

1 KAMALA D. HARRIS
Attorney General of California
2 JANICE K. LACHMAN
Acting Senior Assistant Attorney General
3 JAMES M. LEDAKIS
Supervising Deputy Attorney General
4 State Bar No. 132645
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2105
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 5215

13 **MYRON LAWRENCE WYNN**
455 E Street #5
Chula Vista, CA 91910

A C C U S A T I O N

14 **Pharmacy Technician Registration No. TCH 109115**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

21 2. On June 1, 2011, the Board of Pharmacy issued Pharmacy Technician
22 Registration Number TCH 109115 to Myron Lawrence Wynn (Respondent). The Pharmacy
23 Technician Registration was in full force and effect at all times relevant to the charges brought
24 herein and will expire on November 30, 2014, unless 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 (Code) unless otherwise indicated.

1 the rehabilitation of a person when considering the denial of a license under
2 subdivision (a) of Section 482.

3 (c) A board may deny a license regulated by this code on the ground
4 that the applicant knowingly made a false statement of fact required to be
5 revealed in the application for the license.

6 8. Section 482 of the Code states:

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

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

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

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

13 9. Section 490 of the Code provides, in pertinent part, that a board may suspend or
14 revoke a license on the ground that the licensee has been convicted of a crime substantially
15 related to the qualifications, functions, or duties of the business or profession for which the
16 license was issued.

17 10. Section 492 of the Code states:

18 Notwithstanding any other provision of law, successful completion of any
19 diversion program under the Penal Code, or successful completion of an alcohol
20 and drug problem assessment program under Article 5 (commencing with Section
21 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit
22 any agency established under Division 2 (commencing with Section 500) of this
23 code, or any initiative act referred to in that division, from taking disciplinary
24 action against a licensee or from denying a license for professional misconduct,
25 notwithstanding that evidence of that misconduct may be recorded in a record
26 pertaining to an arrest. This section shall not be construed to apply to any drug
27 diversion program operated by any agency established under Division 2
28 (commencing with Section 500) of this code, or any initiative act referred to in
that division.

11. 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

1 the crime in order to fix the degree of discipline or to determine if the conviction
2 is substantially related to the qualifications, functions, and duties of the licensee in
3 question.

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

6 12. Section 4022 of the Code states

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

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

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

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

17 13. Section 4060 of the Code states

18 No person shall possess any controlled substance, except that furnished to
19 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
20 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
21 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
22 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant
23 pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a
24 pharmacist pursuant to either Section 4052.1 or 4052.2. This section shall not
25 apply to the possession of any controlled substance by a manufacturer,
26 wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist,
27 veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or
28 physician assistant, when in stock in containers correctly labeled with the name
and address of the supplier or producer.

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

14. 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:

.....

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

2

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

23

24 (o) Violating or attempting to violate, directly or indirectly, or assisting in
25 or abetting the violation of or conspiring to violate any provision or term of this
26 chapter or of the applicable federal and state laws and regulations governing
27 pharmacy, including regulations established by the board or by any other state or
28 federal regulatory agency.

(p) Actions or conduct that would have warranted denial of a license.

. . . .

15. Health & Safety Code (HSC) section 11350 states:

22 a) Except as otherwise provided in this division, every person who
23 possesses (1) any controlled substance specified in subdivision (b) or (c), or
24 paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14),
25 (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or
26 (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any
27 controlled substance classified in Schedule III, IV, or V which is a narcotic drug,
28 unless upon the written prescription of a physician, dentist, podiatrist, or
veterinarian licensed to practice in this state, shall be punished by imprisonment
pursuant to subdivision (h) of Section 1170 of the Penal Code.

. . . .

1 **REGULATORY PROVISIONS**

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

3

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

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

9 (2) Total criminal record.

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

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

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

15 17. California Code of Regulations, title 16, section 1770, states:

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

23 **COST RECOVERY**

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

DRUG AT ISSUE

19 19. Cocaine is a Schedule II controlled substance as designated by Health and Safety
20 Code section 11055(b)(6), and is a dangerous drug pursuant to Business & Professions Code
21 section 4022.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(March 21, 2014 Conviction for Assault with a Firearm on January 1, 2013)**

3 20. Respondent subjected his license to discipline under sections 490 and 4301,
4 subdivision (l) of the Code in that Respondent was convicted of a crime that is substantially
5 related to the qualifications, functions, and duties of a licensed pharmacy technician. The
6 circumstances are as follows:

7 a. On March 21, 2014, in a criminal proceeding entitled *The People of the*
8 *State of California vs. Myron Lawrence Wynn*, in San Diego County Superior Court, Central
9 Division, Case Number CD246983, Respondent was convicted on a jury verdict of violating two
10 counts of Penal Code (PC) section 245, subdivision (a)(2), assault with a firearm; Health and
11 Safety Code (HSC) sections 11370.1, subdivision (a), possession of a controlled substance while
12 possessing a loaded firearm, and 11350, subdivision (a), possession of cocaine; and PC sections
13 30605, subdivision (a), possession of an assault weapon and 25400, subdivision (a)(1), carrying a
14 concealed firearm in a vehicle, felonies. The jury found true the allegations that during each of
15 the commission of the two crimes of assault with a firearm, Respondent personally used a
16 firearm, a sentencing enhancement under PC section 1192.7, subdivision (c)(8). The jury also
17 found true the allegation that in the commission of the crime of carrying a concealed firearm in a
18 vehicle, Respondent had reasonable cause to believe that the firearm was stolen. A felony charge
19 for violation of PC section 211, robbery, was dismissed, and the allegation that in the
20 commission of the crime of robbery Respondent personally used a handgun, a sentencing
21 enhancement under PC section 12022.5, subdivision (a), was stricken, pursuant to a plea bargain.

22 b. As a result of the conviction, on June 19, 2014, Respondent was denied
23 probation and sentenced to be committed to the California Department of Corrections and
24 Rehabilitation for a total term of four years, with credit for 100 days served and 100 days for
25 good behavior. Respondent was ordered to pay assessments, fees, and restitution.

26 c. The facts that led to the conviction are that on January 1, 2013,
27 Respondent and a friend made derogatory comments to a female who was with her boyfriend and
28 another male in the area of Cedar Street and 6th Avenue in San Diego, California. The girlfriend

1 and the other male ignored the comments but the boyfriend confronted Respondent. Respondent
2 and his friend apologized, and all the males shook hands before parting. Respondent then went to
3 his friend's car, pulled a gun out, and pointed it at the boyfriend. The boyfriend raised his hands
4 up and Respondent pointed the gun at the other male, who went down on his knees and raised his
5 hands up. Respondent and his friend then fled in a car. The San Diego Police Department
6 (SDPD) received a tip that Respondent was telling people that he had the credentials belonging
7 to the boyfriend. On March 19, 2013, SDPD agents searched Respondent's house and recovered
8 the boyfriend's credentials. The SDPD agents also found a stolen handgun and cocaine in
9 Respondent's car.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Unprofessional Conduct – Commission of Acts Involving Moral Turpitude)**

12 21. Respondent is subject to disciplinary action under Code section 4301, subdivision
13 (f), in that on January 1, 2013, Respondent knowingly and voluntarily participated in the
14 commission of an assault with a firearm. Respondent also possessed a stolen firearm that he used
15 in the assault. Respondent acts involved moral turpitude, as detailed in paragraph 20, above.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Unprofessional Conduct – Violation of Drug Laws)**

18 22. Respondent is subject to disciplinary action under Code section 4301, subdivision
19 (j) in that he violated HSC sections 11350 subdivision (a), possession of cocaine, and 11370.1,
20 subdivision (a), possession of a controlled substance while possessing a loaded firearm, statutes
21 of the State of California regulating controlled substances, as detailed in paragraph 20, above.

22 **FOURTH CAUSE FOR DISCIPLINE**

23 **(Unprofessional Conduct – Violation of Pharmacy Laws)**

24 23. Respondent is subject to disciplinary action under Code section 4301, subdivision
25 (o), in that Respondent possessed a dangerous drug and controlled substance in violation of Code
26 section 4060, as detailed in paragraph 20, above.

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28 ///

1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Conduct That Would Have Warranted Denial of a License)**

3 24. Respondent is subject to disciplinary action under Code section 4301, subdivision
4 (p), in that Respondent was convicted of six felonies, conduct that would have warranted the
5 denial of a pharmacy technician registration under Code section 480, subdivision (a)(1), as
6 detailed in paragraph 20, above.

7 **PRAYER**

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

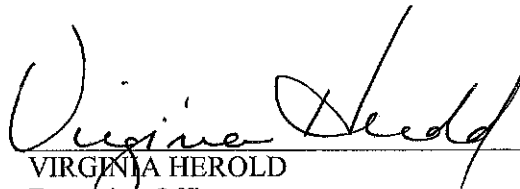
10 1. Revoking or suspending Pharmacy Technician Registration Number TCH
11 109115, issued to Myron Lawrence Wynn;

12 2. Ordering Myron Lawrence Wynn to pay the Board of Pharmacy the reasonable
13 costs of the investigation and enforcement of this case, pursuant to Business and Professions
14 Code section 125.3;

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

16
17
18 DATED: _____

11/4/14



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

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