

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 BRETT A. KINGSBURY
Deputy Attorney General
4 State Bar No. 243744
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-1192
6 Facsimile: (415) 703-5480
Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 4078

11 **JUSTIN MICHAEL VALDIVIA**
12 **79 Blanca Lane #87**
13 **Watsonville, CA 95076**
14 **Pharmacy Technician Registration No.**
TCH 77784

A C C U S A T I O N

15 Respondent.

16 Complainant alleges:

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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 August 3, 2007, the Board of Pharmacy issued Pharmacy Technician
22 Registration Number TCH 77784 to Justin Michael Valdivia (Respondent). The Pharmacy
23 Technician Registration was in full force and effect at all times relevant to the charges brought
24 herein and will expire on August 31, 2011, unless renewed.

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JURISDICTION

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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 4300 of the Code states:

6 "(a) Every license issued may be suspended or revoked.

7 "(b) The board shall discipline the holder of any license issued by the board, whose default
8 has been entered or whose case has been heard by the board and found guilty, by any of the
9 following methods:

10 "(1) Suspending judgment.

11 "(2) Placing him or her upon probation.

12 "(3) Suspending his or her right to practice for a period not exceeding one year.

13 "(4) Revoking his or her license.

14 "(5) Taking any other action in relation to disciplining him or her as the board in its
15 discretion may deem proper.

16 ". . . .

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

22 5. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
23 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
24 disciplinary action during the period within which the license may be renewed, restored, reissued
25 or reinstated.

STATUTORY AND REGULATORY PROVISIONS

26
27 6. Section 4301 of the Code states:

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1 "The board shall take action against any holder of a license who is guilty of unprofessional
2 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

3 Unprofessional conduct shall include, but is not limited to, any of the following:

4 ". . . .

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

8 ". . . .

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

26 ". . . ."

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

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

8 8. Section 490 of the Code states:

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

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

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

23 **COSTS**

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

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Convictions)**

3 10. Respondent is subject to disciplinary action under sections 490 and 4301(l) of the
4 Code, as explained in section 1770 of title 16, California Code of Regulations, in that Respondent
5 was convicted of a crime substantially related to the qualifications, functions, or duties of a
6 pharmacy technician. Specifically, on or about December 10, 2010, in the Superior Court of
7 California for the County of Santa Cruz, in a case entitled *The People of the State of California v.*
8 *Justin Michael Valdivia*, Case No. F20057, Respondent pled no lo contendere to and was
9 convicted of violating California Penal Code § 487(a) (grand theft of personal property), a felony,
10 and § 484a(g) (fraudulent use of a bank access card), a felony. The circumstances of the
11 convictions were as follows:

12 11. On or around November 10, 2010, Respondent possessed and was arrested for having
13 roughly 250 pieces of mail not pertaining to him from various addresses mostly throughout Santa
14 Cruz, California. Respondent further had in his possession 26 checks, a passport, and various ID
15 cards that did not pertain to him.

16 12. In the third quarter of 2010, Respondent participated in fraudulent ATM card
17 transactions in regard to a Bay Federal Credit Union ATM.

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(Act Involving Dishonesty or Moral Turpitude)**

20 13. Respondent is subject to disciplinary action under section 4301(f) of the Code in that
21 Respondent engaged in an act moral turpitude, dishonesty, fraud, deceit, or corruption. The
22 circumstances are described above in the First Cause for Discipline.

23 **PRAYER**

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

26 1. Revoking or suspending Pharmacy Technician Registration Number TCH 77784,
27 issued to Justin Michael Valdivia;

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1 2. Ordering Justin Michael Valdivia to pay the Board of Pharmacy the reasonable costs
2 of the investigation and enforcement of this case, pursuant to Business and Professions Code
3 section 125.3;

4 3. Taking such other and further action as deemed necessary and proper.
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8 DATED: _____

11/16/11



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

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