

1 KAMALA D. HARRIS
Attorney General of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 KATHERINE MESSANA
Deputy Attorney General
4 State Bar No. 272953
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2554
6 Facsimile: (213) 897-2804
Attorneys for Complainant
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8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 3675

11 **JONATHAN MARTINEZ**

A C C U S A T I O N

12 **9230 Deeble St.**
13 **South Gate, CA 90280**

14 **Pharmacy Technician License No. TCH**
15 **71595**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about March 21, 2007, the Board of Pharmacy ("Board") issued Pharmacy
22 Technician License No. TCH 71595 to Jonathan Martinez ("Respondent"). The Pharmacy
23 Technician License was in full force and effect at all times relevant to the charges brought herein
24 and will expire on March 31, 2013, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board under the authority of the following
27 laws. All section references are to the Business and Professions Code unless otherwise indicated.
28

STATUTORY PROVISIONS

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2 4. Section 118, subdivision (b) provides, in pertinent part, that the expiration of a license
3 shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period
4 within which the license may be renewed, restored, reissued or reinstated.

5 5. Section 490 states, in pertinent part:

6 “(a) In addition to any other action that a board is permitted to
7 take against a licensee, a board may suspend or revoke a license on the ground that
8 the licensee has been convicted of a crime, if the crime is substantially related to the
9 qualifications, functions, or duties of the business or profession for which the license
10 was issued.

11 (b) Notwithstanding any other provision of law, a board may
12 exercise any authority to discipline a licensee for conviction of a crime that is
13 independent of the authority granted under subdivision (a) only if the crime is
14 substantially related to the qualifications, functions, or duties of the business or
15 profession for which the licensee's license was issued.

16 (c) A conviction within the meaning of this section means a plea
17 or verdict of guilty or a conviction following a plea of nolo contendere. An action that
18 a board is permitted to take following the establishment of a conviction may be taken
19 when the time for appeal has elapsed, or the judgment of conviction has been
20 affirmed on appeal, or when an order granting probation is made suspending the
21 imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the
22 Penal Code.”

23 6. Section 492 states, in pertinent part:

24 “Notwithstanding any other provision of law, successful completion of
25 any diversion program under the Penal Code, or successful completion of an alcohol
26 and drug problem assessment program under Article 5 (commencing with section
27 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any
28 agency established under Division 2 ([Healing Arts] commencing with Section 500)
of this code, or any initiative act referred to in that division, from taking disciplinary
action against a licensee or from denying a license for professional misconduct,
notwithstanding that evidence of that misconduct may be recorded in a record
pertaining to an arrest.”

29 7. Section 4060 states, in pertinent part:

30 “No person shall possess any controlled substance, except that furnished
31 to a person upon the prescription of a physician, dentist, podiatrist, optometrist,
32 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant
33 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a
34 nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to
35 Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist
36 pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
37 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section
38 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

1 physician assistant, when in stock in containers correctly labeled with the name and
address of the supplier or producer.”

2 8. Section 4300 provides, in pertinent part, that every license issued by the Board is
3 subject to discipline, including suspension or revocation.

4 9. Section 4301 states, in pertinent part:

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

9 ...

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

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

17 ...

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

20 ...

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

1 chapter or of the applicable federal and state laws and regulations governing
2 pharmacy, including regulations established by the board or by any other state or
3 federal regulatory agency.”

4 **REGULATORY PROVISIONS**

5 10. California Code of Regulations, title 16, section 1770 states, in pertinent part:

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

13 **COST RECOVERY**

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

18 **CONTROLLED SUBSTANCE**

19 12. “Methamphetamine,” is a Schedule II controlled substance as defined in Health and
20 Safety Code section 11055, subdivision (d)(2) and is categorized as a dangerous drug pursuant to
21 Health and Safety Code section 4022.

22 **FIRST CAUSE FOR DISCIPLINE**

23 **(Conviction of a Substantially Related Crime)**

24 13. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and
25 490 of the Code, in conjunction with California Code of Regulations, title 16, section 1770, in
26 that Respondent was convicted of a crime substantially related to the qualifications, functions or
27 duties of a licensed pharmacy technician.

28 14. On or about August 15, 2006, after pleading nolo contendere, Respondent was
convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b)
[driving while having 0.08% and more, by weight, of alcohol in his blood] in the criminal
proceeding entitled *The People of the State of California v. Jonathan Martinez* (Super. Ct. Los

1 Angeles County, 2006, No. 6DY02284). The Court placed Respondent on 36 months probation,
2 with terms and conditions.

3 15. The circumstances surrounding the conviction are that on or about March 5, 2006,
4 during an investigation by the South Gate Police Department, Respondent was contacted. He was
5 observed to be asleep in the driver's seat of his vehicle, with the engine running near the middle
6 of the roadway, creating a traffic hazard on Ardine St. and Quartz Ave., in South Gate, CA.
7 When asked if he had been drinking, Respondent admitted to drinking five to six Pacifico Beers.
8 During the booking procedure, Respondent submitted to a breath test that resulted in a blood-
9 alcohol content of 0.16% on the first reading and 0.16% on the second reading.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Dangerous Use of Alcohol)**

12 16. Respondent is subject to disciplinary action under section 4301, subdivision (h), in
13 that on or about March 5, 2006, Respondent used alcoholic beverages to an extent or in a manner
14 dangerous or injurious to himself, any person, or the public, when he operated a vehicle while
15 having 0.16% of alcohol in his blood. The conduct is more particularly described in paragraphs
16 14 and 15, inclusive, above, and herein incorporated by reference.

17 **THIRD CAUSE FOR DISCIPLINE**

18 **(Knowingly Made a False Statement of Fact to Licensing Authority)**

19 18. Respondent is subject to disciplinary action under section 4301, subdivision (g) of the
20 Code in that on or about June 7, 2006, Respondent knowingly made a false statement of fact to
21 the Board by failing to disclose his 2006 conviction on his initial application for licensure. The
22 conduct is more particularly described in paragraphs 14 and 15, inclusive, above, and herein
23 incorporated by reference.

24 **FOURTH CAUSE FOR DISCIPLINE**

25 **(Possession of a Controlled Substance)**

26 17. Respondent is subject to disciplinary action under section 4301, subdivisions (j) and
27 (o), in that Respondent was found to be in possession of a controlled substance.
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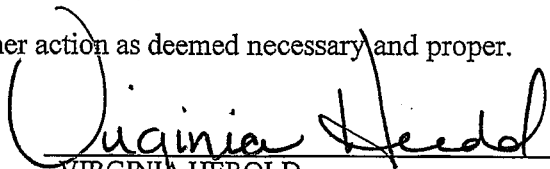
- a) On or about December 2, 2008, during a narcotics investigation by the Los Angeles Police Department, Respondent was contacted through Craigslist. He replied to an advertisement and indicated that he had "Tina," a street name for Methamphetamine and two (2) grams of narcotics.
- b) Respondent arrived at the agreed location to conduct the transaction and was arrested for violating Penal Code section 664/Health and Safety Code section 11379 [attempt to transport a controlled substance/transportation with intent to furnish].
- c) When asked if there was anything that the officer should be aware of in his vehicle, Respondent stated, "No." When the officer called for a K-9 narcotics search dog to search the vehicle, Respondent stated, "I have some stuff in the center console area." The officer removed a plastic bag which contained a crystal like substance resembling Crystal Methamphetamine.
- d) Respondent was re-arrested for violating Health and Safety Code section 11379 [transportation of methamphetamine to furnish].

PRAYER

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

- 1. Revoking or suspending Pharmacy Technician License No. TCH 71595, issued to Respondent;
- 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and
- 3. Taking such other and further action as deemed necessary and proper.

DATED: 9/11/11


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

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