

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

In the Matter of the Accusation Against:

Case No. 3993

**RACHEL ASTORGA**

836 27<sup>th</sup> Street  
San Diego, CA 92102

Pharmacy Technician Registration No. TCH  
69636

Respondent.

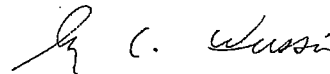
**DECISION AND ORDER**

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 December 21, 2011.

It is so ORDERED November 21, 2011.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
STANLEY C. WEISSER  
Board President

1 KAMALA D. HARRIS  
Attorney General of California  
2 JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
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*Attorneys for Complainant*

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**BOARD OF PHARMACY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

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**San Diego, CA 92102**

15 **Pharmacy Technician Registration No. TCH**  
16 **69636**

17 Respondent.

Case No. 3993

OAH No. 2011040885

**STIPULATED SURRENDER OF**  
**LICENSE AND ORDER**

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 Kamala  
23 D. Harris, Attorney General of the State of California, by Nicole R. Cook, Deputy Attorney  
24 General.

25 2. Rachel Astorga (Respondent) is representing herself in this proceeding and has  
26 chosen not to exercise her right to be represented by counsel.

27 3. On or about June 6, 2006, the Board of Pharmacy issued Pharmacy Technician  
28 Registration No. TCH 69636 to Rachel Astorga (Respondent). The Pharmacy Technician

1 Registration was in full force and effect at all times relevant to the charges brought in Accusation  
2 No. 3993 and will expire on August 31, 2013, unless renewed.

3 JURISDICTION

4 4. Accusation No. 3993 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 April 11, 2011.

7 Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation  
8 No. 3993 is attached as Exhibit A and incorporated by reference.

9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read, and understands the charges and allegations in  
11 Accusation No. 3993. 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 her 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 her own expense; the right to confront and cross-examine the witnesses against her; the right to  
16 present evidence and to testify on her own behalf; the right to the issuance of subpoenas to  
17 compel the attendance of witnesses and the production of documents; the right to reconsideration  
18 and 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. 3993, agrees that cause exists for discipline and hereby surrenders her Pharmacy Technician  
25 Registration No. TCH 69636 for the Board's formal acceptance.

26 9. Respondent understands that by signing this stipulation she enables the Board to issue  
27 an order accepting the surrender of her Pharmacy Technician Registration without further  
28 process.

CONTINGENCY

1  
2       10. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent  
3 understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may  
4 communicate directly with the Board regarding this stipulation and surrender, without notice to or  
5 participation by Respondent. By signing the stipulation, Respondent understands and agrees that  
6 she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board  
7 considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order,  
8 the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this  
9 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not  
10 be disqualified from further action by having considered this matter.

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

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

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

ORDER

22  
23       IT IS HEREBY ORDERED that Pharmacy Technician Registration No. TCH 69636, issued  
24 to Respondent Rachel Astorga, is surrendered and accepted by the Board of Pharmacy.

25       14. The surrender of Respondent's Pharmacy Technician Registration and the acceptance  
26 of the surrendered license by the Board shall constitute the imposition of discipline against  
27 Respondent. This stipulation constitutes a record of the discipline and shall become a part of  
28 Respondent's license history with the Board.

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

3 16. Respondent shall cause to be delivered to the Board her pocket license and, if one was  
4 issued, her wall certificate on or before the effective date of the Decision and Order.

5 17. If she ever applies for licensure or petitions for reinstatement in the State of  
6 California, the Board shall treat it as a new application for licensure.

7 18. Respondent may not apply for any license, permit or registration from the Board for  
8 three (3) years from the effective date of this decision. Respondent stipulates that should she ever  
9 apply for any license from the Board on or after the effective date of this decision, all allegations  
10 set forth in Accusation No. 3993 shall be deemed to be true, correct and admitted by Respondent  
11 when the Board determines whether to grant or deny the application or petition. Respondent must  
12 comply with all the laws, regulations and procedures for licensure in effect at the time the  
13 application or petition is filed. Respondent is required to report this surrender as disciplinary  
14 action.

15 19. Respondent stipulates that should she apply for any license from the Board on or after  
16 the effective date of this decision, investigation and prosecution costs in the amount of \$1,208.00  
17 shall be paid to the Board prior to issuance of the license.

18 ACCEPTANCE

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

23  
24 DATED: August 18 2011 Rachel Astorga  
25 RACHEL ASTORGA  
26 Respondent  
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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: 8/22/2011

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
JAMES M. LEDAKIS  
Supervising Deputy Attorney General



NICOLE R. COOK  
Deputy Attorney General  
*Attorneys for Complainant*

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**Exhibit A**

**Accusation No. 3993**

1 KAMALA D. HARRIS  
Attorney General of California  
2 JAMES LEDAKIS  
Supervising Deputy Attorney General  
3 NICOLE R. COOK  
Deputy Attorney General  
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6 San Diego, CA 92186-5266  
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16 **69636**

17 Respondent.

Case No. 3993

**ACCUSATION**

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 6, 2006, the Board of Pharmacy issued Pharmacy Technician  
24 Registration Number TCH 69636 to Rachel Astorga (Respondent). The Pharmacy Technician  
25 Registration was in full force and effect at all times relevant to the charges brought herein and  
26 will expire on August 31, 2011, unless renewed.

27 ///

28 ///



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 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 "Every license issued may be  
10 suspended or revoked."

11 **STATUTORY PROVISIONS**

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 492 of the Code states:

20 Notwithstanding any other provision of law, successful completion of any  
21 diversion program under the Penal Code, or successful completion of an alcohol  
22 and drug problem assessment program under Article 5 (commencing with Section  
23 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any  
24 agency established under Division 2 (commencing with Section 500) of this code,  
25 or any initiative act referred to in that division, from taking disciplinary action  
26 against a licensee or from denying a license for professional misconduct,  
27 notwithstanding that evidence of that misconduct may be recorded in a record  
28 pertaining to an arrest.

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

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8. Section 4060 of the Code states:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a 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 and devices.

9. 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.

....

(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.

....

1           10. Health and Safety Code section 11350 provides that every person who possesses a  
2 controlled substance, unless upon the prescription of a physician, dentist, podiatrist, or  
3 veterinarian, licensed to practice in this state, shall be punished by imprisonment in the state  
4 prison.

5           11. Health and Safety Code section 11364(a) states:

6                   It is unlawful to possess an opium pipe or any device, contrivance,  
7 instrument, or paraphernalia used for unlawfully injecting or smoking (1) a  
8 controlled substance specified in subdivision (b), (c), or (e), or paragraph (1) of  
9 subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of  
10 subdivision (d) of Section 11054, specified in subdivision (b) or (c) of Section  
11 11055, or specified in paragraph (2) of subdivision (d) of Section 11055; or (2) a  
12 controlled substance which is a narcotic drug classified in Schedule III, IV, or V.

11           12. Health and Safety Code section 11377 states:

12                   (a) Except as authorized by law and as otherwise provided in subdivision  
13 (b) or Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9  
14 of Division 2 of the Business and Professions Code, every person who possesses  
15 any controlled substance which is (1) classified in Schedule III, IV, or V, and  
16 which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054,  
17 except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in  
18 paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2)  
19 or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e),  
20 or (f) of Section 11055, unless upon the prescription of a physician, dentist,  
21 podiatrist, or veterinarian, licensed to practice in this state, shall be punished by  
22 imprisonment in a county jail for a period of not more than one year or in the state  
23 prison.

24                   .....

25           13. Health and Safety Code section 11550 states:

26                   (a) No person shall use, or be under the influence of any controlled  
27 substance which is (1) specified in subdivision (b), (c), or (e), or paragraph (1) of  
28 subdivision (f) of Section 11054, specified in paragraph (14), (15), (21), (22), or  
(23) of subdivision (d) of Section 11054, specified in subdivision (b) or (c) of  
Section 11055, or specified in paragraph (1) or (2) of subdivision (d) or in  
paragraph (3) of subdivision (e) of Section 11055, or (2) a narcotic drug classified  
in Schedule III, IV, or V, except when administered by or under the direction of a  
person licensed by the state to dispense, prescribe, or administer controlled  
substances. It shall be the burden of the defense to show that it comes within the  
exception. Any person convicted of violating this subdivision is guilty of a  
misdemeanor and shall be sentenced to serve a term of not less than 90 days or  
more than one year in a county jail. The court may place a person convicted under  
this subdivision on probation for a period not to exceed five years and, except as

1 provided in subdivision (c), shall in all cases in which probation is granted require,  
2 as a condition thereof, that the person be confined in a county jail for at least 90  
3 days. Other than as provided by subdivision (c), in no event shall the court have  
4 the power to absolve a person who violates this subdivision from the obligation of  
5 spending at least 90 days in confinement in a county jail.

#### 6 COST RECOVERY

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

#### 11 DRUG

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

#### 15 FACTUAL ALLEGATIONS

16 16. On or about March 31, 2010 at approximately 7:13 p.m., officers from the San Diego  
17 Police Department interviewed Respondent and two other individuals in Golden Hill Park. An  
18 officer observed Respondent sitting on a grassy area south of the baseball fields next to a male. A  
19 glass smoking pipe with a white crystalline residue inside the top of it was located on the grass  
20 next to Respondent's left side. The officer asked Respondent if the pipe belonged to her.  
21 Respondent admitted that it did stating, "Well, yes... I guess it is." When asked if she had used  
22 the pipe to smoke methamphetamine, Respondent hesitated and replied, "yes." Respondent was  
23 placed under arrest and questioned further by the officer. Respondent admitted to the officer that  
24 she smoked methamphetamine occasionally and that she had used the pipe to smoke  
25 methamphetamine that day approximately 8 hours prior. Respondent stated that the male  
26 individual had given her the methamphetamine earlier while at Golden Hill Park, that she usually  
27 does not carry a pipe around her, and that she made a big mistake by smoking it that day.  
28 Respondent stated that she was under stress from work and school.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct- Use of Dangerous Drug in Manner Dangerous to Oneself)**

3 17. Respondent is subject to disciplinary action under section 4301(h) of the Code in  
4 that she used methamphetamine to the extent or in a manner as to be dangerous to herself or  
5 others as evidenced by Respondent's admissions set forth in paragraph 16, above.

6 **SECOND CAUSE FOR DISCIPLINE**

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

8 18. Respondent is subject to disciplinary action under section 4301(j) of the Code in  
9 that she violated the California Uniform Controlled Substances Act (Health and Safety Code  
10 11000, et seq.) by possessing and using methamphetamine, and by possessing controlled  
11 substance paraphernalia, as evidenced by Respondent's admissions set forth in paragraph 16,  
12 above.

13 **THIRD CAUSE FOR DISCIPLINE**

14 **(Unprofessional Conduct-Violations of the Chapter)**

15 19. Respondent is subject to disciplinary action under Code section 4301(o) for violation  
16 of the Pharmacy Act in that on or about March 31, 2010, Respondent used and possessed a  
17 controlled substance, methamphetamine, in violation of Code section 4060 as evidenced by  
18 Respondent's admissions set forth in paragraph 16, above.

19 **PRAYER**

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

- 22 1. Revoking or suspending Pharmacy Technician Registration Number TCH 69636,  
23 issued to Rachel Astorga;
- 24 2. Ordering Rachel Astorga to pay the Board of Pharmacy the reasonable costs of the  
25 investigation and enforcement of this case, pursuant to Business and Professions Code section  
26 125.3;

27 ///

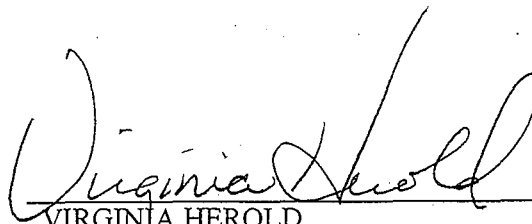
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3. Taking such other and further action as deemed necessary and proper.

DATED: \_\_\_\_\_

4/5/11



VIRGINIA HEROLD

Executive Officer

Board of Pharmacy

Department of Consumer Affairs

State of California

*Complainant*

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