states:

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

23 (a) Considering the denial of a license by the board under Section 480; or

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

25 8. Section 490 of the Code provides, in pertinent part, that a board may suspend or
26 revoke a license on the ground that the licensee has been convicted of a crime substantially
27 related to the qualifications, functions, or duties of the business or profession for which the
28 license was issued.

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9. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of 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.

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

10. Section 4301 of the Code states:

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

...

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

REGULATORY PROVISIONS

11. California Code of Regulations, title 16, section 1769, states:

.....

1 (b) When considering the suspension or revocation of a facility or a personal
2 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:

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

4 (2) Total criminal record.

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

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

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

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

11 For the purpose of denial, suspension, or revocation of a personal or
12 facility license pursuant to Division 1.5 (commencing with Section 475) of the
13 Business and Professions Code, a crime or act shall be considered substantially
14 related to the 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.

15 **COST RECOVERY**

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

22 **FIRST CAUSE FOR DISCIPLINE**

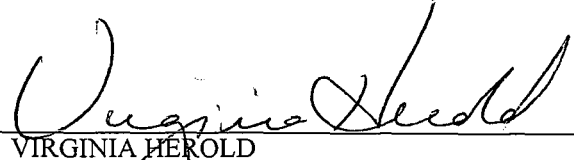
23 **(July 18, 2014 Conviction for Concealing
24 and Aiding a Principal in a Felony)**

25 14. Respondent's Pharmacy Technician Registration is subject to discipline under Code
26 sections 490 and 4301 subdivisions (l) in that he was convicted of a crime that is substantially
27 related to the qualifications, duties, and functions of a Pharmacy Technician. The circumstances
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3. Taking such other and further action as deemed necessary and proper.

DATED: 11/15/14



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

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