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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. 3288

12 **NICKOLAS HERCULES SPANOS, III**
13 306 Shady Acres Drive
Lodi, California 95242

OAH Case No.

A C C U S A T I O N

14 Original Pharmacy Technician Registration No.
15 TCH 10499

16 Respondent.

17
18 Complainant alleges:

19 PARTIES

- 20 1. Virginia Herold (Complainant) brings this Accusation solely in her official
21 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
22 2. On or about November 8, 1993, the Board of Pharmacy issued Original
23 Pharmacy Technician Registration No. TCH 10499 (License) to Nickolas Hercules Spanos, III
24 (Respondent). The License will expire on October 31, 2009, unless renewed.

25 JURISDICTION

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

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4. Code section 4300, in pertinent part, 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.

....

(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure.

5. Section 4301 of the Code, in pertinent part, 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.

....

(k) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self administration of any dangerous drug or alcoholic beverage, or any combination of those substances.

(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

1 21 of the United States Code regulating controlled substances or of a violation of
2 the statutes of this state regulating controlled substances or dangerous drugs shall
3 be conclusive evidence of unprofessional conduct. In all other cases, the record of
4 conviction shall be conclusive evidence only of the fact that the conviction
5 occurred. The board may inquire into the circumstances surrounding the
6 commission of the crime, in order to fix the degree of discipline or, in the case of
7 a conviction not involving controlled substances or dangerous drugs, to determine
8 if the conviction is of an offense substantially related to the qualifications,
9 functions, and duties of a licensee under this chapter. A plea or verdict of guilty
10 or a conviction following a plea of nolo contendere is deemed to be a conviction
11 within the meaning of this provision. The board may take action when the time
12 for appeal has elapsed, or the judgment of conviction has been affirmed on appeal
13 or when an order granting probation is made suspending the imposition of
14 sentence, irrespective of a subsequent order under Section 1203.4 of the Penal
15 Code allowing the person to withdraw his or her plea of guilty and to enter a plea
16 of not guilty, or setting aside the verdict of guilty, or dismissing the accusation,
17 information, or indictment.

18

19 6.. Code section 4022 provides, in pertinent part,

20 "Dangerous drug" or "dangerous device" means any drug or device
21 unsafe for self-use in humans or animals, and includes the following:

22 (a) Any drug that bears the legend: "Caution: federal law
23 prohibits dispensing without prescription," "Rx only," or words of similar import

24 7. 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
28 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.

8. California Code of Regulations, title 16, 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

1 perform the functions authorized by his license or registration in a manner
2 consistent with the public health, safety, or welfare.

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

7 FIRST CAUSE FOR DISCIPLINE

8 (Criminal Conviction)

9 10. Respondent is subject to disciplinary action under Code section 4301,
10 subd. (1) in that Respondent has been convicted of a crime substantially related to the
11 qualifications, functions and duties of a pharmacist technician. The circumstances are as
12 follows:

13 11. On or about, October 17, 2008, in the Superior Court of California, County
14 of Sacramento, in the case entitled, *People of the State of California v. Nickolas Hercules*
15 *Spanos, III* (Super. Ct. Sacramento County, 2008, Case No. 08F02053), Respondent was
16 convicted on his plea of guilty of violating Vehicle Code section 23152(b) (Driving With a Blood
17 Alcohol Level of 0.08 or higher with three prior violations of Vehicle Code section 23152 and/or
18 23103/23103.5 within the preceding ten years), a felony, and Vehicle Code section 14601.2(a)
19 (Driving with a Suspended License), a misdemeanor.

20 12. The circumstances of the crime are that on or about March 17, 2008,
21 Officers McGinity of the California Highway Patrol responded to a report of a vehicle driving
22 erratically. Officer McGinity responded to the report. Officer McGinity located the vehicle and
23 observed the vehicle driving erratically. Officer McGinity initiated an enforcement stop of the
24 vehicle. As Officer McGinity approached the stopped vehicle, the officer smelled a strong odor
25 of alcohol on the Respondent. Officer McGinity observed Respondent to be sleepy with slow
26 and clumsy movements and slurred speech, and, at times, unintelligible. Officer McGinty
27 performed filed sobriety tests upon the Respondent and concluded that the Respondent was under
28 the influence of alcohol and/or drugs. Respondent was placed under arrest and searched. The

1 search discovered several prescription type drug tablets and pills in Respondent's pocket.
2 Respondent indicated that the tablets were "Valium¹" and he may also have some "Soma.²" A
3 blood alcohol breath test was performed upon Respondent with the results being a 0.09% blood
4 alcohol content. A blood sample taken from Respondent at the time of his booking and later
5 tested confirmed Respondent's blood alcohol content of 0.09% and a positive result for
6 meprobamate³, carisoprodol, diazepam and benzoylecgonine (cocaine metabolite)⁴.

7 13. On or about November 3, 1998, Respondent violated Vehicle Code section
8 23152(a) (Driving Under the Influence of Alcohol and/or Drugs), and which resulted in a
9 conviction.

10 14. On or about February 9, 2002, Respondent violated Vehicle Code section
11 23152(a) (Driving Under the Influence of Alcohol and/or Drugs), and which resulted in a
12 conviction.

13 15. On or about March 27, 2004, Respondent violated Vehicle Code section
14 23152(a) (Driving Under the Influence of Alcohol and/or Drugs), and which resulted in a
15 conviction.

16 SECOND CAUSE FOR DISCIPLINE

17 (Corrupt Acts - Acts involving moral turpitude, dishonesty, fraud, deceit or corruption)

18 16. Respondent is subject to disciplinary action under Code section 4301,
19 subd. (f) in that Respondent engaged in acts involving moral turpitude, dishonesty, fraud, deceit

20 _____
21 1. Valium is a brand name of Diazepam, a Schedule IV controlled substance as designated
22 by Health and Safety Code section 11057(d)(9), and is a dangerous drug within the meaning of
Code section 4022, in that under federal law it requires a prescription.

23 2. Soma is a brand name of Carisoprodol and is a dangerous drug pursuant to Code section
24 4022 in that under federal law it requires a prescription.

25 3. Meprobamate is a Schedule IV controlled substance as designated by Health and Safety
26 Code section 11057(d)(18), and is a dangerous drug within the meaning of Code section 4022,
in that under federal law it requires a prescription

27 4. Cocaine is a Schedule II controlled substance as designated by Health and Safety Code
28 section 11056(b)(6), and is a dangerous drug within the meaning of Code section 4022, in that
under federal law it requires a prescription

1 or corruption. The circumstances are detailed above in paragraphs 12 -15.

2 THIRD CAUSE FOR DISCIPLINE

3 (Unlawful Self-Administration of Controlled Substances or Dangerous Drugs)

4 17. Respondent is subject to disciplinary action under Code section 4301,
5 subd. (h) in that Respondent unlawfully self-administered controlled substances and/or dangerous
6 drugs and/or alcoholic beverages in a dangerous or injurious manner. The circumstances are
7 detailed above in paragraphs 12-15.

8 FORTH CAUSE FOR DISCIPLINE

9 (Conviction Involving Alcohol and/or Dangerous Drugs)

10 18. Respondent is subject to disciplinary action under Code section 4301,
11 subd. (k) in that Respondent was convicted of more than one misdemeanor or any felony
12 involving the use, consumption, or self administration of any dangerous drug or alcoholic
13 beverage, or any combination of those substances. The circumstances are detailed above in
14 paragraphs 11 - 15.

15 PRAYER

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

18 1. Revoking or suspending Original Pharmacy Technician Registration No.
19 TCH 10499, issued to Nickolas Hercules Spanos, III;

20 2. Ordering Nickolas Hercules Spanos, III, to pay the Board of Pharmacy the
21 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
22 Professions Code section 125.3;

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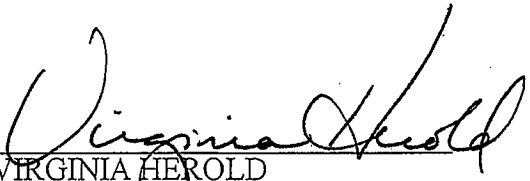
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3. Taking such other and further action as deemed necessary and proper.

DATED: 10/27/09


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

SA2009308405

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