

1 XAVIER BECERRA
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 JOSHUA B. EISENBERG
Deputy Attorney General
4 State Bar No. 279323
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 327-1466
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 5894

12 **EMERSON EVERETT WENDEL-HENRY**
13 5297 Edgewood Ln.
Paradise, CA 95969

A C C U S A T I O N

14 **Pharmacy Technician Registration No.**
15 **TCH 133789**

16 Respondent.

17 Virginia Herold ("Complainant") alleges:

18 **PARTIES**

19 1. Complainant brings this Accusation solely in her official capacity as the Executive
20 Officer of the Board of Pharmacy ("Board"), Department of Consumer Affairs.

21 2. On or about October 18, 2013, the Board issued Pharmacy Technician Registration
22 Number TCH 133789 to Emerson Everett Wendel-Henry ("Respondent"). The Pharmacy
23 Technician Registration was in full force and effect at all times relevant to the charges brought
24 herein and will expire on April 30, 2017, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board, Department of Consumer Affairs, under
27 the authority of the following laws. All section references are to the Business and Professions
28 Code ("Code") unless otherwise indicated.

1 4. Code section 4300 states, in pertinent part:

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

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

5 (1) Suspending judgment.

6 (2) Placing him or her upon probation.

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

8 (4) Revoking his or her license.

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

11 5. Code section 4300.1 states:

12 The expiration, cancellation, forfeiture, or suspension of a board-issued license
13 by operation of law or by order or decision of the board or a court of law, the
14 placement of a license on a retired status, or the voluntary surrender of a license by a
15 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.

16 **STATUTORY AND REGULATORY PROVISIONS**

17 6. Code section 4301 states, in pertinent part:

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

21 (h) The administering to oneself, of any controlled substance, or the use of any
22 dangerous drug or of alcoholic beverages to the extent or in a manner as to be
23 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.

24 (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.

25 (l) The conviction of a crime substantially related to the qualifications,
26 functions, and duties of a licensee under this chapter. The record of conviction of a
27 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
28 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

1 inquire into the circumstances surrounding the commission of the crime, in order to
2 fix the degree of discipline or, in the case of a conviction not involving controlled
3 substances or dangerous drugs, to determine if the conviction is of an offense
4 substantially related to the qualifications, functions, and duties of a licensee under this
5 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
6 contendere is deemed to be a conviction within the meaning of this provision. The
7 board may take action when the time for appeal has elapsed, or the judgment of
8 conviction has been affirmed on appeal or when an order granting probation is made
9 suspending the imposition of sentence, irrespective of a subsequent order under
10 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
11 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
12 dismissing the accusation, information, or indictment.

13 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
14 abetting the violation of or conspiring to violate any provision or term of this chapter
15 or of the applicable federal and state laws and regulations governing pharmacy,
16 including regulations established by the board or by any other state or federal
17 regulatory agency.

18 7. Code section 4060 states, in pertinent part:

19 A person shall not possess any controlled substance, except that furnished to a
20 person upon the prescription of a physician, dentist, podiatrist, optometrist,
21 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant
22 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a
23 nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to
24 Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist
25 pursuant to Section 4052.1, 4052.2, or 4052.6. . . .

26 8. Health and Safety Code section 11170 states, "No person shall prescribe, administer,
27 or furnish a controlled substance for himself."

28 COST RECOVERY

9. Code section 125.3 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.

DRUG

10. *Marijuana* is a Schedule I controlled substance pursuant to Health and Safety Code
section 11054(d)(13).

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1 11. *Methamphetamine* is a Schedule II controlled substance as designated by Health and
2 Safety Code section 11055(d)(2).

3 **FIRST CAUSE FOR DISCIPLINE**

4 (Violation of State Laws Regulating Controlled Substances)

5 11. On or about October 19, 2015, an officer with the Paradise Police Department
6 detained Respondent. When the officer asked if he had any weapons on his person, Respondent
7 said he had a pocket knife in his back pocket. The officer conducted a cursory search for weapons
8 and found multiple hypodermic needles in a cellophane bag, a bag of marijuana, two pocket
9 knives, and a concealed knife with a 3.5" fixed blade on Respondent's person. Respondent
10 admitted that he had narcotics on his person and the officer found multiple color coded baggies
11 with a white crystalline substance later identified as methamphetamine. Respondent admitted to
12 the officer that he had used methamphetamine on and off for ten to fifteen years, and had used
13 marijuana since his early teens. Respondent could not provide the officer with a medical
14 marijuana recommendation.

15 12. Respondent is subject to disciplinary action pursuant to Code section 4301(j), on the
16 grounds of unprofessional conduct, in that Respondent violated statutes regulating controlled
17 substances and dangerous drugs, as follows:

18 a. **Health & Safety Code section 11357 and Code section 4060:** On or about
19 October 19, 2015, Respondent possessed the following controlled substances:

- 20 i. Marijuana
21 ii. Methamphetamine

22 b. **Health and Safety Code Section 11550:** At times unknown between approximately
23 2000 and October 19, 2015, Respondent unlawfully self-administered the following controlled
24 substances:

- 25 i. Marijuana
26 ii. Methamphetamine

27 ///

28 ///

1 **SECOND CAUSE FOR DISCIPLINE**

2 (Use of Controlled Substances in a Dangerous or Injurious Manner)

3 13. Respondent is subject to disciplinary action pursuant to Code section 4301(h), in that
4 at times unknown between approximately 2000 and October 19, 2015, Respondent used
5 marijuana and/or methamphetamine in a manner dangerous or injurious to himself and/or others,
6 as set forth in paragraphs 11 and 12, above.

7 **THIRD CAUSE FOR DISCIPLINE**

8 (Violation of the Pharmacy Law)

9 14. Respondent is subject to disciplinary action pursuant to Code section 4301(o), for
10 unprofessional conduct, in that Respondent violated laws governing pharmacy, as set forth in
11 paragraphs 12(a) and 13, above.

12 **FOURTH CAUSE FOR DISCIPLINE**

13 (Criminal Conviction)

14 15. Respondent is subject to disciplinary action pursuant to Code section 4301(l), on the
15 grounds of unprofessional conduct, in that Respondent committed a crime substantially related to
16 the qualifications, functions, and duties of a licensed pharmacy technician. Specifically, on or
17 about October 22, 2015, in a criminal proceeding entitled *People v. Emerson Everett*
18 *Wendelhenry*, Superior Court of California, County of Butte, Case No. SCR104842, Respondent
19 was convicted by the court on his plea of no contest of violating Penal Code section 21310
20 (carrying a concealed dirk or dagger), a misdemeanor. The circumstance of the crime is that on or
21 about October 19, 2015, Respondent was found to have a concealed dirk, or dagger, on his
22 person, as set forth in paragraph 11, above.

23 **MATTERS IN AGGRAVATION**

24 16. To determine the degree of discipline to be assessed against Respondent, if any,
25 Complainant alleges that on or about July 26, 2016, an officer with the Paradise Police
26 Department found that Respondent had a concealed dirk or dagger and a hypodermic needle on
27 his person. On or about August 18, 2016, a complaint was filed in *People v. Emerson Everett*
28 *Wendelhenry*, Superior Court of California, County of Butte, Case No. 16CM03898, alleging that

1 Respondent possessed a dirk or dagger and unlawful possession of drug paraphernalia on or about
2 July 26, 2016. On or about October 7, 2016, the court issued an arrest warrant for Respondent's
3 failure to appear in that case.

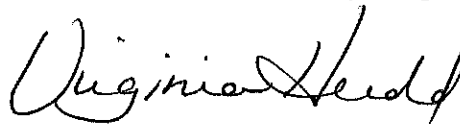
4 **PRAYER**

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

- 7 1. Revoking or suspending Pharmacy Technician Registration Number TCH 133789,
8 issued to Emerson Everett Wendel-Henry
- 9 2. Ordering Emerson Everett Wendel-Henry to pay the Board of Pharmacy the
10 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
11 Professions Code section 125.3; and,
- 12 3. Taking such other and further action as deemed necessary and proper.

13
14 DATED: _____

1/30/17



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

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