

BILL LOCKYER, Attorney General
of the State of California
GLORIA A. BARRIOS, State Bar No. 94811
Deputy Attorney General
California Department of Justice
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2540
Facsimile: (213) 897-2804

Attorneys for Complainant

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

In the Matter of the Accusation Against:

REY GERARDO HERNANDEZ
579 Calle Tulipan
Thousand Oaks, CA 91360

Pharmacy Technician Registration
No. TCH 55294

Respondent.

Case No. 2970

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

Respondent failed to file a Notice of Defense in a timely fashion as required by Government Code section 11520. The Board of Pharmacy has determined that Respondent has waived the right to a hearing to contest the merits of the Accusation in accordance with sections 11506(b) and 11520 of the Government Code.

Accordingly, based on the evidence on file, the aforementioned agency makes the following findings of fact:

FINDINGS OF FACT

1. On April 21, 2006, Complainant Patricia F. Harris, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 2970 against Rey Gerardo Hernandez (Respondent) before the Board of Pharmacy.

///

1 2. On or about August 13, 2004, the Board of Pharmacy issued Pharmacy
2 Technician Registration No. TCH 55294 to Respondent. The Pharmacy Technician Registration
3 was in full force and effect at all times relevant to the charges brought herein and expired on
4 March 31, 2006.

5 3. On or about April 28, 2006, Pamela Van Kesteren, an employee of the
6 Department of Justice, served by Certified and First Class Mail a copy of Accusation No. 2970,
7 Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code
8 sections 11507.5, 11507.6, 11507.7, to Respondent's address of record with the Board, which
9 was and is 579 Calle Tulipan, Thousand Oaks, CA 91360. A copy of the Accusation, the related
10 documents, and Declaration of Service are attached as Exhibit A, and are incorporated herein by
11 reference.

12 4. Service of the Accusation was effective as a matter of law under the
13 provisions of Government Code section 11505, subdivision (c).

14 5. California Government Code section 11520 states, in pertinent part:

15 "(a) If the respondent either fails to file a notice of
16 defense or to appear at the hearing, the agency may take action based upon
17 the respondent's express admissions or upon other evidence and affidavits
18 may be used as evidence without any notice to respondent."

19 6. Pursuant to its authority under Government Code section 11520, the Board
20 finds Respondent is in default. The Board will take action without further hearing and, based on
21 Respondent's express admissions by way of default and the evidence before it, contained in
22 Exhibit A finds that the allegations in Accusation No. 2970 are true.

23 7. The total costs for investigation and enforcement are \$2, 898.00 as of July
24 18, 2006.

25 **DETERMINATION OF ISSUES**

26 1 Based on the foregoing findings of fact, Respondent, Rey Gerardo
27 Hernandez has subjected his Pharmacy Technician Registration No. TCH 55294 to discipline.

28 ///

1 2. A copy of the Accusation, the related documents, Declaration of Service
2 and the exhibit are attached herein

3 3. The agency has jurisdiction to adjudicate this case by default.

4 4. Section 4300 of the Code provides, in pertinent part, that every license
5 issued by the Board is subject to discipline, including suspension or revocation.

6 5. Section 118, subdivision (b) states:

7 "The suspension, expiration, or forfeiture by operation of law of a license issued
8 by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or
9 by order of a court of law, or its surrender without the written consent of the board, shall not,
10 during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board
11 of its authority to institute or continue a disciplinary proceeding against the licensee upon any
12 ground provided by law or to enter an order suspending or revoking the license or otherwise
13 taking disciplinary action against the licensee on any such ground."

14 6. Section 4301 of the Code states:

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

19

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

23

24 "(h) The administering to oneself, of any controlled substance, or the use of any
25 dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or
26 injurious to oneself, to a person holding a license under this chapter, or to any other person or to

27 ///

28 ///

1 the public, or to the extent that the use impairs the ability of the person to conduct with safety to
2 the public the practice authorized by the license.

3

4 "(j) The violation of any of the statutes of this state or of the United States
5 regulating controlled substances and dangerous drugs.

6

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

24

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

26 7. Section 4060 of the Code states:

27 "No person shall possess any controlled substance, except that furnished to a
28 person upon the prescription of a physician, dentist, podiatrist, or veterinarian, or furnished

1 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse
2 practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1. This
3 section shall not apply to the possession of any controlled substance by a manufacturer,
4 wholesaler, pharmacy, physician, podiatrist, dentist, veterinarian, certified nurse-midwife, nurse
5 practitioner, or physician assistant, when in stock in containers correctly labeled with the name
6 and address of the supplier or producer.

7 8. Section 490 of the Code states:

8 "A board may suspend or revoke a license on the ground that the licensee has
9 been convicted of a crime, if the crime is substantially related to the qualifications, functions, or
10 duties of the business or profession for which the license was issued. A conviction within the
11 meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo
12 contendere. Any action which a board is permitted to take following the establishment of a
13 conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has
14 been affirmed on appeal, or when an order granting probation is made suspending the imposition
15 of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the
16 Penal Code."

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

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

24 10. Section 11550 of the Health and Safety Code provides: "no person shall
25 use, or be under the influence of any controlled substance...."

26 11. Section 11170 of the Health and Safety Code provides: "no person shall
27 prescribe, administer, or furnish a controlled substance for himself. . . ."

28 ///

1 12. Section 125.3 of the Code provides, in pertinent part, that the Board may
2 request the administrative law judge to direct a licensee found to have committed a violation or
3 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
4 and enforcement of the case.

5 **CONTROLLED SUBSTANCE**

6 A. "Methamphetamine," is a Schedule II controlled substances as defined in
7 Health and Safety Code section 11055(d)(2) and is categorized as a dangerous drug pursuant to
8 Business and Professions Code section 4022 of the Code.

9 B. "Marijuana," is a Schedule I controlled substance as defined in Health and
10 Safety Code section 11054 (d) (13). There is no legitimate indicated use for this drug.

11 **FIRST CAUSE FOR DISCIPLINE**

12 (Conviction of Substantially Related Crimes)

13 13. Respondent is subject to disciplinary action under section 4300 and 4301,
14 subdivisions (f), (j) and (1) on the grounds of unprofessional conduct in conjunction with section
15 490 of the Code as defined in California Code of Regulations, title 16, section 1770 in that
16 Respondent was convicted of crimes substantially related to the qualifications, functions, or
17 duties of a pharmacy technician. The circumstances are as follows:

18 a. On or about July 21, 2005, Respondent was convicted on a plea of guilty
19 to one count of violating Health and Safety Code section 11550(A), a misdemeanor, (under the
20 influence of a controlled substance), in the Superior Court of the State of California, County of
21 Ventura, Case No. 2005023611 MA entitled *The People of the State of California v. Rey*
22 *Gerardo Hernandez*.

23 b. The circumstances surrounding the conviction are that on or about July 14,
24 2005, Respondent was approached by an officer from the Thousand Oaks Police Department.
25 The officer searched the vehicle in which Respondent was a passenger and revealed
26 approximately .10 gram of crystal methamphetamine. The officer determined that Respondent
27 was under the influence of a controlled substance and was placed under arrest. Respondent

28 ///

1 agreed to give a urine sample for drug testing. The results of the drug screen detected
2 methamphetamine and marijuana.

3 **SECOND CAUSE FOR DISCIPLINE**

4 (Administer, Furnish a Controlled Substance to Oneself)

5 14. Respondent is subject to disciplinary action under sections 4300 and 4301,
6 subdivisions (h), (j) and (p) on the grounds of unprofessional conduct for violating section 4060
7 in conjunction with Health and Safety Code section 11550 in that Respondent administered or
8 furnished controlled substances to himself. The circumstances are as follows:

9 a. Complainant realleges the allegations contained in paragraphs 13. (a) and
10 (b) above and incorporates them by reference.

11 **THIRD CAUSE FOR DISCIPLINE**

12 (Possession of a Controlled Substance)

13 15. Respondent is subject to disciplinary action under section 4300 and 4301,
14 subdivisions (j) and (p) on the grounds of unprofessional conduct for violating section 4060 in
15 conjunction with Health and Safety Code section 11170, in that Respondent was in possession of
16 a controlled substance.

17 a. Complainant realleges the allegations contained in paragraph 13., (a) and
18 (b) above and incorporates them by reference.

19
20 **LOCATION OF RECORD**

21 The administration record upon which the Default Decision and Order is based is
22 located at the Board of Pharmacy, 1625 North Market Boulevard, Suite N-219, Sacramento, CA
23 95834.

24 **ORDER**

25 IT IS ORDERED that Pharmacy Technician Registration No. TCH 55294
26 heretofore issued to Respondent Rey Gerardo Hernandez is revoked.

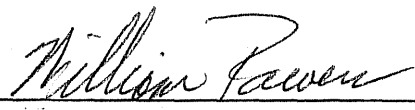
27 Pursuant to Government Code section 11520, subdivision (c), Respondent may
28 serve a written motion requesting that the Decision be vacated and stating the grounds relied on

1 within seven (7) days after service of the Decision on Respondent. The agency in its discretion
2 may vacate the Decision and grant a hearing on a showing of good cause, as defined in the
3 statute.

4 This Decision shall become effective on October 11, 2006. It
5 is ORDERED September 11, 2006.

6
7 BOARD OF PHARMACY
8 DEPARTMENT OF CONSUMER AFFAIRS
9 STATE OF CALIFORNIA

10 By


11 WILLIAM POWERS
12 Board President

13 LA2006600178
14 HERN.DEF.wpd
15 GAB (07/18/2006)
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

ACCUSATION 2006-143

1 BILL LOCKYER, Attorney General
of the State of California

2 GLORIA A. BARRIOS, State Bar No. 94812006 MAR 27 PM 3:45
Deputy Attorney General

3 California Department of Justice
300 So. Spring Street, Suite 1702

4 Los Angeles, CA 90013
Telephone: (213) 897-2540

5 Facsimile: (213) 897-2804

6 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 2970

12 REY GERARDO HERNANDEZ
579 Calle Tulipan
Thousand Oaks, CA 91360

A C C U S A T I O N

13 Pharmacy Technician Registration
No. TCH 55294

14 Respondent.
15

16
17 Complainant alleges:

18 **PARTIES**

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

22 2. On or about August 13, 2004, the Board of Pharmacy issued Pharmacy
23 Technician Registration No. TCH 55294 to Rey Gerardo Hernandez (Respondent). The
24 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges
25 brought herein and will expire on March 31, 2006, unless renewed.

26 ///

27 ///

28 ///

- 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 the public, or to the extent that the use impairs the ability of the person to conduct with safety to
2 the public the practice authorized by the license.

3

4 "(j) The violation of any of the statutes of this state or of the United States
5 regulating controlled substances and dangerous drugs.

6

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

24

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

26 7. Section 4060 of the Code states:

27 "No person shall possess any controlled substance, except that furnished to a
28 person upon the prescription of a physician, dentist, podiatrist, or veterinarian, or furnished

1 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse
2 practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1. This
3 section shall not apply to the possession of any controlled substance by a manufacturer,
4 wholesaler, pharmacy, physician, podiatrist, dentist, veterinarian, certified nurse-midwife, nurse
5 practitioner, or physician assistant, when in stock in containers correctly labeled with the name
6 and address of the supplier or producer.

7 8. Section 490 of the Code states:

8 "A board may suspend or revoke a license on the ground that the licensee has
9 been convicted of a crime, if the crime is substantially related to the qualifications, functions, or
10 duties of the business or profession for which the license was issued. A conviction within the
11 meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo
12 contendere. Any action which a board is permitted to take following the establishment of a
13 conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has
14 been affirmed on appeal, or when an order granting probation is made suspending the imposition
15 of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the
16 Penal Code."

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

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

24 10. Section 11550 of the Health and Safety Code provides: "no person shall
25 use, or be under the influence of any controlled substance...."

26 11. Section 11170 of the Health and Safety Code provides: "no person shall
27 prescribe, administer, or furnish a controlled substance for himself."

28 ///

1 12. Section 125.3 of the Code provides, in pertinent part, that the Board may
2 request the administrative law judge to direct a licensee found to have committed a violation or
3 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
4 and enforcement of the case.

5 **CONTROLLED SUBSTANCE**

6 A. "Methamphetamine," is a Schedule II controlled substances as defined in
7 Health and Safety Code section 11055(d)(2) and is categorized as a dangerous drug pursuant to
8 Business and Professions Code section 4022 of the Code.

9 B. "Marijuana," is a Schedule I controlled substance as defined in Health and
10 Safety Code section 11054 (d) (13). There is no legitimate indicated use for this drug.

11 **FIRST CAUSE FOR DISCIPLINE**

12 (Conviction of Substantially Related Crimes)

13 13. Respondent is subject to disciplinary action under section 4300 and 4301,
14 subdivisions (f), (j) and (1) on the grounds of unprofessional conduct in conjunction with section
15 490 of the Code as defined in California Code of Regulations, title 16, section 1770 in that
16 Respondent was convicted of crimes substantially related to the qualifications, functions, or
17 duties of a pharmacy technician. The circumstances are as follows:

18 a. On or about July 21, 2005, Respondent was convicted on a plea of guilty
19 to one count of violating Health and Safety Code section 11550(A), a misdemeanor, (under the
20 influence of a controlled substance), in the Superior Court of the State of California, County of
21 Ventura, Case No. 2005023611 MA entitled *The People of the State of California v. Rey*
22 *Gerardo Hernandez*.

23 b. The circumstances surrounding the conviction are that on or about July 14,
24 2005, Respondent was approached by an officer from the Thousand Oaks Police Department.
25 The officer searched the vehicle in which Respondent was a passenger and revealed
26 approximately .10 gram of crystal methamphetamine. The officer determined that Respondent
27 was under the influence of a controlled substance and was placed under arrest. Respondent

28 ///

1 agreed to give a urine sample for drug testing. The results of the drug screen detected
2 methamphetamine and marijuana.

3 **SECOND CAUSE FOR DISCIPLINE**

4 (Administer, Furnish a Controlled Substance to Oneself)

5 14. Respondent is subject to disciplinary action under sections 4300 and 4301,
6 subdivisions (h), (j) and (p) on the grounds of unprofessional conduct for violating section 4060
7 in conjunction with Health and Safety Code section 11550 in that Respondent administered or
8 furnished controlled substances to himself. The circumstances are as follows:

9 a. Complainant realleges the allegations contained in paragraphs 13. (a) and
10 (b) above and incorporates them by reference.

11 **THIRD CAUSE FOR DISCIPLINE**

12 (Possession of a Controlled Substance)

13 15. Respondent is subject to disciplinary action under section 4300 and 4301,
14 subdivisions (j) and (p) on the grounds of unprofessional conduct for violating section 4060 in
15 conjunction with Health and Safety Code section 11170, in that Respondent was in possession of
16 a controlled substance.

17 a. Complainant realleges the allegations contained in paragraph 13., (a) and
18 (b) above and incorporates them by reference.

19
20 **PRAYER**

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

23 1. Revoking or suspending Pharmacy Technician Registration No. TCH
24 55294, issued to Rey Gerardo Hernandez;

25 2. Ordering Rey Gerardo Hernandez to pay the Board of Pharmacy the
26 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
27 Professions Code section 125.3;

28 ///

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

DATED: 4/21/06

P. F. Harris
PATRICIA F. HARRIS
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

LA2006600178
HERN.ACC.wpd
GAB (03/20/2006)