

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Senior Assistant Attorney General
3 JAMES M. LEDAKIS
Supervising Deputy Attorney General
4 State Bar No. 132645
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2105
7 Facsimile: (619) 645-2061
Attorneys for Complainant

8
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. 5616

13 **JULIO CESAR MONTES**
14 **2414 North Tustin #R9**
Santa Ana, CA 92705

A C C U S A T I O N

15 **Pharmacy Technician Registration No. TCH 129392**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Accusation solely in her official
21 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
22 2. On January 7, 2013, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 129392 to Julio Cesar Montes (Respondent). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought
25 herein and will expire on April 30, 2016, unless renewed.

26 ///

27 ///

28 ///

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

7 5. Section 4300.1 of the Code states:

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

12 **STATUTORY PROVISIONS**

13 6. Section 482 of the Code states:

14 Each board under the provisions of this code shall develop criteria to
15 evaluate the rehabilitation of a person when:

- 16 (a) Considering the denial of a license by the board under Section 480; or
17 (b) Considering suspension or revocation of a license under Section 490.

18 Each board shall take into account all competent evidence of rehabilitation
19 furnished by the applicant or licensee.

20 7. Section 492 of the Code states:

21 Notwithstanding any other provision of law, successful completion of any
22 diversion program under the Penal Code, or successful completion of an alcohol
23 and drug problem assessment program under Article 5 (commencing with Section
24 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit
25 any agency established under Division 2 (commencing with Section 500) of this
26 code, or any initiative act referred to in that division, from taking disciplinary
27 action against a licensee or from denying a license for professional misconduct,
28 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.

27 ///

28 ///

1 8. Section 4022 of the Code states

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

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

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

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

12 9. Section 4060 of the Code states:

13 No person shall possess any controlled substance, except that furnished to
14 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
15 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
16 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
17 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant
18 pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a
19 pharmacist pursuant to either Section 4052.1 or 4052.2. This section shall not
20 apply to the possession of any controlled substance by a manufacturer,
21 wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist,
22 veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or
23 physician assistant, when in stock in containers correctly labeled with the name
24 and address of the supplier or producer.

25 Nothing in this section authorizes a certified nurse-midwife, a nurse
26 practitioner, a physician assistant, or a naturopathic doctor, to order his or her own
27 stock of dangerous drugs and devices.

28 10. Section 4301 of the Code states:

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:

.....

(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.

.....

///

1 (j) The violation of any of the statutes of this state, of any other state, or of
2 the United States regulating controlled substances and dangerous drugs.

3

4 (l) The conviction of a crime substantially related to the qualifications,
5 functions, and duties of a licensee under this chapter. The record of conviction of
6 a violation of Chapter 13 (commencing with Section 801) of Title 21 of the
7 United States Code regulating controlled substances or of a violation of the
8 statutes of this state regulating controlled substances or dangerous drugs shall be
9 conclusive evidence of unprofessional conduct. In all other cases, the record of
10 conviction shall be conclusive evidence only of the fact that the conviction
11 occurred. The board may inquire into the circumstances surrounding the
12 commission of the crime, in order to fix the degree of discipline or, in the case of
13 a conviction not involving controlled substances or dangerous drugs, to determine
14 if the conviction is of an offense substantially related to the qualifications,
15 functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
16 a conviction following a plea of nolo contendere is deemed to be a conviction
17 within the meaning of this provision. The board may take action when the time
18 for appeal has elapsed, or the judgment of conviction has been affirmed on appeal
19 or when an order granting probation is made suspending the imposition of
20 sentence, irrespective of a subsequent order under Section 1203.4 of the Penal
21 Code allowing the person to withdraw his or her plea of guilty and to enter a plea
22 of not guilty, or setting aside the verdict of guilty, or dismissing the accusation,
23 information, or indictment.

24 ///

25 (p) Actions or conduct that would have warranted denial of a license.

26

27 REGULATORY PROVISIONS

28 11. California Code of Regulations, title 16, section 1769, states:

. . . .

(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.

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

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

9 **COST RECOVERY**

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

16 **DRUGS AT ISSUE**

17 14. Alprazolam, the generic name for Xanax, is a Schedule IV controlled substance
18 under Health and Safety Code section 11057, subdivision (d)(1), and a dangerous drug pursuant
19 to Business and Professions Code section 4022.

20 15. Benzoylcegonine, is the primary metabolite of cocaine, a Schedule II controlled
21 substance under Health and Safety Code section 11055, subdivision (b)(6), and a dangerous drug
22 pursuant to Business and Professions Code section 4022.

23 16. Tetrahydrocannabinol, the principal psychoactive constituent of cannabis, is a
24 Schedule I controlled substance under Health and Safety Code section 11054, subdivision
25 (d)(20), and a dangerous drug pursuant to Business and Professions Code section 4022.

26 **FIRST CAUSE FOR DISCIPLINE**

27 **(July 24, 2015 Conviction for Driving Under the Influence of Drugs on March 29, 2015)**

28 17. Respondent has subjected his Pharmacy Technician Registration to discipline
under Code sections 490 and 4301, subdivision (I), in that he was convicted of crimes that are

///

1 substantially related to the qualifications, functions, and duties of a registered pharmacy
2 technician. The circumstances are as follows:

3 a. On July 24, 2015, in a criminal proceeding entitled *The People of the State*
4 *of California v. Julio Cesar Montes*, in Orange County Superior Court, Central Justice Center,
5 Criminal Division Case Number 15CM06354, Respondent was convicted on his plea of guilty of
6 violating Vehicle Code (VC) section 23152, subdivision (e), driving under the influence of
7 drugs, and Code section 4060, possession of a controlled substance without prescription of a
8 physician, both misdemeanors. A misdemeanor charge for violation of VC section 23152,
9 subdivision (a), driving while under the influence of alcohol (DUI), and an infraction charge for
10 violation of VC section 21451, subdivision (a), failure to yield at a green light, were dismissed
11 under a plea bargain.

12 b. As a result of the convictions, on July 24, 2015, Respondent was
13 sentenced to three years informal probation under standard alcohol and drugs conditions.
14 Respondent was ordered to pay fines, fees, restitution, and assessments, and attend and
15 satisfactorily complete a three-month first offender alcohol program and a Mothers Against
16 Drunk Driving Victim's Impact Panel session. Respondent was also ordered to complete 20 days
17 of service with the California Department of Transportation.

18 c. The facts that led to the convictions are that on March 29, 2015,
19 Respondent was stopped for a red light at the intersection of Grand Avenue and Fairhaven
20 Avenue in Santa Ana, California. A California Highway Patrol (CHP) officer driving a patrol
21 vehicle on Grand Avenue slowed down for a red light at the intersection of Fairhaven Avenue
22 and noticed that Respondent's vehicle remained stopped after the signal light for westbound
23 vehicles turned green. The officer approached Respondent's vehicle and saw that Respondent
24 was asleep. The officer woke up Respondent and instructed him to exit his vehicle. Another
25 officer drove Respondent's vehicle and parked it at the southeast corner of the intersection.
26 While speaking with Respondent, the officer did not smell alcohol but observed Respondent's
27 extremely slurred and thick speech. Respondent had a difficult time paying attention.
28 Respondent's eyes were red, watery, and droopy. Respondent denied having anything to drink or

1 taking medication but failed to perform the series of field sobriety tests as explained and
2 demonstrated. Respondent was arrested and during a search, a small plastic bag with three Xanax
3 bars was found in Respondent's pocket. Respondent was subsequently transported to the CHP
4 Santa Ana area office where he provided a blood sample, which tested positive for alprazolam,
5 benzoylecgonine, and tetrahydrocannabinol.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Unprofessional Conduct - Dangerous Use of Drugs)**

8 18. Respondent has subjected his Pharmacy Technician Registration to discipline
9 under Code section 4301, subdivision (h) in that on March 29, 2015, he used drugs, as described
10 in paragraph 17, above, which is incorporated by reference, to the extent and in a manner that
11 was dangerous and injurious to himself and to the public.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Unprofessional Conduct – Violation of Drug Laws)**

14 19. Respondent has subjected his Pharmacy Technician Registration to discipline
15 under Code sections 490 and 4301, subdivision (j), in that he violated Code section 4060, a
16 statute of the State of California regulating controlled substances. The circumstances are that on
17 March 29, 2015, Respondent was found in possession of three Xanax bars in Santa Ana,
18 California.

19 **FOURTH CAUSE FOR DISCIPLINE**

20 **(Conduct That Would Have Warranted Denial of a License)**

21 20. Respondent has subjected his Pharmacy Technician Registration to discipline
22 under Code section 4301, subdivision (p), in that Respondent was convicted of two
23 misdemeanors involving the use or possession of drugs, conduct that would have warranted the
24 denial of a pharmacy technician registration under Code section 480, subdivision (a)(1), as
25 detailed in paragraphs 17 to 19, above.

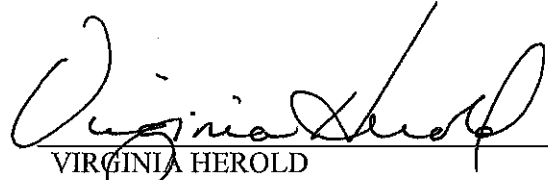
26 **PRAYER**

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

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 129392, issued to Julio Cesar Montes;
2. Ordering Julio Cesar Montes 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: 11/27/15



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

SD2015802356
81184375.doc