

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

In the Matter of the Accusation Against:

ANDREW D. MONTERO
150 Gateway Court, #29
Stockton, California 95207

Pharmacy Technician Registration No. TCH
114540

Respondent.

Case No. 4651

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about July 31, 2013, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the California State Board of Pharmacy, filed Accusation No. 4651 against Andrew D. Montero (Respondent) before the Board of Pharmacy, Department of Consumer Affairs. (Accusation attached as Exhibit A.)

2. On or about August 26, 2011, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 114540 to Respondent. The Pharmacy Technician Registration

1 was in full force and effect at all times relevant to the charges brought in Accusation No. 4651
2 and will expire on January 31, 2015, unless renewed.

3 3. On or about July 31, 2013, Respondent was served by Certified and First Class Mail
4 copies of the Accusation No. 4651, Statement to Respondent, Notice of Defense, Request for
5 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
6 Respondent's address of record which, pursuant to Business and Professions Code section 4100,
7 is required to be reported and maintained with the Board. Respondent's address of record was
8 and is:

9 150 Gateway Court, #29
10 Stockton, California 95207.

11 4. Service of the Accusation was effective as a matter of law under the provisions of
12 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
13 124.

14 5. On or about August 16, 2013, the aforementioned Certified Mail documents were
15 returned by the U.S. Postal Service marked "Unclaimed." The aforementioned First Class Mail
16 documents were not returned.

17 6. Government Code section 11506 states, in pertinent part:

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

23 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
24 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
25 4651.

26 8. California Government Code section 11520 states, in pertinent part:

27 (a) If the respondent either fails to file a notice of defense or to appear at the
28 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
respondent.

///

///

1 c. The circumstances of the above-mentioned criminal conviction subject Respondent's
2 Pharmacy Technician Registration to discipline, under California Business and Professions Code
3 sections 490 and 4301(I), in that the criminal conviction is substantially related to the
4 qualifications, functions, and duties of a pharmacy technician. As a pharmacy technician,
5 Respondent interacts with co-workers and patients in a stressful environment on a daily basis.
6 The above-mentioned criminal conviction establishes that Respondent has a propensity for
7 violence and does not handle stressful situations appropriately such that if he were allowed to
8 continue working as a pharmacy technician, he could react violently toward a co-worker or
9 patient, or attempt to kill himself at work.

10 ORDER

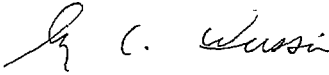
11 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 114540, heretofore
12 issued to Respondent Andrew D. Montero, is revoked.

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

17 This Decision shall become effective on November 22, 2013.

18 It is so ORDERED ON October 23, 2013.

19 BOARD OF PHARMACY
20 DEPARTMENT OF CONSUMER AFFAIRS
21 STATE OF CALIFORNIA

22 
23 By _____
24 STAN C. WEISSER
25 Board President

26 11166185.DOC
27 SA2013110661

28 Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 PHILLIP L. ARTHUR
Deputy Attorney General
4 State Bar No. 238339
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 322-0032
Facsimile: (916) 327-8643
7 E-mail: Phillip.Arthur@doj.ca.gov
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:
12 **ANDREW D. MONTERO**
13 **150 Gateway Court, #29**
14 **Stockton, California 95207**
15 **Pharmacy Technician Registration No. TCH**
114540
16 Respondent.

Case No. 4651
ACCUSATION

17
18 Complainant alleges:

19 **PARTIES**

- 20
21 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
22
23 2. On or about August 26, 2011, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 114540 to Andrew D. Montero (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 January 31, 2015, unless renewed.

27 ///
28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JURISDICTION

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

4. Section 4300 of the Code states, in pertinent part:

"(a) Every license issued may be suspended or revoked. . . ."

5. Section 4300.1 of the Code states:

"The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license."

REGULATIONS

6. Section 490 of the Code states, in pertinent part:

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

"(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

"(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken 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 the provisions of Section 1203.4 of the Penal Code.

1 "(d) The Legislature hereby finds and declares that the application of this section has been
2 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th
3 554, and that the holding in that case has placed a significant number of statutes and regulations
4 in question, resulting in potential harm to the consumers of California from licensees who have
5 been convicted of crimes. Therefore, the Legislature finds and declares that this section
6 establishes an independent basis for a board to impose discipline upon a licensee, and that the
7 amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session do not
8 constitute a change to, but rather are declaratory of, existing law."

9 7. Section 4301 of the Code states, in pertinent part:

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

13 "...

14 "(l) The conviction of a crime substantially related to the qualifications, functions, and
15 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
16 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
17 substances or of a violation of the statutes of this state regulating controlled substances or
18 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
19 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
20 The board may inquire into the circumstances surrounding the commission of the crime, in order
21 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
22 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
23 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
24 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
25 of this provision. The board may take action when the time for appeal has elapsed, or the
26 judgment of conviction has been affirmed on appeal or when an order granting probation is made
27 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
28 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not

1 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
2 indictment.

3 "...

4 "(p) Actions or conduct that would have warranted denial of a license. . . ."

5 **COST RECOVERY**

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

10 **CAUSE FOR DISCIPLINE**

11 **(Conviction of Crime)**

12 9. Respondent is subject to disciplinary action under sections 490 and 4301(l) of the
13 Code in that in *People v. Andrew Dote Montero*, case no. ST059570A, Respondent pled nolo
14 contendere to a misdemeanor charge of reckless driving (a violation of Vehicle Code section
15 23103(a)). The court sentenced respondent to one day of jail, three years probation, and ordered
16 Respondent to pay a fine. The circumstances are as follows:

17 10. On or about July 14, 2012, Respondent drove his vehicle at approximately 80-90
18 miles per hour and rear-ended his ex-boyfriend's vehicle while driving on southbound Interstate 5
19 between the Hammer Lane and Ben Holt drive exits, causing significant damage to both vehicles.
20 Shortly after his arrest on July 14, 2012, Respondent told the arresting officer that after rear-
21 ending his ex-boyfriend's vehicle, he figured his life was over, so he jumped over the retaining
22 wall and tried to hang himself with a rope he found.

23 **PRAYER**

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

26 1. Revoking or suspending Pharmacy Technician Registration Number TCH 114540,
27 issued to Andrew D. Montero;

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2. Ordering Andrew D. Montero 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;
3. Taking such other and further action as deemed necessary and proper.

DATED: 7/22/13 Virginia Herold

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

SA2013110661
11098533.doc