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

12 In the Matter of the Accusation Against:

Case No. 5353

13 **ERIC MATTHEW BIGGS**
4206 12th Street
14 **Riverside, CA 92501**

A C C U S A T I O N

15 **Pharmacy Technician Registration**
16 **No. TCH 108899**

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 December 9, 2010, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 108899 to Eric Matthew Biggs (Respondent). The Pharmacy
25 Technician Registration was in full force and effect at all times relevant to the charges brought
26 herein. The Pharmacy Technician Registration expired on November 30, 2014, and has not been
27 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: "Every license issued may be suspended or
6 revoked."

7 5. Section 4300.1 of the Code states:

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

12 **STATUTORY PROVISIONS**

13 6. Section 492 of the Code states:

14 Notwithstanding any other provision of law, successful completion of any
15 diversion program under the Penal Code, or successful completion of an alcohol and
16 drug problem assessment program under Article 5 (commencing with section
17 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any
18 agency established under Division 2 ([Healing Arts] commencing with Section 500)
19 of this code, or any initiative act referred to in that division, from taking disciplinary
20 action against a licensee or from denying a license for professional misconduct,
21 notwithstanding that evidence of that misconduct may be recorded in a record
22 pertaining to an arrest.

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

26 7. Section 4301 of the Code states:

27 The board shall take action against any holder of a license who is guilty of
28 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:

.....

(h) The administering to oneself, of any controlled substance, or the use of any
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.

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(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.

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REGULATORY PROVISIONS

8. 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.

9. California Code of Regulations, title 16, section 1775.1(d) states:

Failure of a person or entity cited to pay a fine within 30 days of the date of assessment, unless the citation is being appealed, may result in disciplinary action by the board. When a citation is not contested and a fine is not paid, the full amount of the fine shall be added to the fee for renewal of the license and the license shall not be renewed without payment of the renewal fee and fine.

COSTS

10. Section 125.3 of the Code 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.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Dangerous Use of a Controlled Substance on January 26, 2012)**

3 11. Respondent's registration is subject to disciplinary action under section 4301(h) of
4 the Code in that he used an illegal controlled substance to the extent or in a manner as to be
5 dangerous or injurious to himself. The circumstances are as follows:

6 12. On or about the morning of January 26, 2012, a patrol officer with the Corona Police
7 Department was investigating a report of a commercial alarm. Outside of the business,
8 Respondent was sitting in the driver's seat of a parked vehicle with the seat fully reclined as if
9 trying to hide. The officer made contact with Respondent to determine why Respondent was
10 parked in the lot of a closed business with an activated alarm. Respondent had symptoms
11 consistent with the use of a stimulant: visibly dry mouth, eyelid flutter, muscle rigidity, a white
12 film on the tongue, and slightly constricted pupils with hippus present. During field evaluation
13 tests, Respondent exhibited a rapid pulse. Respondent was arrested for being under the influence
14 of a controlled substance. During booking, Respondent provided a blood sample that tested
15 positive for opiates.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Dangerous Use of a Controlled Substance on April 14, 2014)**

18 13. Respondent's registration is subject to disciplinary action under section 4301(h) of
19 the Code in that he used an illegal controlled substance to the extent or in a manner as to be
20 dangerous or injurious to himself. The circumstances are as follows:

21 14. On or about the evening of April 14, 2014, the Corona Police Department was
22 dispatched to a report that two males had purchased hypodermic needles at a pharmacy and were
23 suspected of using the pharmacy's restroom to inject illegal narcotics. Upon arrival, patrol
24 officers intercepted a vehicle leaving the pharmacy's parking lot. An officer made contact with
25 Respondent, who was the driver. The officer observed that Respondent had several open sores on
26 his face and was trembling uncontrollably, symptoms consistent with an addiction to heroin.
27 Respondent denied using heroin in the pharmacy restroom; he last used heroin that morning.
28 Respondent also admitted that he used methamphetamine. After having Respondent exit the

1 vehicle, the officer observed signs and symptoms associated with narcotic use: eyelid flutter,
2 white coating on the inside of his mouth, and there were several visible track marks on his arms.
3 Respondent was arrested for being under the influence of a controlled substance. Prior to
4 transporting, Respondent alerted officers to a syringe he had hidden in his underwear. The needle
5 contained a small amount of brown residue and it appeared to have been used. Respondent's
6 companion was arrested for possession of heroin.

7 15. As a result of the arrest, on September 19, 2014, in a criminal proceeding entitled
8 *People of the State of California v. Eric Matthew Biggs*, in Riverside County Superior Court, case
9 number RIM1412364, Respondent pled guilty to a violation of Health and Safety Code section
10 11550(a), under the influence of a controlled substance, a misdemeanor. The court deferred entry
11 of judgment for 18 months, and Respondent agreed to complete a drug diversion program.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Violation of Statutes Involving Controlled Substances)**

14 16. Respondent's registration is subject to disciplinary action under section 4301(j) of the
15 Code in that on April 14, 2014, Respondent pled guilty to violating Health and Safety Code
16 section 11550(a), a misdemeanor statute, for willfully and unlawfully being under the influence
17 of a controlled substance not having been administered by and under the direction of a person
18 licensed by the State of California to prescribe and administer controlled substances.

19 **FOURTH CAUSE FOR DISCIPLINE**

20 **(Violation of Provisions or Regulations Governing Pharmacy)**

21 17. Respondent's registration is subject to disciplinary action under section 4301(o) of
22 the Code in that he failed to pay a fine associated with a Citation within 30 days of the date of
23 assessment, as required by California Code of Regulations, title 16, section 1775.1(d).

24 18. As a result of Respondent's January 26, 2012 arrest for being under the influence of a
25 controlled substance, as described in paragraph 12, above, he was issued Citation No. CI 2011
26 51206 on June 21, 2013. The Citation assessed an administrative fine in the amount of \$4,000.
27 Respondent failed to appeal the Citation, or pay the fine by the July 21, 2013 deadline.

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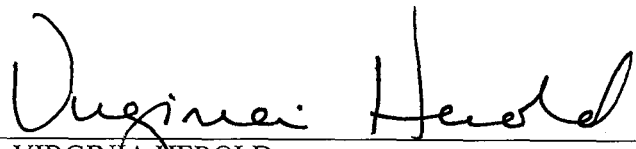
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PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 108899, issued to Eric Matthew Biggs;
2. Ordering Eric Matthew Biggs to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: 3/24/15



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

SD2014708378