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

In the Matter of the Accusation Against: **MIRANDA SUE SCOTT** 1606 Gramercy Avenue # 303 Torrance, CA 90501 Pharmacy Technician Registration No. TCH 41378 Respondent.	Case No. 5311 **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, Department of Consumer Affairs ("Board").

2. On or about February 8, 2002, the Board issued Pharmacy Technician Registration No. TCH 41378 to Miranda Sue Scott ("Respondent"). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on March 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 ("Code") unless otherwise indicated.

4. Section 4011 of the Code provides that "[t]he board shall administer and enforce this chapter [Pharmacy Law, (Business and Profession Code, Sec 4000 et seq.)] and the Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code)."

5. Section 4300, subdivision (a), of the Code states, in pertinent part, that "[e]very license issued may be suspended or revoked."

6. Section 4300.1 of the Code states, in pertinent part:

"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."

STATE AND FEDERAL STATUTORY PROVISIONS

7. Section 490 states, in pertinent part:

"(a) In addition to any other action that a board is permitted to take against 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.

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

"(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken 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 the provisions of Section 1203.4 of the Penal Code. . . ."

8. Section 492 of the Code state, in pertinent part:

"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 (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."

9. Section 4060 of the Code states, in pertinent part:

"No person shall possess any controlled substance, except that furnished to a person upon the 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 2836.1, 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."

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10. Section 4301 of the Code 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.

. . . .

"(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.

. . . .

"(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 [Pharmacy Law] 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."

11. United States Code title 21, section 844 states, in pertinent part:

"(a) Unlawful acts; penalties. It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by this title or title III. . . ."

REGULATORY PROVISION

12. 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

13. Section 125.3 of the Code provides 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 SUBSTANCES

14. Adderall, a trade name for a combination drug containing amphetamine and dextroamphetamine, is a Schedule II controlled substance pursuant to both California and United States law. (See Health & Safety Code § 11055, subdivision (d)(1); 21 U.S.C. §812.) Adderall is also a dangerous drug pursuant to Code section 4022.

15. Marijuana, hashish, and tetrahydrocannabinols (concentrated marijuana), are hallucinogenic Schedule I controlled substances pursuant to both California and United States law. (See Health & Safety Code §11054, subds. (d)(13) and (20); 21 U.S.C. § 812.) Marijuana is also a dangerous drug pursuant to Code section 4022.

FIRST CAUSE FOR DISCIPLINE

(Conviction of a Substantially Related Crime)

16. Respondent is subject to disciplinary action under Code sections 490 and 4301, subdivision (l), in conjunction with California Code of Regulations, title 6, section 1770, on the grounds of unprofessional conduct in that Respondent was convicted of a crime that is substantially related to the qualifications, functions, or duties of a pharmacy technician which to a substantial degree evidences her present or potential unfitness to perform the functions authorized by her registration in a manner consistent with the public health, safety, or welfare, as follows:

a. On or about May 13, 2005, after pleading nolo contendere, Respondent was convicted of one misdemeanor count of violating Vehicle Code section 23222, subdivision (b) [possession of marijuana while driving], in the criminal proceeding entitled *The People of the State of California v. Miranda Sue Scott* (L.A. County Super. Ct., 2005, No. 5SB02164). The Court ordered Respondent to pay fines.

b. The circumstances underlying the conviction are that on or about January 28, 2005, a Torrance Police Department officer stopped Respondent's vehicle for having an expired registration. While speaking with Respondent, the officer noticed a shiny metal smoking pipe lying inside of Respondent's purse on the floorboard of the front passenger side of the vehicle. The officer asked Respondent what was in the purse, and she ultimately admitted to having a marijuana smoking pipe inside the purse. Respondent also admitted that there might be marijuana in the vehicle and that she had previously been arrested for possession of a controlled substance several years earlier. After a further search of the vehicle, the officer found a metal tin that contained several loose pieces of marijuana and two plastic bags containing marijuana in Respondent's purse.

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SECOND CAUSE FOR DISCIPLINE

(Unlawful Possession of Controlled Substances)

17. Respondent is subject to disciplinary action under Code section 4301, subdivision (o), in conjunction with Code section 4060, on the grounds of unprofessional conduct in that on or about January 28, 2005 and August 17, 2013, Respondent unlawfully possessed controlled substances. The facts and circumstances are as follows:

a. On or about August 17, 2013, a Torrance Police Department officer observed Respondent smoking by the side of a grocery store. When the officer drove past Respondent's location, he smelled the odor of burnt marijuana and observed Respondent making quick movements as if she was discarding or concealing an item. Upon making contact with Respondent, the officer again smelled a strong odor of burnt marijuana and Respondent admitted to smoking marijuana. With Respondent's consent, the officer searched Respondent's purse and found an unmarked pill bottle containing five pink pills, which he confirmed were Adderall 30 mg. Respondent admitted to possessing the Adderall without a valid prescription. On or about June 2, 2014, Respondent plead guilty to one misdemeanor count of violating Health & Safety Code section 11377, subdivision (a) [possession of a controlled substance] in the criminal proceeding entitled *The People of the State of California v. Miranda Sue Scott* (L.A. County Super. Ct., 2014, No. 3SY07039) and was placed in a Deferred Entry of Judgment program.

b. On or about January 28, 2005, a Torrance Police Department officer discovered marijuana and a marijuana smoking pipe in Respondent's vehicle. Complainant incorporates by reference the allegations in paragraph 16, including all subparagraphs, as though fully set forth herein.

THIRD CAUSE FOR DISCIPLINE

(Violating Federal Drug Laws)

18. Respondent is subject to disciplinary action under Code sections 4301, subdivision (j), in conjunction with United States Code, title 21, section 844, on the grounds of unprofessional conduct in that Respondent violated federal laws governing the possession of controlled substances. Respondent unlawfully possessed marijuana and amphetamine without a valid

prescription. Complainant incorporates by reference the allegations in paragraphs 16 and 17, including all subparagraphs, 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 Number TCH 41378, issued to Miranda Sue Scott;

2. Ordering Miranda Sue Scott to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3 of the Code; and

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

DATED: 3/31/15

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

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