

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

In the Matter of the Accusation Against:

ARACELI MOJARRO
30088 Pechanga Drive
Temecula, CA 92592

Pharmacy Technician No. TCH 34970

Respondent.

Case No. 3495

OAH No. 2010080414

DECISION

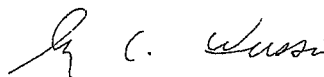
The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as its Decision in the above-entitled matter.

This decision shall become effective on April 15, 2011.

It is so ORDERED March 16, 2011.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STANLEY C. WEISSER
Board President

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34970,

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PROPOSED DECISION

This matter came on regularly for hearing before Roy W. Hewitt, Administrative Law Judge (ALJ), Office of Administrative Hearings, at San Diego, California on January 5, 2011.

Deputy Attorney General Diane De Kervor represented complainant.

Araceli Mojarro (respondent) represented herself.

Oral and documentary evidence was received and the matter was submitted on January 5, 2011.

FACTUAL FINDINGS

1. The Accusation was filed by Virginia Herold, while acting in her official capacity as the Executive Officer, Board of Pharmacy (the board), Department of Consumer Affairs, State of California.

2. On October 18, 2000, the board issued Pharmacy Technician Registration Number TCH 34970 to respondent. That license was, and currently is, in full force and effect, with an expiration date of December 31, 2011.

3. On September 21 and 22, 2008, the Riverside County Sheriff's Department was conducting an undercover drug purchase operation. As part of that operation a confidential informant (CI) purchased one gram of cocaine¹ at respondent's place of residence (home). On the basis of the drug purchase a search warrant to search respondent's home was issued. Deputies executed the warrant on September 27, 2008. Respondent, a male friend, and respondent's six-year-old son were present when deputies searched respondent's home. During the search the deputies found cocaine in respondent's purse and marijuana² on and in respondent's dresser. Additionally, other drugs and drug paraphernalia were found throughout the house, in the garage, and in the car. Respondent admitted to the police that she possessed and smoked marijuana and that she used cocaine occasionally. Respondent also produced a medical marijuana card and presented it to the deputies.

4. Respondent was arrested and charged with child endangerment (her son could have accessed the drugs), possession of controlled substances, and being under the influence of a controlled substance. Ultimately, in Riverside County Superior Court, Case number SWF026811, respondent pled guilty to one count of violating California Health and Safety Code section 11350, subdivision (a) (possession of cocaine), a felony, but judgment was deferred and respondent was diverted pursuant to Penal Code section 1000.³

5. On June 17, 2009, respondent successfully completed her court ordered Penal Code section 1000 diversion.

6. Respondent testified that she last used cocaine and relinquished her medical marijuana card in 2008. Respondent attends AA once or twice per month and, other than this conviction and minor traffic infractions, respondent has no history of criminal violations.

7. Respondent has been registered as a pharmacy technician since 2000 and, other than the instant proceedings, has no record of any disciplinary actions against her registration.

¹ Pursuant to California Health and Safety Code section 11055, subdivision (b)(6), cocaine is a Schedule II controlled substance and is designated by Business and Professions Code section 4022 as a dangerous drug.

² Pursuant to California Health and Safety Code section 11054, subdivision (d)(13), marijuana is a Schedule I controlled substance and is designated by Business and Professions Code section 4022 as a dangerous drug.

³ Respondent was ordered to enroll in a seven-month diversion program.

8. Respondent was very cooperative with the Sheriff's deputies and she took responsibility for her criminal actions by pleading guilty at the early stages of her criminal proceedings.

9. Respondent was not present on the date in September when the CI purchased cocaine from her male roommate and she testified that she did not know about the drug sale/purchase until the warrant was executed the day of her arrest. Respondent acknowledged the fact that she knew drugs were present in her home but testified that she told her roommate to be sure the drugs were secured and out of reach of her child. Unbeknownst to respondent, her roommate placed the cocaine in respondent's purse because he knew that respondent's child had been trained to stay out of respondent's purse.

10. Other than respondent's testimony there was no evidence in the form of character reference letters or non-party testimony to corroborate respondent's claim that she has not used drugs since 2008 and that she has been rehabilitated.

11. The reasonable costs of investigation and enforcement of this administrative matter against respondent total \$4,769.00. Given the nature of the proceedings against respondent \$4,769.00 in costs is reasonable.

LEGAL CONCLUSIONS

1. Cause exists for discipline of respondent's registration because, as set forth in Findings 3 and 4, respondent's possession and use of controlled substances on September 17, 2008, constitutes unprofessional conduct within the meaning of Business and Professions Code sections 4301, subdivision (h).

2. Cause exists for discipline of respondent's registration because her conduct, as set forth in Findings 3 and 4, reveals that respondent violated Business and Professions Code section 4301, subdivision (j) by violating statutes of this state.

3. Respondent's attempt to provide evidence of rehabilitation was insufficient. As set forth in Finding 10, other than respondent's testimony there was no evidence in the form of character reference letters or non-party testimony to corroborate respondent's claim that she has not used drugs since 2008 and that she has been rehabilitated. Consequently, given the recentness of respondent's unprofessional conduct, there is no justification for concluding that respondent is an appropriate candidate for a probationary registration at this point. Perhaps at some future date, if respondent elects to apply for reinstatement of her registration, she can present adequate evidence of her rehabilitation.

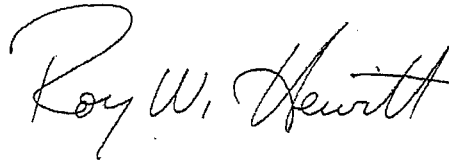
4. As set forth in Finding 11, the reasonable costs of investigating and enforcing this action against respondent, recoverable by the board pursuant to Business and Professions Code section 125.3, total \$4,769.00.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

1. Respondent's Pharmacy Technician Registration Number TCH 34970 is revoked; and,
2. Respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$4,769.00.

Dated: January 18, 2011.



ROY W. HEWITT
Administrative Law Judge
Office of Administrative Hearings

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

11 In the Matter of the Accusation Against:

Case No. 3495

12 **ARACELI MOJARRO**
13 **30088 Pechanga Drive**
14 **Temecula, CA 92592**

A C C U S A T I O N

15 **Pharmacy Technician Registration No. TCH**
34970

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 or about October 18, 2000, the Board of Pharmacy issued Pharmacy
23 Technician Registration Number TCH 34970 to Araceli Mojarro (Respondent). The Pharmacy
24 Technician Registration will expire on December 31, 2011, unless renewed.

25 JURISDICTION

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

1 4. Code section 118, subdivision (b), states, in pertinent part, that the expiration of
2 a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during
3 the period within which the license may be renewed, restored, reissued or reinstated.

4 STATUTORY PROVISIONS

5 5. Section 4022 of the Code states

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

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

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

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

16 6. Section 4060 of the Code states:

17 No person shall possess any controlled substance, except that furnished to
18 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
19 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant
20 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a
21 nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to
22 Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist
23 pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
24 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section
25 shall not apply to the possession of any controlled substance by a manufacturer,
26 wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist,
27 veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or
28 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.

7. Section 4300 of the Code states that "(a) Every license issued may be
suspended or revoked."

8. 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:

1
2 (h) The administering to oneself, of any controlled substance, or the use
3 of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be
4 dangerous or injurious to oneself, to a person holding a license under this chapter, or
5 to any other person or to the public, or to the extent that the use impairs the ability of
6 the person to conduct with safety to the public the practice authorized by the license.

7
8 (j) The violation of any of the statutes of this state, or any other state, or
9 of the United States regulating controlled substances and dangerous drugs.

10 COST RECOVERY

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

15 DRUGS

16 10. Cocaine is a Schedule II controlled substance as designated by Health and
17 Safety Code section 11055(b)(6), and is a dangerous drug pursuant to Business & Professions
18 Code section 4022.

19 11. Marijuana is a Schedule I controlled substance as designated by Health and
20 Safety Code section 11054, subdivision (d)(13), and is a dangerous drug pursuant to Business &
21 Professions Code section 4022.

22 FIRST CAUSE FOR DISCIPLINE

23 **(Unprofessional Conduct - Possession and Use of Controlled Substances
24 on September 27, 2008)**

25 12. Grounds exist to revoke Respondent's license pursuant to Code section 4300,
26 4060, and section 4301, subdivision (h) for unprofessional conduct. The facts and circumstances
27 surrounding this cause for discipline are as follows. On September 27, 2008, Respondent's
28 residence was searched by the police pursuant to a warrant. The focus of the warrant was that
cocaine was allegedly being sold from the home. Two adults, including Respondent, and
Respondent's child were located in the house. Respondent and the other adult were found to be
in possession of cocaine and marijuana and under the influence of a controlled substance. Drugs

1 and paraphernalia to sell drugs were located in the house, the garage, and the car. Respondent
2 admitted to the police that she possessed and smoked marijuana and that she has a medical
3 marijuana card, that she uses cocaine occasionally, and that she had used cocaine earlier in the
4 week.

5 13. Respondent was arrested and charged with child endangerment (the child could
6 have accessed and ingested the drugs), possession of controlled substances (cocaine and
7 marijuana), and under the influence of a controlled substance. On November 7, 2008, in a case
8 entitled People vs. Aricelli Mojarro (Riverside County Superior Court Case No. SWF026811),
9 Respondent pled guilty to a violation of Health and Safety Code section 11350(a) (possession of
10 cocaine), a felony, but judgment was deferred pursuant to Penal Code section 1000 and
11 Respondent was ordered to enroll in a 7 month diversion program.

12 SECOND CAUSE FOR DISCIPLINE

13 **(Unprofessional Conduct – Violation of Drug Laws on September 27, 2008)**

14 Grounds exist to revoke Respondent's license pursuant to Code section 4300 and section
15 4301, subdivision (j) for unprofessional conduct in that she violated laws regulating controlled
16 substances and dangerous drugs. As detailed in paragraphs 12 and 13 above, which are hereby
17 incorporated by reference, Respondent possessed cocaine in violation of Health and Safety Code
18 section 11350(a) and admitted to administering and being under the influence of cocaine in
19 violation of Health and Safety Code section 11550.

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 A. Revoking or suspending Pharmacy Technician Registration Number TCH
24 34970, issued to Araceli Mojarro.

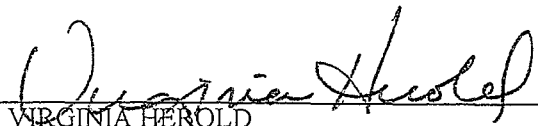
25 B. Ordering Araceli Mojarro to pay the Board of Pharmacy the reasonable costs of
26 the investigation and enforcement of this case, pursuant to Business and Professions Code section
27 125.3;

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

DATED: 5/18/10



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

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