

1 KAMALA D. HARRIS  
Attorney General of California  
2 MARC D. GREENBAUM  
Supervising Deputy Attorney General  
3 LESLIE A. WALDEN  
Deputy Attorney General  
4 State Bar No. 196882  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-3465  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*

7  
8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 5392

11 **MARC F. VARGAS**  
12 **140 E. Spring St., #1**  
13 **Long Beach, CA 90806**

**A C C U S A T I O N**

14 **Pharmacy Technician Registration No. TCH**  
15 **96273**

Respondent.

16  
17  
18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.  
22 2. On or about December 10, 2009, the Board of Pharmacy issued Pharmacy Technician  
23 Registration Number TCH 96273 to Marc F. Vargas (Respondent). The Pharmacy Technician  
24 Registration was in full force and effect at all times relevant to the charges brought herein and  
25 will expire on September 30, 2015, unless renewed.

26 ///

27 ///

28

**JURISDICTION**

1  
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.     California Code of Regulations, title 16, section 1770, states:

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

12       5.     Section 4300 of the Code states:

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

14       "(b) The board shall discipline the holder of any license issued by the board, whose default  
15 has been entered or whose case has been heard by the board and found guilty, by any of the  
16 following methods:

17       "(1) Suspending judgment.

18       "(2) Placing him or her upon probation.

19       "(3) Suspending his or her right to practice for a period not exceeding one year.

20       "(4) Revoking his or her license.

21       "(5) Taking any other action in relation to disciplining him or her as the board in its  
22 discretion may deem proper.

23       "(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The  
24 board may, in its sole discretion, issue a probationary license to any applicant for a license who is  
25 guilty of unprofessional conduct and who has met all other requirements for licensure. The board  
26 may issue the license subject to any terms or conditions not contrary to public policy, including,  
27 but not limited to, the following:

28       "(1) Medical or psychiatric evaluation.

- 1       "(2) Continuing medical or psychiatric treatment.
- 2       "(3) Restriction of type or circumstances of practice.
- 3       "(4) Continuing participation in a board-approved rehabilitation program.
- 4       "(5) Abstention from the use of alcohol or drugs.
- 5       "(6) Random fluid testing for alcohol or drugs.
- 6       "(7) Compliance with laws and regulations governing the practice of pharmacy.
- 7       "(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary

8 certificate of licensure for any violation of the terms and conditions of probation. Upon  
9 satisfactory completion of probation, the board shall convert the probationary certificate to a  
10 regular certificate, free of conditions.

11       "(e) The proceedings under this article shall be conducted in accordance with Chapter 5  
12 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board  
13 shall have all the powers granted therein. The action shall be final, except that the propriety of the  
14 action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil  
15 Procedure."

16       6.       Section 4300.1 of the Code states:

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

22       7.       Section 4301 of the Code states:

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

26       "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or  
27 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and  
28 whether the act is a felony or misdemeanor or not.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

...

"(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.

...

"(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.

"...."

8. Section 4060 of the Code states:

"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."

9. Section 4327 of the Code states:

"Any person who, while on duty, sells, dispenses or compounds any drug while under the influence of any dangerous drug or alcoholic beverages shall be guilty of a misdemeanor."

1 10. Section 11170 of the California Health & Safety Code states:

2 “No person shall prescribe, administer, or furnish a controlled substance for himself.”

3 **COST RECOVERY**

4 11. Section 125.3 of the Code states, in pertinent part, that the Board may request the  
5 administrative law judge to direct a licentiate found to have committed a violation or violations of  
6 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
7 enforcement of the case.

8 **DRUG CLASSIFICATION**

9 12. Marijuana is a Schedule I controlled substance as defined by Health and Safety Code  
10 section 11054 subdivision (b)(48)(d)(13).

11 **FIRST CAUSE FOR DISCIPLINE**

12 (Unlawful Possession of a Controlled Substance)

13 13. Respondent is subject to disciplinary action under section 4060 in conjunction with  
14 section 4301 subdivision (j), and Health and Safety code section 11170 in that Respondent was in  
15 possession of a controlled substance and/or administered or furnished a controlled substance for  
16 his own use without a prescription. The circumstances are as follows:

17 14. On or about July 21, 2014, Respondent, while working at McGruff Compounding  
18 Pharmacy located at 2921 W. Macarther Boulevard, suite 142, Santa Ana, California, was asked  
19 to submit to a random urine drug test after his work-shift began. The result of this test showed  
20 that Respondent’s urine tested positive for marijuana.

21 **SECOND CAUSE FOR DISCIPLINE**

22 (Unprofessional Conduct - Functioning Under the Influence of a Controlled Substance)

23 15. Respondent is subject to disciplinary action under section 4301, subdivision (h) in  
24 that the Board may take action against any licensee who is guilty of administering to himself any  
25 controlled substance to the extent that the use impairs that person to conduct himself with safety  
26 to the public in the practice authorized by his license. Respondent is further subject to disciplinary  
27 action under section 4327, in that any person who sells dispenses or compounds any drug while  
28

1 under the influence of any dangerous drug shall be guilty of a misdemeanor. The circumstances  
2 are as follows:

3 16. On or about July 21, 2014, Respondent, while working at McGruff Compounding  
4 Pharmacy located at 2921 W. Macarther Boulevard, suite 142, Santa Ana, California, was asked  
5 to submit to a random urine drug test after his work-shift began. The result of this test showed  
6 that Respondent's urine tested positive for marijuana, which is a Schedule I controlled substance  
7 as defined by Health and Safety Code section 11054 subdivision (b)(48)(d)(13). After said test,  
8 Respondent failed to return from his lunch break, and later sent an email the same day at 1:22  
9 p.m. tendering his resignation from McGruff Compounding Pharmacy.

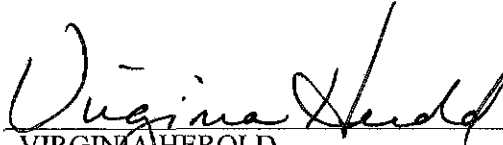
10  
11 **PRAYER**

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

- 14 1. Revoking or suspending Pharmacy Technician Registration Number TCH 96273,  
15 issued to Marc F. Vargas;
- 16 2. Ordering Marc F. Vargas to pay the Board of Pharmacy the reasonable costs of the  
17 investigation and enforcement of this case, pursuant to Business and Professions Code section  
18 125.3; and
- 19 3. Taking such other and further action as deemed necessary and proper.

20  
21 DATED: \_\_\_\_\_

9/4/15



22 VIRGINIA HEROLD  
23 Executive Officer  
24 Board of Pharmacy  
25 Department of Consumer Affairs  
26 State of California  
27 Complainant

28  
LA2015500480  
51788688.doc