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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. 3476

12 **TOMAS TOPETE**
13 **2797 Ulric Street**
14 **San Diego, CA 92111**

ACCUSATION

15 **Pharmacy Technician Registration No.**
16 **TCH 5914**

17 Respondent.

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 March 19, 1993, the Board of Pharmacy issued Pharmacy Technician
24 Registration No. TCH 5914 to Tomas Topete (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 July 31, 2010, unless renewed.

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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, or 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 of the Code states:

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

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

14 (1) Suspending judgment.

15 (2) Placing him or her upon probation.

16 (3) Suspending his or her right to practice for a period not exceeding one year.

17 (4) Revoking his or her license.

18 (5) Taking any other action in relation to disciplining him or her as the board in its
19 discretion may deem proper.

20 (c) The board may refuse a license to any applicant guilty of unprofessional conduct.

21 STATUTORY PROVISIONS

22 6. Section 4301 of the Code states:

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

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(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.

....

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter...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 or verdict 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.

....

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

7. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

....

(2) Conviction of a crime.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

1 (b) Notwithstanding any other provisions of this code, the provisions of this division shall
2 govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2)
3 of subdivision (a).

4 (c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good
5 moral character or any similar ground relating to an applicant's character, reputation, personality,
6 or habits.

7 8. Section 482 of the Code states:

8 Each board under the provisions of this code shall develop criteria to evaluate the
9 rehabilitation of a person when:

10 (a) Considering the denial of a license by the board under Section 480; or

11 (b) Considering suspension or revocation of a license under Section 490.

12 Each board shall take into account all competent evidence of rehabilitation furnished by the
13 applicant or licensee."

14 9. Section 490 of the Code provides, in pertinent part, that a board may suspend or
15 revoke a license on the ground that the licensee has been convicted of a crime substantially
16 related to the qualifications, functions, or duties of the business or profession for which the
17 license was issued.

18 10. Section 493 of the Code states:

19 Notwithstanding any other provision of law, in a proceeding conducted by a board within
20 the department pursuant to law to deny an application for a license or to suspend or revoke a
21 license or otherwise take disciplinary action against a person who holds a license, upon the
22 ground that the applicant or the licensee has been convicted of a crime substantially related to the
23 qualifications, functions, and duties of the licensee in question, the record of conviction of the
24 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
25 and the board may inquire into the circumstances surrounding the commission of the crime in
26 order to fix the degree of discipline or to determine if the conviction is substantially related to the
27 qualifications, functions, and duties of the licensee in question.

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1 "As used in this section, "license" includes "certificate," "permit," "authority," and
2 "registration."

3 11. Section 4313 of the Code states:

4 In determining whether to grant an application for licensure or whether to discipline or
5 reinstate a license, the board shall give consideration to evidence of rehabilitation. However,
6 public protection shall take priority over rehabilitation and, where evidence of rehabilitation and
7 public protection are in conflict, public protection shall take precedence.

8 **REGULATIONS**

9 12. California Code of Regulations, title 16, section 1769(b) states:

10 When considering the suspension or revocation of a facility or personal license on the
11 ground that the licensee or the registrant has been convicted of a crime, the board in evaluating
12 the rehabilitation of such person and her present eligibility for a license will consider the
13 following:

14 (1) The nature and severity of the act(s) or offense(s).

15 (2) Total criminal record.

16 (3) Time that has elapsed since the commission of the act(s) or offense(s).

17 (4) Whether the licensee has complied with all terms of parole, probation, restitution, or
18 any other sanctions lawfully imposed against the licensee.

19 (5) Evidence, if any, of rehabilitation submitted by the licensee.

20 13. California Code of Regulations, title 16, section 1770, states:

21 For the purpose of denial, suspension, or revocation of a personal or facility license
22 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
23 crime or act shall be considered substantially related to the qualifications, functions or duties of a
24 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
25 licensee or registrant to perform the functions authorized by his license or registration in a manner
26 consistent with the public health, safety, or welfare.

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1 COST RECOVERY

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

6 FACTS

7 15. On or about November 22, 2005, in a criminal proceeding entitled *People v. Tomas*
8 *Topete*, in the Superior Court of California, County of San Diego, Case No. CD 194852,
9 Respondent was convicted by his plea of guilty to violation of Penal Code section 422 (making a
10 criminal threat with intent to terrorize), a felony.

11 16. Respondent was sentenced to three years formal probation, commitment to the
12 custody of the Sheriff for 365 days, payment of fines and fees in the amount of \$839.00, payment
13 of all medical/psychological therapy expenses incurred by the victim, payment of restitution to
14 the victim in an amount to be determined, attend and successfully complete a substance abuse
15 counseling program, totally abstain from the use of alcohol, not own or possess a weapon or
16 firearm, not use or possess any controlled substance without a valid prescription and submit to
17 testing for the use of controlled substances/alcohol when required by the probation or law
18 enforcement officer, attend and successfully complete anger management and individual
19 counseling, comply with all orders of the family court (including restraining orders), no contact
20 with victim, successfully complete a batterer's program at least one year in duration involving
21 weekly, minimum two-hour sessions, comply with protective order, obey all court orders.

22 17. As a result of this plea arrangement, all other charges (violation of Penal Code section
23 245(a) (1)-assault with a deadly weapon/force likely to cause great bodily injury; violation of
24 Penal Code section 273.6(a) - disobeying a court obtained to prevent domestic violence and
25 disturbance of the peace; and violation of Vehicle Code section 20002(a) - hit and run) were
26 dismissed.

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1 18. The circumstances of the crime are that on or about October 30, 2005, Respondent
2 chased the victim in his vehicle, ramming her vehicle with his multiple times while travelling at
3 high speeds through city streets and neighborhoods. Respondent attempted to force the victim off
4 the road with his vehicle, and tried to force the victim into the cars parked alongside the road.
5 When the victim stopped her vehicle near her boyfriend's house, Respondent rammed it again.
6 The victim yelled for her sister to call the police, to which Respondent replied "You're going to
7 call the cops? I might as well fuck you up then." The victim's boyfriend arrived on the scene,
8 distracting Respondent and providing the victim with an opportunity to escape in her vehicle.

9 19. The victim and Respondent had ended a fifteen year cohabiting relationship in
10 September 2004. They have two children from this relationship.

11 20. The victim reported that she was afraid of the Respondent. She stated that he
12 continually disregarded the restraining order. (The police report states this was evident by the
13 active misdemeanor warrant for his arrest). The victim stated that although she did not report it,
14 Respondent has attempted to run her off the road in the past, and had hit her numerous times.

15 21. During the investigation of this matter, the San Diego police discovered that
16 Respondent had an active warrant for violation of Penal Code section 166(c)(1); willful violation
17 of a protective order issued in a pending criminal proceeding involving domestic violence, or
18 issued as a condition of probation after a conviction in a criminal proceeding involving domestic
19 violence. Respondent was arrested for the warrant, for violation of Domestic Violence probation
20 (San Diego prosecutor's case number M864670DV).

21 22. As a result of this matter, probation as to San Diego Superior Court Case No.
22 M864670DV was revoked, and Respondent was remanded into custody.

23 **FIRST CAUSE FOR DISCIPLINE**

24 (November 22, 2005 Criminal Conviction for making Criminal Threats on October 30, 2005)

25 23. Respondent is subject to disciplinary action under Code sections 490 and 4301(1), in
26 that he was convicted of a crime substantially related to the duties, functions, and qualifications of
27 a pharmacy technician, as described in paragraphs 15-22, above.

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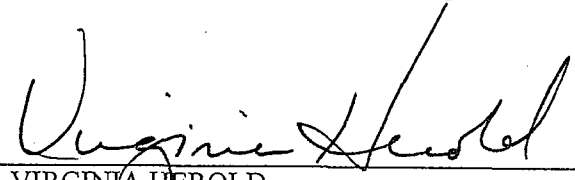
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PRAYER

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 No. TCH 5914, issued to Respondent Tomas Topete.
2. Ordering Respondent Tomas Topete 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: 4/6/10



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

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