

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 ALFREDO TERRAZAS  
Senior Assistant Attorney General  
3 ARTHUR D. TAGGART  
Supervising Deputy Attorney General  
4 State Bar No. 083047  
1300 I Street, Suite 125  
5 P.O. Box 944255  
Sacramento, CA 94244-2550  
6 Telephone: (916) 324-5339  
Facsimile: (916) 327-8643  
7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 2973

13 **DONALD EDWARD BENDELE, III**  
4201 Wilder Way  
Denair, CA 95316

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

14 **Pharmacy Technician License No.**  
15 **TCH 50148,**

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 22 2. On or about December 29, 2003, the Board of Pharmacy issued Pharmacy Technician  
23 License Number 50148 to Donald Edward Bendele, III (Respondent). Respondent's license will  
24 expire on December 31, 2009, unless renewed.

25 **JURISDICTION**

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

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4. Section 4300 of the Code states:

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

"(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

- "(1) Suspending judgment
- "(2) Placing him or her upon probation
- "(3) Suspending his or her right to practice for a period not exceeding one year
- "(4) Revoking his or her license
- "(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper. . . ."

5. 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:

"(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.

\* \* \*

"(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 the Pharmacy Law." (Bus. & Prof. Code, §§ 4000, et seq.)

6. 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

1 naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued  
2 by a certified nurse-midwife . . . .

3 7. Health and Safety Code section 11350 states:

4 “(a) Except as otherwise provided in this division, every person who  
5 possesses (1) any controlled substance specified in subdivisions (b) and (c), or  
6 paragraph (1) of subdivision (f) of Section 11054, specified in paragraphs (14),  
7 (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or  
8 (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any  
9 controlled substance classified in Schedule III, IV, or V which is a narcotic drug,  
unless upon the written prescription of a physician, dentist, podiatrist, or  
veterinarian licensed to practice in this state, shall be punished by imprisonment in  
the state prison.”

10 8. Health and Safety Code section 11357 states:

11 “(a) Except as authorized by law, every person who possesses any  
12 concentrated cannabis shall be punished by imprisonment in the county jail for a  
13 period of not more than one year or by a fine of not more than five hundred dollars  
14 (\$500), or by both such fine and imprisonment, or shall be punished by  
imprisonment in the state prison.”

15 9. Health and Safety Code section 11377 states:

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

23 10. California Code of Regulations, title 16, section 1772, states:

24 “For the purpose of denial, suspension, or revocation of a personal or  
25 facility license . . . , a crime or act shall be considered substantially related to the  
26 qualifications, functions or duties of a licensee or registrant if to a substantial  
27 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.”

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**DRUGS**

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2 11. (a) "Methamphetamine" is a Schedule II controlled substance as designated by  
3 Health and Safety Code section 11055(d) (2).

4 (b) "Marijuana" is a Schedule I controlled substance as designed by Health and  
5 Safety Code section 11054(d) (13).

6 **FIRST CAUSE FOR DISCIPLINE**

7 (Prior Misdemeanor Convictions for Possession of Marijuana and DUI)

8 12. Respondent is subject to disciplinary action pursuant to section 4301 for violating  
9 Code section 4301(l) on the basis of the following convictions:

10 a. On or about March 15, 2001, Respondent was convicted of misdemeanor  
11 possession of marijuana in violation of Health and Safety Code section 11357(a), on the basis of a  
12 guilty plea entered in Stanislaus County Superior Court, Case No. 1019821. His conviction was  
13 based on his possession of marijuana in Stanislaus County on or about February 5, 2001.

14 b. On or about April 12, 2002, Respondent was convicted of a misdemeanor  
15 violation of California Vehicle Code section 23152(a), on the basis of a guilty plea entered in  
16 Stanislaus County Superior Court in Case No. 1037703. His conviction was based on his wilful  
17 and unlawful driving of a vehicle while under the influence of an alcoholic beverage.

18 c. On or about December 12, 2008, Respondent was convicted of felony  
19 possession of the controlled substance methamphetamine in violation of Health and Safety Code  
20 section 11377(a), on the basis of a nolo contendere plea entered in Stanislaus County Superior  
21 Court, Case No. 1252795.

22 d. On or about January 15, 2009, Respondent was convicted of misdemeanor  
23 battery in violation of California Penal Code section 242, on the basis of a nolo contendere plea  
24 entered in Stanislaus County Superior Court, Case No. 1251784.

25 e. The convictions set forth above involve crimes or acts substantially related to  
26 the qualifications, functions, or duties of a pharmacy technician.

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**SECOND CAUSE FOR DISCIPLINE**

((Unlawful Possession of a Controlled Substance - Marijuana))

13. Respondent is subject to disciplinary action pursuant to Code section 4301 for violating Code section 4301(j), in that he possessed controlled substances in violation of Code section 4060 and Health and Safety Code sections 11350(a) and 11357(a) as set forth below:

a. On or about February 5, 2001, Respondent unlawfully possessed marijuana in Stanislaus County.

b. On or about October 31, 2008, a Stanislaus County Deputy Sheriff searched Respondent and found marijuana in his possession.

**THIRD CAUSE FOR DISCIPLINE**

((Unlawful Possession of a Controlled Substance - Methamphetamine))

14. Respondent is subject to disciplinary action pursuant to Code section 4301, in that he violated Code section 4301(g) by possessing a controlled substance in violation of Code section 4060 and Health and Safety Code section 11377(a) as set forth below.

a. On or about February 24, 2005, a Stanislaus County Deputy Sheriff searched Respondent and found methamphetamine and a pipe used to smoke methamphetamine in his possession.

b. On or about October 31, 2008, a Stanislaus County Deputy Sheriff searched Respondent and found methamphetamine in his possession.

**FOURTH CAUSE FOR DISCIPLINE**

(Dangerous Use of Alcoholic Beverages)

15. Respondent is subject to disciplinary action pursuant to Code section 4301 for violating Code section 4301(h), in that on or about January 1, 2002, he drove a vehicle under the influence of alcoholic beverages, and to the extent and in a manner dangerous to himself or others.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 (Commission of Act Involving Moral Turpitude or Corruption)

3 16. Respondent is subject to disciplinary action pursuant to Code section 4301 for  
4 violating Code section 4301(f), in that he committed the following acts involving moral turpitude  
5 or corruption:

6 a. On or about December 19, 2008, Respondent used force and violence against  
7 his uncle and elderly grandmother.

8 b. Respondent unlawfully possessed marijuana as set forth in paragraphs 13 (a)  
9 and (b) above.

10 c. Respondent unlawfully possessed methamphetamine as set forth in paragraphs  
11 14 (a) and (b) above.

12 d. Respondent drove a vehicle under the influence of alcohol as set forth in  
13 paragraph 15 above.

14 **PRAYER**

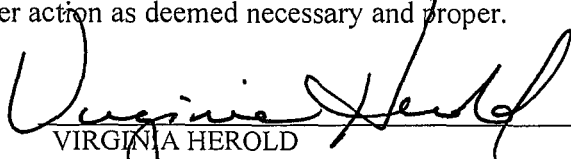
15 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
16 and that following the hearing, the Board of Pharmacy issue a decision:

17 1. Revoking or suspending Pharmacy Technician License Number 50148, issued to  
18 Donald Edward Bendele, III.

19 2. Ordering Donald Edward Bendele, III, to pay the Board of Pharmacy the reasonable  
20 costs of the investigation and enforcement of this case, pursuant to Business and Professions  
21 Code section 125.3;

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

23 DATED: 1/26/10

24   
25 VIRGINIA HEROLD  
26 Executive Officer  
27 Board of Pharmacy  
28 Department of Consumer Affairs  
State of California  
Complainant

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