

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

In the Matter of the Accusation Against:

Case No. 3508

MARTY JOSEPH GONZALES

24280 Citrus Hill Road
Wildomar, CA 92595

Pharmacy Technician Registration No. TCH
23010

Respondent.

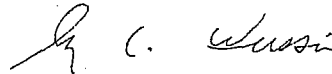
DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on August 19, 2011.

It is so ORDERED July 20, 2011.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

1 EDMUND G. BROWN JR.
Attorney General of California
2 LINDA K. SCHNIEDER
Supervising Deputy Attorney General
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Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 3508

12 **MARTY JOSEPH GONZALES**
13 **PO Box 372**
14 **Wildomar, CA 92595**

STIPULATED SURRENDER OF
LICENSE AND ORDER

15 **Pharmacy Technician License**
16 **No. TCH 23010**

Respondent.

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
19 proceeding that the following matters are true:

20 PARTIES

21 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
22 She brought this action solely in her official capacity and is represented in this matter by Edmund
23 G. Brown Jr., Attorney General of the State of California, by Sherry L. Ledakis, Deputy Attorney
24 General.

25 2. Marty Joseph Gonzales (Respondent) is representing himself in this proceeding and
26 has chosen not to exercise his right to be represented by counsel.

27 3. On or about June 30, 1997, the Board of Pharmacy issued Pharmacy Technician
28 License No. TCH 23010 to Marty Joseph Gonzales (Respondent). The license was in full force

1 and effect at all times relevant to the charges brought in Accusation No. 3508 and will expire on
2 March 31, 2011, unless renewed.

3 JURISDICTION

4 4. Accusation No. 3508 was filed before the Board of Pharmacy (Board) Department of
5 Consumer Affairs, and is currently pending against Respondent. The Accusation and all other
6 statutorily required documents were properly served on Respondent on November 10, 2009.
7 Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation
8 No. 3508 is attached as exhibit A and incorporated herein by reference.

9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read, and understands the charges and allegations in
11 Accusation No. 3508. Respondent also has carefully read, and understands the effects of this
12 Stipulated Surrender of License and Order.

13 6. Respondent is fully aware of his legal rights in this matter, including the right to a
14 hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at
15 his own expense; the right to confront and cross-examine the witnesses against him; the right to
16 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
17 the attendance of witnesses and the production of documents; the right to reconsideration and
18 court review of an adverse decision; and all other rights accorded by the California
19 Administrative Procedure Act and other applicable laws.

20 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
21 every right set forth above.

22 CULPABILITY

23 8. Respondent admits the truth of each and every charge and allegation in Accusation
24 No. 3508, agrees that cause exists for discipline and hereby surrenders his Pharmacy Technician
25 License No. TCH 23010 for the Board's formal acceptance.

26 9. Respondent understands that by signing this stipulation he enables the Board to issue
27 an order accepting the surrender of his Pharmacy Technician License without further process.

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RESERVATION

10. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Board of Pharmacy or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

11. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that facsimile copies of this Stipulated Surrender of License and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

13. This Stipulated Surrender of License and Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the (Board) may, without further notice or formal proceeding, issue and enter the following Order:

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ORDER

IT IS HEREBY ORDERED that Pharmacy Technician License No. TCH 23010, issued to Respondent Marty Joseph Gonzales, is surrendered and accepted by the Board of Pharmacy.

15. The surrender of Respondent's Pharmacy Technician License and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

16. Respondent shall lose all rights and privileges as a pharmacy technician in California as of the effective date of the Board's Decision and Order.

17. Respondent shall cause to be delivered to the Board both his wall license certificate and, if one was issued, pocket license on or before the effective date of the Decision and Order.

18. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a new application for licensure. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 3508 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

19. Respondent may not apply for any license, permit, or registration from the board for three (3) years from the effective date of this decision. Respondent stipulates that should he apply for any license from the board on or after the effective date of this decision, all allegations set forth in the accusation shall be deemed to be true, correct and admitted by respondent when the board determines whether to grant or deny the application. Respondent shall satisfy all requirements applicable to that license as of the date the application is submitted to the board, including, but not limited to certification by a nationally recognized body prior to the issuance of a new license. Respondent is required to report this surrender as disciplinary action.

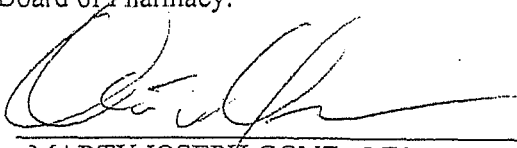
20. Respondent shall pay the Board its costs of investigation and enforcement in the amount of \$1,772.50.

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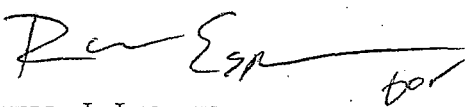
ACCEPTANCE

I have carefully read the Stipulated Surrender of License and Order. I understand the stipulation and the effect it will have on my Pharmacy Technician License. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 9/10/2010 
MARTY JOSEPH GONZALES
Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated: September ~~7~~¹⁰, 2010
Respectfully submitted,
EDMUND G. BROWN JR.
Attorney General of California
LINDA K. SCHNIEDER
Supervising Deputy Attorney General

SHERRY L. LEDAKIS
Deputy Attorney General
Attorneys for Complainant

SD2009804880
Stipulation.rtf

Exhibit A

Accusation No. 3508

1 EDMUND G. BROWN JR.
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 SHERRY L. LEDAKIS
Deputy Attorney General
4 State Bar No. 131767
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6 San Diego, CA 92186-5266
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10 **DEPARTMENT OF CONSUMER AFFAIRS**
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11 In the Matter of the Accusation Against:

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12 **MARTY JOSEPH GONZALES**
13 P.O. Box 372
Wildomar, CA 92595
14 Pharmacy Technician No. TCH 23010

A C C U S A T I O N

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about June 30, 1997, the Board of Pharmacy issued Pharmacy Technician
22 Registration Number TCH 23010 to Marty Joseph Gonzales (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 March 31, 2011, unless renewed.

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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 unless otherwise indicated.

5 4. Section 118, subdivision (b), of the Code provides that the
6 suspension/expiration/surrender/cancellation of a license shall not deprive the Board of
7 jurisdiction to proceed with a disciplinary action during the period within which the license may
8 be renewed, restored, reissued or reinstated.

9 STATUTORY PROVISIONS

10 5. Section 490 of the Code states:

11 (a) In addition to any other action that a board is permitted to take against a
12 licensee, a board may suspend or revoke a license on the ground that the licensee has
13 been convicted of a crime, if the crime is substantially related to the qualifications,
14 functions, or duties of the business or profession for which the license was issued.

15 ...

16 (c) A conviction within the meaning of this section means a plea or verdict of
17 guilty or a conviction following a plea of nolo contendere. Any action that a board is
18 permitted to take following the establishment of a conviction may be taken when the
19 time for appeal has elapsed, or the judgment of conviction has been affirmed on
20 appeal, or when an order granting probation is made suspending the imposition of
21 sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of
22 the Penal Code.

23

24 6. Code section 493 of the Code states:

25 Notwithstanding any other provision of law, in a proceeding conducted by a
26 board within the department pursuant to law to deny an application for a license or to
27 suspend or revoke a license or otherwise take disciplinary action against a person who
28 holds a license, upon the ground that the applicant or the licensee has been convicted
of a crime substantially related to the qualifications, functions, and duties of the
licensee in question, the record of conviction of the crime shall be conclusive
evidence of the fact that the conviction occurred, but only of that fact, and the board
may inquire into the circumstances surrounding the commission of the crime in order
to fix the degree of discipline or to determine if the conviction is substantially related
to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and
"registration."

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7. 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:

(a) Gross immorality.

...

(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.

...

(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.

8. Section 4311 of the Code states:

...

(c) In addition to any suspension under subdivision (a), the board shall also suspend any license issued by the board, or the holder thereof, if the board determines that the felony conviction of the holder of the license is substantially related to the qualifications, functions, or duties of the licensee.

...

(4) A conviction of any crime referred to in Section 4301, or for violation of Section 187, 261, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee of the board. Upon its own motion or for good cause shown the board may decline to impose a suspension under this subdivision or may set aside a suspension previously imposed when it appears to be in the interest of justice to do so, with due regard to

maintaining the integrity of and confidence in the practice of pharmacy and the handling of dangerous drugs and devices.

9. 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.

10. California Code of Regulations, title 16, section 1769(b) 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.

11. Section 125.3 of the Code states, 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.

FIRST CAUSE FOR DISCIPLINE

(November 30, 2008 Conviction for Child Molestation on August 1, 2004)

12. Respondent is subject to disciplinary action under Code sections 490 and 4301(l) in that he has been convicted of a crime substantially related to the qualifications duties and functions of a pharmacy technician. Respondent was convicted of violating Penal Code section 273a(a), commission of an unjustifiable offense against a child under conditions likely to produce great bodily harm or death. The circumstances are as follows:

1 13. On or about August 1, 2004, respondent had been drinking alcohol and giving his
 2 twelve year old step daughter a back massage. During the massage he moved his hands to the
 3 front of her chest and massaged her breasts. The child reported the incident to her mother who
 4 contacted the police and respondent was arrested.

5 14. On or about November 30, 2008, in a criminal proceeding entitled *People of the State*
 6 *of California v. Marty Joseph Gonzalez*, in the San Diego Superior Court, case number
 7 SCE277360, respondent was convicted on his plea of guilty to violating Penal Code section
 8 273a(a).

9 15. As a result of the conviction, respondent was sentenced to four years of formal
 10 probation, 180 days in custody, and payment of fines, among other things.

11 **SECOND CAUSE FOR DISCIPLINE**

12 (Commission of an Act of Gross Immorality and Moral Turpitude)

13 16. Respondent is subject to disciplinary action under Code section 4301(a) and
 14 (f) in that he is guilty of unprofessional conduct by performing an act of immorality and
 15 moral turpitude, as set forth above in paragraphs 11-13.

16 **PRAYER**

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

19 1. Revoking or suspending Pharmacy Technician Number TCH 23010, issued to Marty
 20 Joseph Gonzales.

21 2. Ordering Marty Joseph Gonzales to pay the Board of Pharmacy the reasonable costs
 22 of the investigation and enforcement of this case, pursuant to Business and Professions Code
 23 section 125.3;

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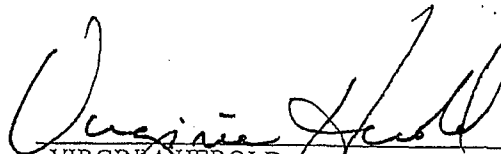
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3. Taking such other and further action as deemed necessary and proper.

DATED:

11/4/09



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

SD2009804880