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

12 In the Matter of the Accusation Against:

Case No. 3502

13 **ANDRE CARL ROBINSON**
14 **8450 Via Mallorca, Unit 232**
La Jolla, CA 92037

A C C U S A T I O N

15 **Pharmacy Technician Registration**
16 **No. TCH 70130**

17 Respondent.

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 August 24, 2006, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 70130 to Andre Robinson (Respondent). The Pharmacy Technician
24 Registration will expire on December 31, 2011, 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.

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

3 (b) Any device that bears the statement: "Caution: federal law restricts this device to
4 sale by or on the order of a _____," "Rx only," or words of similar import, the
5 blank to be filled in with the designation of the practitioner licensed to use or order
6 use of the device.

7 (c) Any other drug or device that by federal or state law can be lawfully dispensed
8 only on prescription or furnished pursuant to Section 4006.

9 10. Section 4059 of the Code states, in pertinent part:

11 (a) A person may not furnish any dangerous drug, except upon the prescription of a
12 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
13 pursuant to Section 3640.7. A person may not furnish any dangerous device, except
14 upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or
15 naturopathic doctor pursuant to Section 3640.7.

16 11. Section 4060 of the Code states:

17 No person shall possess any controlled substance, except that furnished to a
18 person upon the prescription of a physician, dentist, podiatrist, optometrist,
19 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant
20 to a drug order issued by a certified nurse midwife pursuant to Section 2746.51, a
21 nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to
22 Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist
23 pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
24 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section
25 shall not apply to the possession of any controlled substance by a manufacturer,
26 wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist,
27 veterinarian, naturopathic doctor, certified nurse midwife, nurse practitioner, or
28 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.

12. 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:

...

(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.

...

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1 (l) The conviction of a crime substantially related to the qualifications, functions,
2 and duties of a licensee under this chapter. The record of conviction of a violation of
3 Chapter 13 (commencing with Section 801) of Title 21 of the United States Code
4 regulating controlled substances or of a violation of the statutes of this state regulating
5 controlled substances or dangerous drugs shall be conclusive evidence of
6 unprofessional conduct. In all other cases, the record of conviction shall be conclusive
7 evidence only of the fact that the conviction occurred. The board may inquire into the
8 circumstances surrounding the commission of the crime, in order to fix the degree of
9 discipline or, in the case of a conviction not involving controlled substances or
10 dangerous drugs, to determine if the conviction is of an offense substantially related to
11 the qualifications, functions, and duties of a licensee under this chapter. A plea or
12 verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a
13 conviction within the meaning of this provision. . . .

14

15 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
16 abetting the violation of or conspiring to violate any provision or term of this chapter or
17 of the applicable federal and state laws and regulations governing pharmacy, including
18 regulations established by the board or by any other state or federal regulatory agency.

19

20 12. Section 4313 of the Code states:

21 In determining whether to grant an application for licensure
22 or whether to discipline or reinstate a license, the board shall give
23 consideration to evidence of rehabilitation. However, public
24 protection shall take priority over rehabilitation and, where
25 evidence of rehabilitation and public protection are in conflict,
26 public protection shall take precedence.

27 **REGULATIONS**

28 13. California Code of Regulations, title 16, section 1769 states, in pertinent part:

(b) When considering the suspension or revocation of a facility or a personal
license on the ground that the licensee or the registrant has been convicted of a crime,
the board, in evaluating the rehabilitation of such person and his present eligibility for
a license will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with all terms of parole, probation,
restitution or any other sanctions lawfully imposed against the licensee.
- (5) Evidence, if any, of rehabilitation submitted by the licensee.

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1 14. California Code of Regulations, title 16, section 1770 states:

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

6 **COST RECOVERY**

7 15. Section 125.3 of the Code states, 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 16. Suboxone, the brand name for Buprenorphine and Naloxone, is a Schedule III
13 controlled substance as designated by 21 Code of Federal Regulations section 1308.13(e)(2)(i),
14 and a dangerous drug pursuant to Code section 4022. Suboxone is used in the treatment of opiate
15 addiction.

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(December 21, 2009 Criminal Conviction –
18 Disturbing the Peace on October 30, 2008)**

18 17. Grounds exist to revoke Respondent's license pursuant to Code section 4300,
19 section 4301, subdivision (l) as well as 490 and 493 for a criminal conviction that is substantially
20 related to the qualifications, functions, and duties of a Pharmacy Technician. On August 7, 2009,
21 in a case entitled *People vs. Andre Robinson* (San Diego Superior Court Case No. 084503),
22 Respondent was convicted by a plea of guilty to a violation of Penal Code section 647(b)
23 (prostitution), a misdemeanor. After timely completion of a prostitution impact program, HIV
24 education, and HIV testing, on December 21, 2009, Respondent was permitted to withdraw this
25 guilty plea and instead pled guilty to a violation of Penal Code section 415(3) (disturbing the
26 peace with offensive words in a public place likely to provoke a violent reaction), a misdemeanor.

27 18. The facts and circumstances surrounding this cause for discipline are as
28 follows: On October 30, 2008, the police were conducting an undercover vice operation.

1 Respondent attempted to solicit an undercover officer for prostitution. The Officer posted a
2 phone number on Craig's list. Respondent texted her and stated that he wanted to trade suboxone
3 ("its like ecstasy") for sex. The undercover officer texted back and asked Respondent to call her.
4 Robinson called her and asked if she wanted to trade sex for the pills. He told her he had 4 to 6
5 pills and that she could get "30 to 50 dollars per pill." The undercover officer asked him to bring
6 6 pills and Respondent asked to see her. The undercover officer gave Respondent the location
7 where they were operating from. Respondent arrived, sat on the bed, and pulled out a bag with
8 six orange pills that were later identified as suboxone. He stated that he wanted sex for the pills,
9 at which point he was arrested. In his plea agreement, respondent admitted that he "did solicit an
10 act of prostitution."

11 19. On December 21, 2009, upon the change of his plea, Respondent remained on the
12 previously imposed three years informal probation, including the prostitution intervention
13 program, H.I.V. education, and \$593.00 in fines and fees.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Possession of Controlled Substances Without a Prescription)**

16 17. Grounds exist to revoke Respondent's license pursuant to Code section 4300, section
17 4060, section 4301, subdivisions (j) and (o) for possession of a controlled substance without a
18 prescription. The facts supporting this cause for discipline are described in paragraph 18 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 70130,
23 issued to Andre Robinson.

24 2. Ordering Andre Robinson 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;

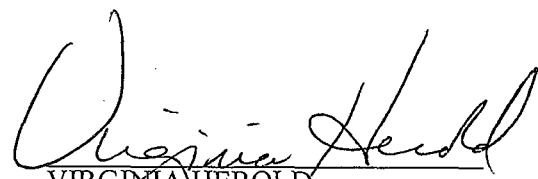
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3. Taking such other and further action as deemed necessary and proper.

DATED: 5/11/10



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

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