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

11
12 In the Matter of the Accusation Against:

Case No. 4811

13 **CRYSTAL S. VERGARA**
1810 Main Street
14 Ramona, CA 92065

A C C U S A T I O N

15 **Pharmacy Technician Registration**
16 **No. TCH 108318**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about November 12, 2010, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 108318 to Crystal S. Vergara (Respondent). Respondent is also
25 known as Crystal Soledad Vergara. The Pharmacy Technician Registration was in full force and
26 effect at all times relevant to the charges brought herein and will expire on July 31, 2014, unless
27 renewed.

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1 **JURISDICTION**

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 (Code) unless otherwise indicated.

5 4. Section 4300, subdivision (a) of the Code states "Every license issued may be
6 suspended or revoked."

7 5. Section 4300.1 of the Code states:

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

12 **STATUTORY PROVISIONS**

13 6. Section 492 of the Code states:

14 Notwithstanding any other provision of law, successful completion of any
15 diversion program under the Penal Code, or successful completion of an alcohol and
16 drug problem assessment program under Article 5 (commencing with section
17 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any
18 agency established under Division 2 ([Healing Arts] commencing with Section 500)
19 of this code, or any initiative act referred to in that division, from taking disciplinary
20 action against a licensee or from denying a license for professional misconduct,
21 notwithstanding that evidence of that misconduct may be recorded in a record
22 pertaining to an arrest.

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

21 7. Section 4022 of the Code states

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

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

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

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

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

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

4 12. California Code of Regulations, title 16, section 1770, states:

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

9 COSTS

10 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
11 administrative law judge to direct a licentiate found to have committed a violation or violations of
12 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
13 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
14 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
15 included in a stipulated settlement.

16 DRUG

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

20 FIRST CAUSE FOR DISCIPLINE

21 **(Dangerous Use of a Controlled Substance on February 11, 2013)**

22 15. Respondent has subjected her registration to discipline under section 4301,
23 subdivision (h) of the Code in that she used methamphetamine to the extent or in a manner to be
24 dangerous to herself and others on February 11, 2013. The circumstances are as follows:

25 a. On or about the afternoon of the evening of February 11, 2013, a patrol deputy
26 with the San Diego County Sheriff's Department conducted a traffic stop on a vehicle in which
27 Respondent was a passenger. All four persons in the vehicle consented to a search of the vehicle,
28 themselves, and their belongings. In the backseat where Respondent had been sitting, the deputy

1 located a purse which Respondent identified as hers. Inside the purse the deputy found a
2 hypodermic needle, and three bindles of what subsequently tested positive for 0.9 grams of
3 methamphetamine. He also located a single tablet of quetiapine, an antipsychotic medication, for
4 which Respondent had no prescription. Inside a knit glove was a small glass smoking pipe with
5 black and white residue consistent with the type commonly used to smoke methamphetamine.
6 Respondent was arrested. The deputy conducted a drug evaluation of Respondent; she exhibited
7 rapid eyelid fluttering, she was fidgeting, her tongue was coated with a thin white film, her pupils
8 were dilated, and her pulse was elevated. Respondent provided a urine sample for testing.

9 b. Following a failure to appear at court, on or about March 12, 2013, in a
10 criminal proceeding entitled *People of the State of California v. Crystal Soledad Vergara*, in San
11 Diego County Superior Court, case number C327658, Respondent pled guilty to Count 1 of the
12 complaint, a violation of Health and Safety Code section 11377, subdivision (a), possession of a
13 controlled substance, to wit, methamphetamine, a felony reduced to a misdemeanor pursuant to
14 Penal Code section 17b, subdivision (4). Pursuant to a plea agreement, the court dismissed
15 additional counts of violating Health and Safety Code section 11550, subdivision (a), under the
16 influence of methamphetamine, and Vehicle Code section 23152, subdivision (a), driving under
17 the influence, misdemeanors.

18 c. As a result of the plea, on or about March 12, 2013, the court deferred entry of
19 judgment for 18 months and Respondent was ordered to complete a drug diversion program. On
20 or about August 6, 2013, a bench warrant was issued for Respondent's arrest.

21 **SECOND CAUSE FOR DISCIPLINE**

22 **(Dangerous Use of a Controlled Substance on March 5, 2013)**

23 16. Respondent has subjected her registration to discipline under section 4301,
24 subdivision (h) of the Code in that she used methamphetamine to the extent or in a manner to be
25 dangerous to herself and others on March 5, 2013. The circumstances are as follows:

26 a. At approximately 3:00 in the morning, on or about March 5, 2013, the same
27 San Diego County Sheriff's Department deputy observed Respondent walking down the street.
28 Due to his prior contacts with Respondent, and knowing she had an active warrant for her arrest,

1 the deputy conducted a pedestrian stop. Respondent admitted that she was aware she had a bench
2 warrant for failing to appear at court. While speaking to Respondent, the deputy observed that
3 she was speaking rapidly and appeared nervous. When asked the last time she used
4 methamphetamine, Respondent replied "Probably yesterday." While handcuffing Respondent,
5 the deputy observed that she exhibited muscle rigidity consistent with being under the influence
6 of a controlled substance. During a drug evaluation, Respondent exhibited the following
7 symptoms: fluttering eyelids, a thin coating of white and brown film on her tongue, her mouth
8 appeared dry and foamy, her pupils were dilated, and her pulse was elevated. Respondent was
9 charged with violation of Health and Safety Code section 11550, subdivision (a), under the
10 influence of a controlled substance, to wit, methamphetamine.

11 b. As a result of the arrest, on or about March 12, 2013, in a criminal proceeding
12 entitled *People of the State of California v. Crystal Soledad Vergara*, in San Diego County
13 Superior Court, case number C328197, the court dismissed the charge of violating Health and
14 Safety Code section 11550, subdivision (a) pursuant to the plea agreement reached in case
15 number C327658, described in paragraph 15, above.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Violation of Statutes Regulating Controlled Substances)**

18 17. Respondent has subjected her registration to discipline under section 4301,
19 subdivision (j) of the Code in that she violated California statutes regulating controlled substances
20 and dangerous devices when she possessed methamphetamine and a hypodermic syringe, and was
21 under the influence of methamphetamine on January 21, 2012, in violation of Business and
22 Professions Code sections 4022, 4059, and 4060, and Health and Safety Code sections 11377,
23 subdivision (a), and 11550, subdivision (a).

24 **PRAYER**

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

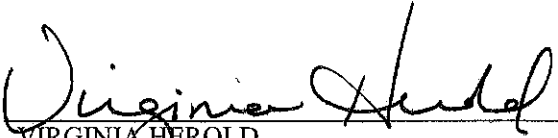
27 1. Revoking or suspending Pharmacy Technician Registration Number TCH 108318,
28 issued to Crystal S. Vergara;

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2. Ordering Crystal S. Vergara 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: 10/21/13



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

SD2013705529