

1 EDMUND G. BROWN JR.
Attorney General of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 ELENA L. ALMANZO
Deputy Attorney General
4 State Bar No. 131058
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 322-5524
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

11
12 In the Matter of the Accusation Against:

Case No. 3561

13
14 **JOSEPH A. SHEPPARD**
3755 Argonaut
15 Rocklin, CA 95677

A C C U S A T I O N

16 **Pharmacy Technician Registration**
17 **No. TCH 61325**

18 Respondent.

19 Complainant alleges:

20 **PARTIES**

- 21 1. Virginia Herold (Complainant) brings this Accusation solely in her official
22 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 23 2. On or about March 29, 2005, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 61325 to Joseph A. Sheppard (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 December 31, 2012, unless renewed.

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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:

(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.

(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy, including, but not limited to, the following:

(1) Medical or psychiatric evaluation.

(2) Continuing medical or psychiatric treatment.

(3) Restriction of type or circumstances of practice.

(4) Continuing participation in a board-approved rehabilitation program.

(5) Abstention from the use of alcohol or drugs.

(6) Random fluid testing for alcohol or drugs.

(7) Compliance with laws and regulations governing the practice of pharmacy.

(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary certificate of licensure for any violation of the terms and conditions of probation. Upon satisfactory completion of probation, the board shall convert the probationary certificate to a regular certificate, free of conditions.

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

6 5. Section 4301 of the Code states in pertinent part:

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

11 (f) The commission of any act involving moral turpitude, dishonesty,
12 fraud, deceit, or corruption, whether the act is committed in the course of relations as
13 a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

14 (g) Knowingly making or signing any certificate or other document that
15 falsely represents the existence or nonexistence of a state of facts.

16 (h) The administering to oneself, of any controlled substance, or the use
17 of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be
18 dangerous or injurious to oneself, to a person holding a license under this chapter, or
19 to any other person or to the public, or to the extent that the use impairs the ability of
20 the person to conduct with safety to the public the practice authorized by the license.

21 (j) The violation of any of the statutes of this state, or any other state, or
22 of the United States regulating controlled substances and dangerous drugs.

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

26 (l) The conviction of a crime substantially related to the qualifications,
27 functions, and duties of a licensee under this chapter. The record of conviction of a
28 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
States Code regulating controlled substances or of a violation of the statutes of this
state regulating controlled substances or dangerous drugs shall be conclusive
evidence of unprofessional conduct. In all other cases, 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.

(o) Violating or attempting to violate, directly or indirectly, or assisting in
or abetting the violation of or conspiring to violate any provision or term of this
chapter or of the applicable federal and state laws and regulations governing

1 pharmacy, including regulations established by the board or by any other state or
2 federal regulatory agency.

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

7 7. Section 4060 of the Code states:

8 No person shall possess any controlled substance, except that furnished to
9 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
10 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant
11 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a
12 nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to
13 Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist
14 pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
15 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section
16 shall not apply to the possession of any controlled substance by a manufacturer,
17 wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist,
18 veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or
19 physician assistant, when in stock in containers correctly labeled with the name and
20 address of the supplier or producer.

21 Nothing in this section authorizes a certified nurse-midwife, a nurse
22 practitioner, a physician assistant, or a naturopathic doctor, to order his or her own
23 stock of dangerous drugs and devices.

24 8. Section 4022 of the Code states:

25 "Dangerous drug" or "dangerous device" means any drug or device
26 unsafe for self-use in humans or animals, and includes the following: (a) Any drug
27 that bears the legend: "Caution: federal law prohibits dispensing without
28 prescription," "Rx only," or words of similar import.

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

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

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

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1 **DRUGS**

2 10. "Cocaine" is a Schedule II controlled substance as designated by Health and
3 Safety Code section 11055(b)(6).

4 11. "Viagra" is a dangerous drug as defined by Business and Professions Code section
5 4022.

6 12. "Cialis" is a dangerous drug as defined by Business and Professions Code section
7 4022.

8 **FIRST CAUSE FOR DISCIPLINE**
9 **(Conviction)**

10 13. Respondent is subject to disciplinary action under section 490 and 4301,
11 subdivisions (k) and (l) in that he was convicted of a crime substantially related to the practice of
12 a pharmacy technician. The circumstances are as follows:

13 14. On or about January 30, 2009, in *People v. Joseph Anthony Sheppard*, Superior
14 Court of California, County of Santa Clara; Case No. BB836922, Respondent was convicted on
15 his plea of guilty to a violation of no contest to a violation of Penal Code section 666 (petty theft
16 with specified priors).

17 15. The circumstances were that on or about October 29, 2008, Respondent was
18 working at the Safeway Pharmacy in Mountain View when he was suspected of stealing Viagra
19 and Cialis. Respondent admitted to Safeway personnel that he had taken Viagra and Cialis from
20 three different Safeway stores.

21 **SECOND CAUSE FOR DISCIPLINE**
22 **(Possession of a Controlled Substance)**

23 16. Respondent is subject to disciplinary action under sections 4060 and 4301
24 subdivisions (j) and (o) in that he illegally possessed controlled substances. The circumstances
25 are set forth above in paragraph 14 and 15, above and as follows:

26 17. On or about February 16, 2008, Respondent was observed driving at a high rate of
27 speed and was stopped by the California Highway Patrol. Respondent was observed to be under
28

1 the influence of alcohol. A search incident to arrest uncovered that Respondent was in possession
2 of cocaine.

3 **THIRD CAUSE FOR DISCIPLINE**
4 **(Use of Alcohol or Drugs in a Manner Dangerous to Self or Others)**

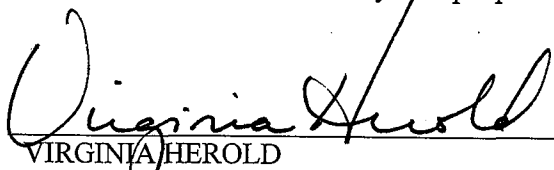
5 18. Respondent is subject to disciplinary action under section 4301(h) in that he used
6 alcohol or drugs in a manner dangerous to himself or others as set forth in paragraphs 14 and 15
7 above.

8 **PRAYER**

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

- 11 1. Revoking or suspending Pharmacy Technician Registration Number TCH 61325,
12 issued to Joseph A. Sheppard;
- 13 2. Ordering Joseph A. Sheppard to pay the Board of Pharmacy the reasonable costs
14 of the investigation and enforcement of this case, pursuant to Business and Professions Code
15 section 125.3; and,
- 16 3. Taking such other and further action as deemed necessary and proper.

17 DATED: 1/5/11



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

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