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

11 Case No. 3597

12 In the Matter of the Accusation Against:

13 ANGELA BERGHOUSE
1060 Olive Terrance
14 Ramona, CA 92065

ACCUSATION

15 Pharmacy Technician Registration No. TCH 51956

16 Respondent.

17
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 December 29, 2003, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 51956 to Angela Berghouse (Respondent). The Pharmacy Technician
24 Registration was in full force and effect at all times relevant to the charges brought herein and
25 will expire on July 31, 2011, unless renewed.

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1 the record of conviction of the crime shall be conclusive evidence of the fact that the
2 conviction occurred, but only of that fact, and the board may inquire into the
3 circumstances surrounding the commission of the crime in order to fix the degree of
4 discipline or to determine if the conviction is substantially related to the qualifications,
5 functions, and duties of the licensee in question.

6 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority, and
7 'registration.'"

8 9. Section 4022 of the Code states:

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

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

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

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

19 10. Section 4059 of the Code provides in pertinent part that a person may not furnish any
20 dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist,
21 veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any
22 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist,
23 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

24 11. Section 4060 of the Code states:

25 "No person shall possess any controlled substance, except that furnished to a person
26 upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or
27 naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order
28 issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner

1 pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1, or
2 naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either
3 subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5)
4 of, subdivision (a) of Section 4052. This section shall not apply to the possession of any
5 controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician,
6 podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife,
7 nurse practitioner, or physician assistant, when in stock in containers correctly labeled
8 with the name and address of the supplier or producer.

9 “Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a
10 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous
11 drugs and devices.”

12 12. Section 4301 of the Code states:

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

17 “. . . .

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

21 “. . . .

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

27 “. . . .

28

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

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

6 “(l) The conviction of a crime substantially related to the qualifications, functions,
7 and duties of a licensee under this chapter. The record of conviction of a violation of
8 Chapter 13 (commencing with Section 801) of Title 21 of the United States Code
9 regulating controlled substances or of a violation of the statutes of this state regulating
10 controlled substances or dangerous drugs shall be conclusive evidence of unprofessional
11 conduct. In all other cases, the record of conviction shall be conclusive evidence only of
12 the fact that the conviction occurred. The board may inquire into the circumstances
13 surrounding the commission of the crime, in order to fix the degree of discipline or, in the
14 case of a conviction not involving controlled substances or dangerous drugs, to determine
15 if the conviction is of an offense substantially related to the qualifications, functions, and
16 duties of a licensee under this chapter. A plea or verdict of guilty or a conviction
17 following a plea of nolo contendere is deemed to be a conviction within the meaning of
18 this provision. The board may take action when the time for appeal has elapsed, or the
19 judgment of conviction has been affirmed on appeal or when an order granting probation
20 is made suspending the imposition of sentence, irrespective of a subsequent order under
21 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty
22 and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the
23 accusation, information, or indictment.

24 “....

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

1 18. Title 16, California Code of Regulations, section 1769, states:

2 “....

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

7 “(1) Nature and severity of the act(s) or offense(s).

8 “(2) Total criminal record.

9 “(3) The time that has elapsed since commission of the act(s) or offense(s).

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

12 “(5) Evidence, if any, of rehabilitation submitted by the licensee.”

13 **COST RECOVERY**

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

18 **DRUGS**

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

22 21. OxyContin, the controlled-release oral formulation of Oxycodone, is a Schedule II
23 controlled substance as designated by Health and Safety Code section 11055, subdivision
24 (b)(1)(N), and is a dangerous drug pursuant to Business and Professions Code section 4022.

25 22. Suboxone, a brand name for buprenorphine and naloxone, is Schedule III controlled
26 substance as designated by 21 Code of Federal Regulations 1308.13(e)(2)(i) and Health and
27 Safety Code section 11058(d), and is a dangerous drug pursuant to Business and Professions
28 Code section 4022. Suboxone is used to treat opioid addiction.

1 syringes and Xanax pills. The Dyson vacuum cleaner was located in the middle of the kitchen.
2 The officers then arrested both Respondent and her boyfriend.

3 d. As a result of the conviction, on or about September 4, 2007, Respondent was
4 placed on summary probation for three years, sentenced to serve six days in the county jail (with
5 credit for time served), required to stay away from Target, and ordered to pay all fines and fees.

6 **SECOND CAUSE FOR DISCIPLINE**

7 (Unprofessional Conduct – Dishonesty and Deceit)

8 25. Respondent is subject to disciplinary action for unprofessional conduct under section
9 4301(f) of the Code in that Respondent's burglary constitutes dishonesty and deceit, as set forth
10 in paragraph 24, which is incorporated here by this reference.

11 **THIRD CAUSE FOR DISCIPLINE**

12 (July 29, 2008 Conviction for Being Under the Influence of a Controlled
13 Substance on June 14, 2008)

14 26. Respondent is subject to disciplinary action under sections 490 and 4301(l) in that she
15 was convicted of a crime that is substantially related to the qualifications, duties, and functions of
16 a pharmacy technician. The circumstances are as follows:

17 a. On or about July 29, 2008, in a criminal proceeding entitled *People of the State*
18 *of California vs. Angela Berghouse*, in San Diego Superior Court case number C281586,
19 Respondent was convicted on her plea of guilty to violation of Health and Safety Code section
20 11550(a), being under the influence of a controlled substance. In her plea of guilty, Respondent
21 admits that she was under the influence of Oxycodone. This matter was heard at the same time as
22 Respondent's other case No. C284615, as set forth in Fifth Cause for Discipline, below. The
23 circumstances that led to the conviction are as follows:

24 b. On or about June 14, 2008 at 10:07 p.m., the San Diego County Sheriff's
25 Department received a call from Respondent's grandmother, A.B., to investigate a trespass in
26 Ramona. At 10:13 p.m., a Ramona Patrol Deputy who responded to the scene located
27 Respondent walking from the residence and loading her vehicle. The Deputy observed
28 Respondent bending down to pick up some of her personal belongings that were lying on the

1 2008, Respondent illegally possessed a controlled substance, as set forth in paragraph 26, which
2 is incorporated here by this reference.

3 **FIFTH CAUSE FOR DISCIPLINE**

4 (October 22, 2008 Conviction for Being Under the Influence of a Controlled
5 Substance on September 29, 2008)

6 28. Respondent is subject to disciplinary action under Code sections 490 and 4301(l) in
7 that she was convicted of a crime that is substantially related to the qualifications, duties, and
8 functions of a pharmacy technician. The circumstances are as follows:

9 a. On or about October 22, 2008, in a criminal proceeding entitled *People of the*
10 *State of California vs. Angela Berghouse*, in San Diego Superior Court case number C284615,
11 Respondent was convicted on her plea of guilty to violation of Health and Safety Code section
12 11550(a), being under the influence of a controlled substance. This matter was heard at the same
13 time as Respondent's other case No. C281586, as set forth above in the Third Cause for
14 Discipline, above.

15 b. The circumstances that led to the conviction are that on or about September 29,
16 2008 at 2:50 a.m., Ramona Patrol Deputies responded to a dispatch originating from a call by
17 Respondent's mother that a person was under the influence of a controlled substance in her
18 Ramona residence. The Deputies located Respondent and her boyfriend at the residence in
19 Ramona and both individuals displayed symptoms of being under the influence of a central
20 nervous system stimulant. Both Respondent and her boyfriend had dilated pupils, blood shot and
21 watery eyes, pale faces, dry lips and mouth, dry pasted tongues, and appeared agitated. Both
22 Respondent and her boyfriend were arrested for violation of Health and Safety Code section
23 11550(a), under the influence of a controlled substance. The Deputies then searched the
24 residence and located three rifles.

25 c. Respondent admitted to the Deputy that she had used Oxycontin for over two
26 years and had become addicted to it. She denied using illegal drugs at that time and indicated that
27 she had a prescription for Suboxone from her doctor to help her withdraw from her opiate
28

1 addiction. Respondent stated that all three rifles belonged to her. A blood sample was obtained
2 from Respondent and she tested positive for methamphetamine, with a blood level of 171 ng./ml.

3 d. As a result of the conviction, on October 22, 2008, Respondent was sentenced
4 to formal probation, ordered to complete 20 days in the Public Service Work Program, required to
5 complete 50 hours of volunteer work, ordered to register as a drug offender and required to
6 complete a drug treatment program. Pursuant to Penal Code section 1210.1, Respondent's
7 sentence was suspended for 5 years and the fines, volunteer hours, and public work hours were
8 stayed until her completion of the drug treatment program. On October 22, 2009, after the
9 completion of a PC 1210.1 Drug Program, Respondent's plea was set aside and her case was
10 dismissed.

11 **SIXTH CAUSE FOR DISCIPLINE**

12 (Unprofessional Conduct- Possession of Controlled Substances)

13 29. Respondent is subject to disciplinary action for unprofessional conduct under section
14 4301(o) of the Code in that she violated the Pharmacy Act by possessing controlled substances
15 without a prescription in violation of Code section 4060, as is set forth in paragraphs 26 through
16 28, which are incorporated herein by this reference.

17 **SEVENTH CAUSE FOR DISCIPLINE**

18 (Unprofessional Conduct -Self-Administration of a Controlled Substances)

19 30. Respondent is subject to disciplinary action for unprofessional conduct under Code
20 section 4301, subdivision (h), in that on June 14, 2008 and September 29, 2008, Respondent
21 illegally administered a controlled substance to herself, as is set forth in paragraphs 26 and 28,
22 which are incorporated herein by this reference.

23 **EIGHTH CAUSE FOR DISCIPLINE**

24 (Unprofessional Conduct – More Than One Conviction Involving Use of Dangerous Drug)

25 31. Respondent is subject to disciplinary action under Code section 4301, subdivision (k),
26 in that she was convicted of more than one crime involving the use, consumption, or self-
27 administration of a dangerous drug, as is set forth in paragraphs 27 through 29, which are
28 incorporated herein by this reference.

1 ground and then stumble forward. Respondent used her hands to brace herself against the ground.
2 The Deputy observed that Respondent was making slow and lethargic movements and suspected
3 that she was under the influence. Respondent gave permission to search her vehicle. After the
4 Deputy performed a drug influence evaluation on Respondent, he determined that she was under
5 the influence of a central nervous system depressant and placed her under arrest for violation of
6 Health and Safety Code section 11550(a), under the influence of a controlled substance.

7 c. Respondent later admitted that she smoked an 80 milligram pill of Oxycontin at
8 10:00 p.m. Respondent admitted that she had put the pill on a piece of aluminum foil, burned the
9 pill and inhaled the fumes through a straw. She admitted that she obtained the Oxycontin in
10 Mexico and smuggled seventeen pills into the United States underneath her breast. She also
11 admitted that she is prescribed Suboxone to help her with her opiate addiction and that she took
12 1/4 of the dosage of Suboxone that morning. Respondent admitted that she had been using
13 Oxycontin for the past year and had injected it the week prior with her boyfriend. A blood
14 sample was obtained from Respondent and she tested positive for Oxycodone, with a blood level
15 of 189.6 ng/ml. Respondent's last prescription for Oxycontin was on August 31, 2006.

16 d. As a result of the conviction, on October 22, 2008, Respondent was sentenced
17 to formal probation, ordered to complete 20 days in the Public Service Work Program, required to
18 complete 50 hours of volunteer work, ordered to register as a drug offender and required to
19 complete a drug treatment program. Pursuant to Penal Code section 1210.1, Respondent's
20 sentence was suspended for 5 years and the fines, volunteer hours, and Public Work hours were
21 stayed until her completion of the drug treatment program. On October 22, 2009, after the
22 completion of a PC 1210.1 Drug Program, Respondent's plea of guilty was set aside and the case
23 was dismissed.

24 FOURTH CAUSE FOR DISCIPLINE

25 (Unprofessional Conduct – Possession of a Controlled Substance on June 14, 2008)

26 27. Respondent is subject to disciplinary action for unprofessional conduct under Code
27 section 4301, subsection (j), in that she violated the Pharmacy Act by possessing a controlled
28 substance without a prescription in violation of Code section 4060, in that on or about June 14,

1 NINTH CAUSE FOR DISCIPLINE

2 (Conduct That Would Have Warranted a Denial of a License)

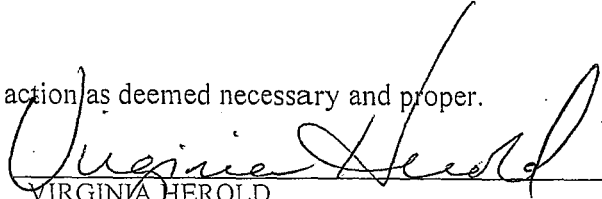
3 32. Respondent is subject to disciplinary action under section 4301(p) of the Code in that
4 Respondent committed burglary, administered to herself controlled substances, and possessed
5 controlled substances. Such egregious conduct would have warranted the denial of a pharmacy
6 technician registration under section 480, subdivisions (a)(1) and (a)(2) of the Code.

7 PRAYER

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

- 10 1. Revoking or suspending Pharmacy Technician Registration Number TCH 51956,
- 11 issued to Respondent Angela Berghouse.
- 12 2. Ordering Respondent Angela Berghouse to pay the Board of Pharmacy the reasonable
- 13 costs of the investigation and enforcement of this case, pursuant to Business and Professions
- 14 Code section 125.3;
- 15 3. Taking such other and further action as deemed necessary and proper.

16 DATED: 7/11/10



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

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