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

11 In the Matter of the Accusation Against:

Case No. 4275

12 **CESAR GARCIABUENO**
13 **P. O. Box 131351**
14 **San Diego, CA 92170**

A C C U S A T I O N

15 **Pharmacy Technician Registration**
16 **No. TCH 44346**

Respondent.

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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 27, 2002, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 44346 to Cesar GarciaBueno (Respondent). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought
25 herein and will expire on September 30, 2012, 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(a) of the Code states that “[e]very license issued may be suspended or
6 revoked.”

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

STATUTORY AND REGULATORY PROVISIONS

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12 6. Section 482 of the Code states:

13 Each board under the provisions of this code shall develop criteria to evaluate
14 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 490 of the Code provides, in pertinent part, that a board may suspend or
20 revoke a license on the ground that the licensee has been convicted of a crime substantially
21 related to the qualifications, functions, or duties of the business or profession for which the
22 license was issued.

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8. Section 492 of the Code states:

Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any 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.

This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division.

9. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

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

10. Section 4301 of the Code states:

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

....

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

....

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

8 (p) Actions or conduct that would have warranted denial of a license.

9 11. Section 4022 of the Code states

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

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

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

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

20 12. Title 16, California Code of Regulations, section 1769, states:

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

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

26 (2) Total criminal record.

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

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

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

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1 13. Title 16, California Code of Regulations, section 1770, states:

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

6 **COST RECOVERY**

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

11 **DRUG**

12 15. Methamphetamine is a Schedule II controlled substance pursuant to Health and Safety
13 Code section 11055, subdivision (d)(2), and is a dangerous drug pursuant to Business and Professions
14 Code section 4022.

15 **FIRST CAUSE FOR DISCIPLINE**

16 **(Unprofessional Conduct – Under the Influence of a Controlled Substance –
17 Methamphetamine – on July 31, 2011)**

18 16. Respondent is subject to disciplinary action under section 4301, subdivisions (j) and
19 (o) of the Code in that Respondent was under the influence of the controlled substance and
20 dangerous drug, methamphetamine, without a prescription. The circumstances are as follows:

21 17. On July 31, 2011, at approximately 0745 hours, Susanville Police Department
22 officers responded to a report of a juvenile vandalizing garbage cans at a little league park in the
23 area of River Street and South McDow.

24 18. Upon arrival, officers made contact with Respondent. Respondent was acting
25 unusual. Officers asked if he needed the officers' assistance and Respondent asked officers for a
26 New York seltzer beverage. Officers attempted to handcuff Respondent while they completed
27 their investigation and Respondent resisted the officers. Officers arrested Respondent for
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1 resisting arrest as he was agitated and combatant, and transported him to the county detention
2 facility for booking.

3 19. Once at the detention facility, officers noticed Respondent was constantly pacing in
4 his holding cell, pulling his hair and looking rapidly in all directions. Officers conducted a drug
5 influence evaluation on Respondent by using a pupilometer, pen light and a digital heart rate
6 monitor. During the evaluation, Respondent was constantly moving around, seemed nervous or
7 paranoid and had rapid speech. Respondent told officers that he had been using
8 methamphetamine continuously for the last three days, with the most recent use the morning of
9 July 31, 2011. Respondent told officers that he traded a ring for \$50 worth of methamphetamine
10 and snorted it early that morning. Respondent provided officers with a urine sample which tested
11 positive for methamphetamine. Officers added a charge of being under the influence of a
12 controlled substance. A subsequent toxicology report showed that Respondent's specimen tested
13 positive for methamphetamine.

14 20. As a result of the arrest, on or about March 24, 2011, in a criminal proceeding entitled
15 *People of the State of California vs. Cesar A. Garcia-Bueno*, in the Superior Court of the State of
16 California, County of Lassen, in Case No. CR029025, Respondent pled not guilty to violating
17 Penal Code section 148(a)(1) (resisting/obstructing peace officers) and Health and Safety Code
18 section 11550(a) (under the influence of a controlled substance – methamphetamine).

19 21. On September 27, 2011, Case No. CR029025 was ordered dismissed in the interest of
20 justice.

21 **SECOND CAUSE FOR DISCIPLINE**

22 **(Unprofessional Conduct – Use of Controlled Substances or Dangerous Drugs to an Extent
23 or in Manner Dangerous or Injurious to Self or Others)**

24 22. Respondent is subject to disciplinary action under section 4301(h) of the Code in that
25 on or about July 31, 2011, Respondent used and was under the influence of controlled substances,
26 to wit: methamphetamine, to an extent or in a manner dangerous or injurious to himself or others,
27 as is more fully detailed at paragraphs 16-21, above, which are incorporated here by reference.
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THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Committed Act Which Would Have Warranted Denial of License)

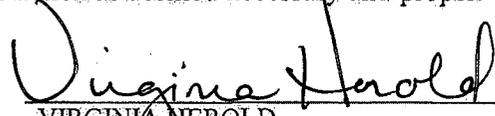
23. Respondent is subject to disciplinary action under section 4301(p) of the Code in that he engaged in actions or conduct that would have warranted denial of a license, as fully set forth at paragraph 16 through 21, above, which are incorporated here by reference.

PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 44346, issued to Cesar Antonio GarciaBueno;
2. Ordering Cesar Antonio GarciaBueno to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: 5/31/12



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

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