

1  
2  
3  
4  
5  
6  
7  
8

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

9 In the Matter of the Accusation Against:

Case No. 3577

10 MICHAEL JOSEPH MITOSINKA  
11 1589 S. La Brucherie Road  
12 El Centro, CA 92243

**DEFAULT DECISION AND ORDER**

13 Pharmacy Technician Registration No. TCH  
14 80095

[Gov. Code, §11520]

Respondent.

15  
16

FINDINGS OF FACT

17 1. On or about August 23, 2010, Complainant Virginia Herold, in her official capacity  
18 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed  
19 Accusation No. 3577 against Michael Joseph Mitosinka (Respondent) before the Board of  
20 Pharmacy. (Accusation attached as Exhibit A.)

21 2. On or about October 29, 2008, the Board of Pharmacy issued Pharmacy Technician  
22 Registration Number TCH 80095 to Respondent Michael Joseph Mitosinka. 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 May 31, 2012, unless renewed.

25 3. On or about September 13, 2010, Respondent was served by Certified and First Class  
26 Mail copies of the Accusation No. 3577, Statement to Respondent, Notice of Defense, Request  
27 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and  
28 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code

1 sections 136 and 4100, as well as California Code of Regulations, title 16, section 1704, is  
2 required to be reported and maintained with the Board, which was and is: 1589 S. La Brucherie  
3 Road, El Centro, CA 92243.

4 4. Service of the Accusation was effective as a matter of law under the provisions of  
5 Government Code section 11505, subdivision (c) and/or Business and Professions Code  
6 section 124.

7 5. Government Code section 11506 states, in pertinent part:

8 (c) The respondent shall be entitled to a hearing on the merits if the respondent  
9 files a notice of defense, and the notice shall be deemed a specific denial of all parts  
10 of the accusation not expressly admitted. Failure to file a notice of defense shall  
11 constitute a waiver of respondent's right to a hearing, but the agency in its discretion  
12 may nevertheless grant a hearing.

13 6. Respondent failed to file a Notice of Defense within 15 days after service upon him  
14 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation  
15 No. 3577.

16 7. California Government Code section 11520 states, in pertinent part:

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

21 8. Pursuant to its authority under Government Code section 11520, the Board finds  
22 Respondent is in default. The Board will take action without further hearing and, based on the  
23 relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,  
24 as well as taking official notice of all the investigatory reports, exhibits and statements contained  
25 therein on file at the Board's offices regarding the allegations contained in Accusation No. 3577,  
26 finds that the charges and allegations in Accusation No. 3577, are separately and severally true  
27 and correct by clear and convincing evidence.

28 9. Taking official notice of its own internal records, pursuant to Business and  
Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation  
and Enforcement of this matter is \$1,675.00 as of December 2, 2010.

///

1 DETERMINATION OF ISSUES

2 1. Based on the foregoing findings of fact, Respondent Michael Joseph Mitosinka has  
3 subjected his Pharmacy Technician Registration No. TCH 80095 to discipline.

4 2. The agency has jurisdiction to adjudicate this case by default.

5 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician  
6 Registration based upon the following violations alleged in the Accusation which are supported  
7 by the evidence contained in the Default Decision Investigatory Evidence Packet in this case:

- 8 a. Unprofessional Conduct for Administering Controlled Substance to Oneself (Bus. &  
9 Prof. Code, § 4301, subd. (h));  
10 b. Unprofessional Conduct for Violating Law Regulating Controlled Substances (Bus. &  
11 Prof. Code, § 4301, subd. (j)); and  
12 c. Unprofessional Conduct for Violation of the Pharmacy Act (Bus. & Prof. Code, § 4301,  
13 subd. (o)).

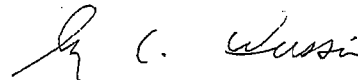
14 ORDER

15 **IT IS SO ORDERED** that Pharmacy Technician Registration No. TCH 80095, heretofore  
16 issued to Respondent Michael Joseph Mitosinka, is revoked.

17 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a  
18 written motion requesting that the Decision be vacated and stating the grounds relied on within  
19 seven (7) days after service of the Decision on Respondent. The agency in its discretion may  
20 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

21 This Decision shall become effective on April 15, 2011.

22 It is so ORDERED March 16, 2011.

23 

24  
25 \_\_\_\_\_  
26 STANLEY C. WEISSER, BOARD PRESIDENT  
27 FOR THE BOARD OF PHARMACY  
28 DEPARTMENT OF CONSUMER AFFAIRS

27 Attachment:  
28 Exhibit A: Accusation

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
3 RON ESPINOZA  
Deputy Attorney General  
4 State Bar No. 176908  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2100  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

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

11  
12 Case No. 3577

13 In the Matter of the Accusation Against:

14 MICHAEL JOSEPH MITOSINKA,  
1589 S. La Brucherie Road  
El Centro, CA 92243

**A C C U S A T I O N**

15 Pharmacy Technician Registration No. TCH  
16 80095

17 Respondent.

18  
19  
20 Complainant alleges:

21 **PARTIES**

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

24 2. On or about October 29, 2008, the Board of Pharmacy issued Pharmacy Technician  
25 Registration Number TCH 80095 to Michael Joseph MitoSinka, TCH (Respondent). The  
26 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges  
27 brought herein and will expire on May 31, 2012, unless renewed.  
28

JURISDICTION

1  
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 suspension, expiration,  
6 surrender, cancellation of a license shall not deprive the Board of jurisdiction to proceed with a  
7 disciplinary action during the period within which the license may be renewed, restored, reissued  
8 or reinstated.

9       5. Section 4300, subdivision (a) of the Code states in pertinent part, "every license  
10 issued may be suspended or revoked."

STATUTORY AND REGULATORY PROVISIONS

11  
12       6. Section 482 of the Code states:

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

15       (a) Considering the denial of a license by the board under Section 480; or

16       (b) Considering suspension or revocation of a license under Section 490.

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

19       7. Section 4060 of the Code states:

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

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

4 8. Section 4301 of the Code states:

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

9 (h) The administering to oneself, of any controlled substance, or the use of  
10 any dangerous drug or of alcoholic beverages to the extent or in a manner as to be  
11 dangerous or injurious to oneself, to a person holding a license under this chapter,  
12 or to any other person or to the public, or to the extent that the use impairs the  
13 ability of the person to conduct with safety to the public the practice authorized by  
14 the license.

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

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

#### 22 COST RECOVERY

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

#### 27 DRUG

28 10. Methamphetamine is a Schedule II controlled substance as designated by Health  
and Safety Code section 11055(d)(2), and is a dangerous drug pursuant to Business and  
Professions Code section 4022.

1 **FACTUAL ALLEGATIONS**

2 11. On or about April 9, 2009, an officer from El Centro Sheriff's Department received a  
3 dispatch of a report of a disturbance in El Centro, California. The officer arrived at the scene and  
4 identified Respondent as the subject of the disturbance. During the conversation, Respondent  
5 admitted to the officer that he had not slept in two days and that he had been yelling at his parents  
6 to leave him alone about his drug use. Respondent also admitted that he had been using  
7 methamphetamine for about one month and that he had last used "on Tuesday." Respondent  
8 admitted that he had a scale, some bags, and a broken glass pipe in his room. Respondent stated  
9 that he wanted help for his drug problem. The officer collected 1 glass smoking device with  
10 residue, 1 digital scale with residue, 2 packs of clear cellophane bags and 1 red bag. Respondent  
11 was arrested for violation of Health and Safety Code section 11364, possession of controlled  
12 substance paraphernalia and Penal Code section 135, destroying/concealing evidence.  
13 Respondent was transported and booked into custody at the Imperial County Jail.

14 12. On August 3, 2009, in the criminal proceeding entitled *People of the State of*  
15 *California v. Michael Joseph Mitosinka*, in Imperial Superior Court case number ECM29575,  
16 Respondent pled guilty to violation of Health and Safety Code section 11364, possession of  
17 controlled substance paraphernalia. On August 24, 2009, the Court ordered Respondent to enroll  
18 and complete the diversion drug program pursuant to Penal Code section 1000. Respondent's  
19 sentence was suspended and judgment was deferred pending his completion of the drug program.

20 **FIRST CAUSE FOR DISCIPLINE**

21 **(Unprofessional Conduct – Administering Controlled Substances to Oneself)**

22 13. Respondent is subject to disciplinary action under section 4301(h) of the Code in that  
23 Respondent administered methamphetamine to himself as evidenced by his admissions, as is set  
24 forth in paragraphs 11-12, incorporated herein by reference.

25 **SECOND CAUSE FOR DISCIPLINE**

26 **(Unprofessional Conduct-Violating Laws Regulating Controlled Substances)**

27 14. Respondent is subject to disciplinary action under section 4301(j) of the Code in that  
28 Respondent violated the California Uniform Controlled Substances Act (Health and Safety Code

1 sections 11000, et seq.) as evidenced by his admissions, as is more fully described in paragraphs  
2 11-12, incorporated herein by reference.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct-Violation of the Chapter)**

5 15. Respondent is subject to disciplinary action under 4301(o) of the Code for violation  
6 of the Pharmacy Act in that Respondent used methamphetamine, in violation of Code section  
7 4060 as is more fully described in paragraphs 11-12, incorporated herein by reference.

8 **PRAYER**

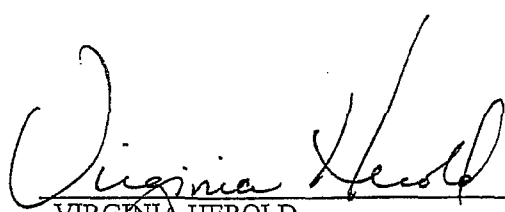
9 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
10 and that following the hearing, the Board of Pharmacy issue a decision:

11 1. Revoking or suspending Pharmacy Technician Registration Number TCH 80095,  
12 issued to Michael Joseph Mitosinka, TCH;

13 2. Ordering Michael Joseph Mitosinka to pay the Board of Pharmacy the reasonable  
14 costs of the investigation and enforcement of this case, pursuant to Business and Professions  
15 Code section 125.3;

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

17  
18  
19 DATED: 8/23/10

  
20 VIRGINIA HEROLD  
21 Executive Officer  
22 Board of Pharmacy  
23 Department of Consumer Affairs  
24 State of California  
25 Complainant

26 SD2010800048  
27 70304095.doc  
28