

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 RITA M. LANE
Deputy Attorney General
4 State Bar No. 171352
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2614
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:
12
13 **JESUS DANIEL CORRAL MARQUEZ**
1906 Cambridge Street
Orange, CA 92865
14
15 **Pharmacy Technician Registration No. TCH**
110571
16
17 Respondent.

Case No. 4798
A C C U S A T I O N

18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity as
21 the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
22 2. On or about February 11, 2011, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 110571 to Jesus Daniel Corral Marquez (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 July 31, 2014, unless renewed.

26 ///
27 ///
28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 4300 of the Code states:

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

5. Section 4300.1 of the Code states:

The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.

STATUTORY PROVISIONS

6. 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.

.....

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

.....

7. Section 4022 of the Code states

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

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

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

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

5 8. Section 4060 of the Code states:

6 No person shall possess any controlled substance, except that furnished to a
7 person upon the prescription of a physician, dentist, podiatrist, optometrist,
veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
8 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant
9 pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or
a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv)
10 of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This
section shall not apply to the possession of any controlled substance by a
11 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
12 practitioner, or physician assistant, when in stock in containers correctly labeled
with the name and address of the supplier or producer.

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

15 9. Health and Safety Code section 11173 states in pertinent part that no person shall
16 obtain a controlled substance by fraud, deceit, subterfuge or concealment of a material fact.

17 REGULATIONS

18 10. California Code of Regulations, title 16, section 1770, states:

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

23 COSTS

24 11. Section 125.3 of the Code states, 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.

28 ///

1 **FACTS**

2 12. On June 29, 2012, at approximately, 2325 hours, police pulled Respondent over for
3 a traffic violation. Officers observed that Respondent was slow to respond to questioning and was
4 slow to exit his vehicle. Respondent exhibited several objective symptoms that he was under the
5 influence of a controlled substance, including rapid pulse and dilated pupils. Respondent also had
6 an odor of alcohol coming from his person. Respondent failed a sobriety field test and admitted he
7 had used cocaine, marijuana and alcohol within the last couple of hours. Respondent was arrested
8 for driving under the influence.

9 13. On June 30, 2012 at approximately 0113 hours while in police custody, Respondent
10 submitted to a blood test and he tested positive for cocaine and marijuana.

11 **FIRST CAUSE FOR DISCIPLINE**

12 (Unprofessional Conduct: Violating Drug Statutes- Possession
13 Of a Controlled Substance Without a Prescription)

14 14. Respondent is subject to disciplinary action under Code section 4301(j) for violating
15 statutes regarding controlled substances in conjunction with Code section 4060 in that on or about
16 June 29, 2012, Respondent possessed the controlled substances, cocaine and marijuana, without a
17 prescription, an act constituting unprofessional conduct. The circumstances are set forth in detail
18 in paragraphs 12 through 13 above.

19 **SECOND CAUSE FOR DISCIPLINE**

20 (Unprofessional Conduct: Self-Administration of a Controlled Substance)

21 15. Respondent is subject to disciplinary action under Code section 4301(h) for self-
22 administering controlled substances in that on or about June 29, 2012, Respondent admitted to
23 police officers that he had recently used cocaine and marijuana, acts constituting unprofessional
24 conduct. The circumstances are set forth in detail in paragraphs 12 through 13 above.

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Use of a Dangerous Drug
to the Extent to be Dangerous to Self and Others)

16. Respondent is subject to disciplinary action under Code section 4301(h) for unprofessional conduct, for using dangerous drugs to an extent or in a manner as to be dangerous or injurious to himself and others, when he drove his vehicle under the influence of cocaine and marijuana. The circumstances are set forth in detail in paragraphs 12 through 13 above.

DISCIPLINARY CONSIDERATIONS

17. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges:

a. On or about April 9, 2012, in a prior criminal proceeding entitled *People v. Jesus Corral Marquez*, Orange County Superior Court Case No. 11NM17817, Respondent was convicted of Driving Under the Influence of Alcohol (VC section 23152(a) and Driving Under the Influence of Alcohol with a blood alcohol content over .08 percent (VC section 23152(b)). As a result of the conviction, Respondent was sentenced to three years probation, and ordered to complete a First Offender Alcohol Program and attend and complete a Mother's Against Drunk Driving Victim's Impact Panel. Respondent was further ordered to pay fines and fees. The facts that led to the conviction are that on or about August 19, 2011, Respondent drove a vehicle while under the influence of alcohol with a blood alcohol content of .14 percent.

b. On or about June 7, 2012, in a prior administrative proceeding entitled *In the Matter of the Citation Against Jesus Corral Marquez*, case number CI2011-49331, the Board cited and fined Respondent under (1) Business and Professions Code section 4301(h), in that he used alcohol in a dangerous manner; and (2) Business and Professions Code section 4301(l), in that Respondent was convicted of a crime substantially related to the practice of a pharmacy technician.

PRAYER

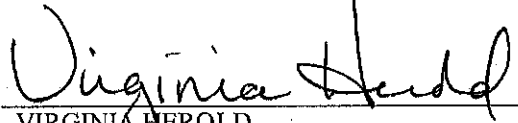
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. Revoking or suspending Pharmacy Technician Registration Number TCH 110571, issued to Jesus Daniel Corral Marquez;
2. Ordering Jesus Daniel Corral Marquez 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; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 12/12/13



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

SD2013705554
70781656.doc