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

11  
12 Case No. 3577

13 In the Matter of the Accusation Against:

14 MICHAEL JOSEPH MITOSINKA,  
1589 S. La Brucherie Road  
El Centro, CA 92243

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

16 Pharmacy Technician Registration No. TCH  
80095

17 Respondent.

18  
19  
20 Complainant alleges:

21 **PARTIES**

22 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
23 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

24 2. On or about October 29, 2008, the Board of Pharmacy issued Pharmacy Technician  
25 Registration Number TCH 80095 to Michael Joseph Mitosinka, TCH (Respondent). The  
26 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges  
27 brought herein and will expire on May 31, 2012, unless renewed.  
28

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, 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, subdivision (a) of the Code states in pertinent part, "every license  
10 issued may be suspended or revoked."

11 **STATUTORY AND REGULATORY PROVISIONS**

12 6. Section 482 of the Code states:

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

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

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

17 Each board shall take into account all competent evidence of rehabilitation  
18 furnished by the applicant or licensee.

19 7. Section 4060 of the Code states:

20 No person shall possess any controlled substance, except that furnished to a  
21 person upon the prescription of a physician, dentist, podiatrist, optometrist,  
22 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished  
23 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section  
24 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant  
25 pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a  
26 pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv)  
27 of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This  
28 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.

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

4 8. Section 4301 of the Code states:

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

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

15 .....

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

18 ....

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

24 .....

### 25 COST RECOVERY

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

### 29 DRUG

30 10. Methamphetamine is a Schedule II controlled substance as designated by Health  
31 and Safety Code section 11055(d)(2), and is a dangerous drug pursuant to Business and  
32 Professions Code section 4022.

1 **FACTUAL ALLEGATIONS**

2 11. On or about April 9, 2009, an officer from El Centro Sheriff's Department received a  
3 dispatch of a report of a disturbance in El Centro, California. The officer arrived at the scene and  
4 identified Respondent as the subject of the disturbance. During the conversation, Respondent  
5 admitted to the officer that he had not slept in two days and that he had been yelling at his parents  
6 to leave him alone about his drug use. Respondent also admitted that he had been using  
7 methamphetamine for about one month and that he had last used "on Tuesday." Respondent  
8 admitted that he had a scale, some bags, and a broken glass pipe in his room. Respondent stated  
9 that he wanted help for his drug problem. The officer collected 1 glass smoking device with  
10 residue, 1 digital scale with residue, 2 packs of clear cellophane bags and 1 red bag. Respondent  
11 was arrested for violation of Health and Safety Code section 11364, possession of controlled  
12 substance paraphernalia and Penal Code section 135, destroying/concealing evidence.  
13 Respondent was transported and booked into custody at the Imperial County Jail.

14 12. On August 3, 2009, in the criminal proceeding entitled *People of the State of*  
15 *California v. Michael Joseph MitoSinka*, in Imperial Superior Court case number ECM29575,  
16 Respondent pled guilty to violation of Health and Safety Code section 11364, possession of  
17 controlled substance paraphernalia. On August 24, 2009, the Court ordered Respondent to enroll  
18 and complete the diversion drug program pursuant to Penal Code section 1000. Respondent's  
19 sentence was suspended and judgment was deferred pending his completion of the drug program.

20 **FIRST CAUSE FOR DISCIPLINE**

21 **(Unprofessional Conduct – Administering Controlled Substances to Oneself)**

22 13. Respondent is subject to disciplinary action under section 4301(h) of the Code in that  
23 Respondent administered methamphetamine to himself as evidenced by his admissions, as is set  
24 forth in paragraphs 11-12, incorporated herein by reference.

25 **SECOND CAUSE FOR DISCIPLINE**

26 **(Unprofessional Conduct-Violating Laws Regulating Controlled Substances)**

27 14. Respondent is subject to disciplinary action under section 4301(j) of the Code in that  
28 Respondent violated the California Uniform Controlled Substances Act (Health and Safety Code

1 sections 11000, et seq.) as evidenced by his admissions, as is more fully described in paragraphs  
2 11-12, incorporated herein by reference.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct-Violation of the Chapter)**

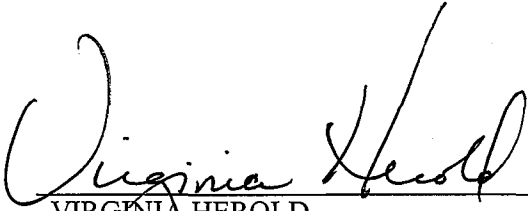
5 15. Respondent is subject to disciplinary action under 4301(o) of the Code for violation  
6 of the Pharmacy Act in that Respondent used methamphetamine, in violation of Code section  
7 4060 as is more fully described in paragraphs 11-12, incorporated herein by reference.

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 80095,  
12 issued to Michael Joseph Mitosinka, TCH;
- 13 2. Ordering Michael Joseph Mitosinka to pay the Board of Pharmacy the reasonable  
14 costs of the investigation and enforcement of this case, pursuant to Business and Professions  
15 Code section 125.3;
- 16 3. Taking such other and further action as deemed necessary and proper.

17  
18  
19 DATED: 8/23/10

  
20 VIRGINIA HEROLD  
21 Executive Officer  
22 Board of Pharmacy  
23 Department of Consumer Affairs  
24 State of California  
25 Complainant

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