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

In the Matter of the Accusation Against:

DAVID PHILIP PORRINI
8241 Lavender Lane
Riverside, CA 92508

Pharmacy Technician Registration No. TCH
84158

Respondent.

Case No. 3636

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about June 9, 2010, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 3636 against David Philip Porrini (Respondent) before the Board of Pharmacy.

2. On or about June 30, 2008, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 84158 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2011, unless renewed.

3. On or about June 15, 2010, Mona S. Sebastian, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation No. 3636, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is:

1
2 A copy of the Accusation is attached as exhibit A, and is incorporated herein by reference.

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

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

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

9 6. Respondent failed to file a Notice of Defense within 15 days after service upon him
10 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
11 3636.

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

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

16 8. Pursuant to its authority under Government Code section 11520, the Board finds
17 Respondent is in default. The Board will take action without further hearing and, based on the
18 evidence on file herein, finds that the allegations in Accusation No. 3636 are true.

19 9. The total cost for investigation and enforcement in connection with the Accusation
20 are \$2,355.00 as of July 8, 2010.

21 DETERMINATION OF ISSUES

22 1. Based on the foregoing findings of fact, Respondent David Philip Porrini has
23 subjected his Pharmacy Technician Registration No. TCH 84158 to discipline.

24 2. A copy of the Accusation is attached.

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

26 4. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
27 Registration based upon the following violations alleged in the Accusation:
28

1 a. Respondent is subject to disciplinary action pursuant to Business and Professions
2 Code section 4301(h), in that Respondent used a controlled substance, namely methamphetamine
3 on or about August 3, 2008.

4 b. Respondent is subject to disciplinary action pursuant to Business and Professions
5 Code section 4301(o) in that on or about August 3, 2008, Respondent furnished to himself and
6 possessed a controlled substance, namely methamphetamine, in violation of Business and
7 Professions Code sections 4059 and 4060.

8 c. Respondent is subject to disciplinary action pursuant to Business and Professions
9 Code sections 490 and 4301(l) in that Respondent was convicted of a crime substantially related
10 to the qualifications, duties, and functions of a pharmacy technician. On or about March 26, 2009,
11 Respondent was convicted on his plea of guilty for violating Health and Safety Code section
12 11378, possession of a controlled substance for sale, a felony on or about October 29, 2008.

13 d. Respondent is subject to disciplinary action pursuant to Business and Professions
14 Code section 4301(o) for violations of the Pharmacy Act in that on or about October 29, 2008,
15 Respondent possessed a controlled substance, namely Ecstasy with the intent to sell in violation
16 of Business and Professions Code sections 4059 and 4060.

17 e. Respondent is subject to disciplinary action pursuant to Business and Professions
18 Code section 4301(j) in that on or about August 3, 2008 and October 29, 2008, Respondent
19 violated the California Uniform Controlled Substances Act (Health and Safety Code sections
20 11000, et seq.).

21 ORDER

22 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 84158, heretofore
23 issued to Respondent David Philip Porrini, is revoked.

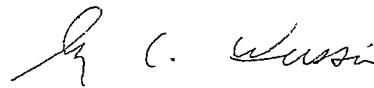
24 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
25 written motion requesting that the Decision be vacated and stating the grounds relied on within
26 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
27 vacate the Decision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

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This Decision shall become effective on October 3, 2010.

It is so ORDERED September 3, 2010.



STANLEY C. WEISSER, BOARD PRESIDENT
FOR THE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS

10590487.DOC
DOJ docket number: SD2010800395

Attachment:

Exhibit A: Accusation No. 3636

Exhibit A
Accusation No. 3636

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

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. 3636

12 **DAVID PHILIP PORRINI**
13 8241 Lavender Lane
14 Riverside, CA 92508

ACCUSATION

15 Pharmacy Technician Registration No. TCH
16 84158

Respondent.

17
18
19 Complainant alleges:

20 **PARTIES**

- 21 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
22 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
23 2. On or about June 30, 2008, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 84158 to David Philip Porrini (Respondent). The Pharmacy
25 Technician Registration was in full force and effect at all times relevant to the charges brought
26 herein and will expire on August 31, 2011, unless renewed.
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1 misconduct, notwithstanding that evidence of that misconduct may be recorded in
2 a record pertaining to an arrest.

3 This section shall not be construed to apply to any drug diversion program
4 operated by any agency established under Division 2 (commencing with Section
5 500) of this code, or any initiative act referred to in that division.

6 9. Section 493 of the Code states:

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

17 As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,'
18 and 'registration.'

19 10. Section 4059 of the Code provides, in pertinent part, that a person may not furnish
20 any dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,
21 veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any
22 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist,
23 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

24 11. Section 4060 of the Code states:

25 No person shall possess any controlled substance, except that furnished to
26 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
27 veterinarian, or naturopathic doctor pursuant to Section 3640.7 or furnished pursuant
28 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a
nurse practitioner pursuant to Section 2836.1, or physician assistant pursuant to
Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist
pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This 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.

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 or devices.

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12. 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:

....

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

....

(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.

....

(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 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.

....

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

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13. Title 16, California Code of Regulations, section 1769 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 offenses(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.

14. Title 16, California Code of Regulations, 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.

COST RECOVERY

15. Section 125.3 of the Code 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.

DRUGS

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

17. Methylenedioxymethamphetamine (Ecstasy) is an analog of Methamphetamine within the meaning of Health and Safety Code section 11401(a). 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 himself and possessed a controlled substance, methamphetamine, in violation of Code sections
2 4059 and 4060 as is more fully described in Paragraph 18 above.

3 THIRD CAUSE FOR DISCIPLINE

4 (March 26, 2009 Conviction for Possession of a Controlled Substance For Sale on October
5 29, 2008)

6 20. Respondent is subject to disciplinary action under sections 490 and 4301(l) of the
7 Code in that he was convicted of a crime that is substantially related to the qualifications, duties,
8 and functions of a pharmacy technician. The circumstances are as follows:

9 a. On or about March 26, 2009, in a criminal proceeding entitled *People of the State*
10 *of California v. David Philip Porrini*, in Riverside County Superior Court, case number
11 RIF147172, Respondent was convicted on his plea of guilty for violating Health and Safety Code
12 section 11378, possession of a controlled substance for sale, a felony.

13 b. As a result of the conviction, on or about March 26, 2009, Respondent was
14 sentenced to 36 months of formal probation, ordered to serve 120 days in jail with two days credit
15 for time served, to participate in and complete any counseling, rehabilitation or treatment deemed
16 appropriate by the probation officer, and to pay fines totaling \$1215.

17 c. The facts that led to the conviction were that on or about October 29, 2008, police
18 officers responded to a hotel room at 6830 Valley Way in the area of Rubidoux where the
19 occupants, including Respondent were reportedly smoking marijuana. A police officer searched
20 Respondent's person and felt a large bulge inside of Respondent's left pant pocket. The officer
21 asked Respondent what was in his pocket and Respondent admitted that he had Ecstasy pills in
22 his pant pocket. The officer removed a baggie from Respondent's pants and found that the baggie
23 contained 95 Ecstasy pills and 1.4 grams of broken Ecstasy pills. The pills field-tested positive
24 for Ecstasy. Based on the officer's experience and training and the large amount of Ecstasy pills
25 in Respondent's possession, the officer believed that Respondent possessed Ecstasy for the
26 purpose of sale. The officer's drug field test evaluation also revealed that Respondent was under
27 the influence of a controlled substance.

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FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Violations of the Chapter)

21. Respondent is subject to disciplinary action under Code section 4301(o) for violations of the Pharmacy Act in that on or about October 29, 2008, Respondent possessed a controlled substance, Ecstasy, with the intent to sell, in violation of Code sections 4059 and 4060, as is more fully described in Paragraph 20 above.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Violating Laws Regulating Controlled Substances)

22. Respondent is subject to disciplinary action under section 4301(j) of the Code in that on or about August 3, 2008 and October 29, 2008, Respondent violated the California Uniform Controlled Substances Act (Health and Safety Code 11000, et seq.), as is more fully described in Paragraphs 18 and 20 above.

PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 84158, issued to David Philip Porrini;
2. Ordering David Philip Porrini to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 6/9/10 Virginia Herold

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

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