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

In the Matter of the Accusation Against: **JULETTA POGOSIAN** **13300 Victory Blvd., 182** **Van Nuys, CA 91401** **Pharmacy Technician Registration No. TCH 87036** Respondent.	Case No. 5581 **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.

2. On October 17, 2008, the Board of Pharmacy (Board) issued Pharmacy Technician Registration Number TCH 87036 to Juletta Pogosian (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2018, 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. Code section 118, subdivision (b), provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued, or reinstated.

5. Code section 4300, subdivision (a), provides that every license issued by the Board may be suspended or revoked.

6. Code 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.

STATUTORY PROVISIONS

7. Code section 482 states:

> Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:
>
> (a) Considering the denial of a license by the board under Section 480; or
>
> (b) Considering suspension or revocation of a license under Section 490.
>
> Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

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

9. Code section 493 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 (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.

10. Code section 4022 states

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

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

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

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

11. Code section 4060 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.

12. Code 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:

. . .

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

. . .

(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 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.

. . . .

13. Health & Safety Code section 11055 states, in pertinent part:

(a) The controlled substances listed in this section are included in Schedule II.

(b) Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(1) Opium, opiate, and any salt, compound, derivative, or preparation of opium or opiate, with the exception of naloxone hydrochloride (N-allyl-14-hydroxy-nordihydromorphinone hydrochloride), but including the following:

. . .

(I) Hydrocodone.

. . .

(d) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

. . .

(2) Methamphetamine, its salts, isomers, and salts of its isomers.

. . . .

14. Health & Safety Code section 11057 states, in pertinent part:

(a) The controlled substances listed in this section are included in Schedule IV.

(b) Schedule IV shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(c) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

. . .

(d) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Alprazolam.

. . . .

15. Health & Safety Code section 11375 states, in pertinent part:

. . .

(b) (2) Every person who possesses any controlled substance specified in subdivision (c), unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be guilty of an infraction or a misdemeanor.

(c) This section shall apply to any material, compound, mixture, or preparation containing any of the following substances:

. . .

(12) Alprazolam.

. . . .

16. Health and Safety Code section 11377, subdivision (a) states:

Except as authorized by law and as otherwise provided in subdivision (b) or Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses any controlled substance which is (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in a county jail for a period of not more than one year or pursuant to subdivision (h) of Section 1170 of the Penal Code.

REGULATORY PROVISIONS

17. California Code of Regulations, title 16, section 1769 states, in pertinent part:

. . .

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

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

(2) Total criminal record.

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

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

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

18. 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.

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COST RECOVERY

19. 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.

DRUGS

20. Alprazolam is a Schedule IV controlled substance as designated by Health and Safety Code section 11057, subdivision (d)(1), and is categorized as a dangerous drug under Code section 4022.

21. Hydrocodone is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (b)(1)(I), and is categorized as a dangerous drug under Code section 4022.

22. Methamphetamine is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (d)(2), and is categorized as a dangerous drug under Code section 4022.

FIRST CAUSE FOR DISCIPLINE

(September 30, 2014 Criminal Conviction for Theft on June 18, 2014)

23. Respondent has subjected her Pharmacy Technician Registration to discipline under Code sections 490 and 4301, subdivision (l), in that she was convicted of a crime that is substantially related to the qualifications, functions, and duties of a registered pharmacy technician. The circumstances are as follows:

a. On September 30, 2014, in a criminal proceeding entitled *The People of the State of California vs. Juletta Pogosian,* in Los Angeles County Superior Court, Van Nuys Courthouse West, Case Number 4PY03014, Respondent was convicted on her plea of nolo contendere to violation of Penal Code (PC) section 484, subdivision (a), theft, a misdemeanor. Respondent pled guilty of violating Health and Safety Code section 11377, subdivision (a),

possession of methamphetamine, a misdemeanor. Misdemeanor charges for violation of Health and Safety Code section 11375, subdivision (b)(2), possession of alprazolam, and Code section 4060, possession of a controlled substance without a prescription, were dismissed under a plea bargain.

b. As a result of the conviction for violating PC section 484, subdivision (a), on September 30, 2014, Respondent was sentenced to ten days in the Los Angeles County Jail (LACJ), with credit for one day actually served, and granted summary probation for 24 months under certain terms and conditions. Respondent was ordered to pay fines, assessments, and surcharges, or serve seven days in the LACJ. Respondent was also ordered to pay court costs and restitution, and stay away from the location of the theft.

c. As a result of Respondent's guilty plea of violating Health and Safety Code section 11377, subdivision (a), on September 30, 2014, she was placed on deferred entry of judgment for a period of 18 months under PC section 1000. Respondent was ordered to pay a diversion restitution fee, enroll in a drug education program by November 12, 2014, and provide proof of completion on March 30, 2016.

d. The facts that led to the conviction are that on June 18, 2014, Respondent, entered a Macy's store in Sherman Oaks, California, selected over 20 pairs of branded underwear, and proceeded to a fitting room. Respondent then concealed 18 of the 20 underwear, selected a shirt, and paid for the shirt at a register. Respondent headed toward the exit without paying for the concealed merchandize in her possession as she passed several open and manned registers. A loss prevention officer contacted Respondent outside the store, took her into custody, and reported the incident to the Los Angeles Police Department (LAPD). A responding officer from the LAPD arrested Respondent for shoplifting Macy's merchandize worth $213.00.

e. While processed for booking at the Van Nuys Area Jail, Respondent was found in possession of acetaminophen and hydrocodone bitartrate pills, methamphetamine, and alprazolam pills.

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SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Commission of An Act Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)

24. Respondent has subjected her Pharmacy Technician Registration to discipline under Code section 4301, subdivision (f), in that on June 18, 2014, she committed acts involving moral turpitude, dishonesty, fraud, deceit, and corruption. The circumstances are as follows:

a. Respondent committed theft, as detailed in paragraph 23 (d), above, and incorporated here by reference.

b. Respondent unlawfully possessed controlled substances, as detailed in paragraph 23 (e), above, and incorporated here by reference.

THIRD CAUSE FOR DISCIPLINE

(Violation of Drug Laws)

25. Respondent has subjected her Pharmacy Technician Registration to discipline under Code section 4301, subdivision (j) in that Respondent violated Code section 4060 and Health and Safety Code sections 11375, subdivision (b)(2), and 11377, subdivision (a), statutes of the State of California regulating controlled substances and dangerous drugs, by unlawfully possessing alprazolam, hydrocodone, and methamphetamine, as detailed in paragraph 23, above, and incorporated herein by this reference.

FOURTH CAUSE FOR DISCIPLINE

(Violation of Pharmacy Laws)

26. Respondent has subjected her Pharmacy Technician Registration to discipline under Code section 4301, subdivision (o), in that Respondent possessed controlled substances in violation of Code section 4060, and Health and Safety Code sections 11375, subdivision (b)(2), and 11377, subdivision (a), as detailed in paragraph 23, above, and incorporated herein by this reference, in violation of pharmacy laws.

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 87036, issued to Juletta Pogosian;

2. Ordering Juletta Pogosian 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; and

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

DATED: 6/10/16

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

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