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BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **GILBERT AGUILAR** 1123 Ahern Drive Bassett, CA 91746 Pharmacy Technician Registration No. TCH 99051 Respondent.	Case No. 5272 **A C C U S A T I O N**

Complainant alleges:

PARTIES

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

2. On or about March 22, 2010, the Board issued Pharmacy Technician Registration No. TCH 99051 to Gilbert Aguilar (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2015, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 492 states:

"Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division."

5. Section 4060 states:

"No person shall possess any controlled substance, except that furnished to a person upon prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 28361.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or 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."

6. Section 4300 provides in pertinent part, that every license issued by the Boards is subject to discipline, including suspension or revocation.

7. Section 4300.1 states:

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

8. Section 4301 states, in pertinent part:

"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:

. . . .

(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.

. . . .

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

REGULATORY PROVISIONS

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

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

COST RECOVERY

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

CONTROLLED SUBSTANCE / DANGEROUS DRUG

11. "Methamphetamine," is a schedule II controlled substance as defined in Health and Safety Code section 11055, subdivision (c)(14), and is categorized a dangerous drug pursuant to section 4022.

FIRST CAUSE FOR DISCIPLINE

(Illegal Possession of a Controlled Substance / Dangerous Drug)

12. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (j), in conjunction with section 4060, on the grounds of unprofessional conduct, in that, Respondent was in possession of methamphetamine, a controlled substance / dangerous drug, as follows:

a. On or about April 3, 2014, a West Covina Police Officer conducted a traffic enforcement stop where Respondent was the passenger in the vehicle. When the officer asked both occupants if there was anything illegal in the vehicle, Respondent appeared to be very nervous and would not make eye contact with the officer. Respondent stated, "I have some dope in my pocket." Respondent removed a black cloth sack from his right cargo short pocket and a clear glass Methamphetamine pipe, wrapped in a napkin, from his waistband. The cloth sack contained three clear plastic baggies. One of the baggies was empty and the other two baggies contained a usable quantity of a white crystalline substance consistent with Methamphetamine. The officer conducted a presumptive test on the substance and it tested positive for Methamphetamine. Respondent was subsequently arrested for violating Health and Safety Code section 11377, subdivision (a) [possession of a controlled substance]. During the booking

procedure, Respondent stated that he purchased the Methamphetamine the previous Sunday for $30.00. He also admitted to having a slight problem with abusing Methamphetamine and that he needed to quit.

b. Subsequently, on or about April 30, 2014, after pleading guilty, the Court placed Respondent on 18 months Deferred Entry of Judgment for violating Health and Safety code section 11377, subdivision (a) [Possession of a controlled substance] in the criminal proceeding entitled *The People of the State of California v. Gilberto Aguilar* (Super. Ct. L.A. County, 2014, No. KA105309).

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct/ Violation of Licensing Chapter)

13. Respondent is subject to disciplinary action under section 4301, subdivision (o), in that Respondent committed acts of unprofessional conduct and/ or violated provisions of the licensing chapter. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 12, as though set forth fully.

PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration No. TCH 99051, issued to Gilbert Aguilar;

2. Ordering Gilbert Aguilar to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and

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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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