

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 CRISTINA FELIX
Deputy Attorney General
4 State Bar No. 195663
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2455
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 4882

12 **MICHAEL JOSEPH REBER**

A C C U S A T I O N

13 13414 E. Loumont St.
14 Whittier, CA 90601

15 Pharmacy Technician Registration
16 No. TCH 118184

17 Respondent.

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 April 6, 2012, the Board of Pharmacy (Board) issued Pharmacy
23 Technician Registration No. TCH 118184 to Michael Joseph Reber (Respondent). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought
25 herein, expired on September 30, 2013, and has not been renewed.

26 ///

27 ///

28 ///

1 **JURISDICTION**

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

4 **STATUTORY PROVISIONS**

5 4. Section 490 states, in pertinent part:

6 (a) In addition to any other action that a board is permitted to take
7 against a licensee, a board may suspend or revoke a license on the ground that the
8 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 exercise
12 any authority to discipline a licensee for conviction of a crime that is independent of
13 the authority granted under subdivision (a) only if the crime is substantially related to
14 the qualifications, functions, or duties of the business or profession for which the
15 licensee's license was issued.

16 (c) A conviction within the meaning of this section means a plea or
17 verdict of guilty or a conviction following a plea of nolo contendere. Any 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 the provisions of
22 Section 1203.4 of the Penal Code.

23 5. Section 492 states, in pertinent part:

24 Notwithstanding any other provision of law, successful completion of any
25 diversion program under the Penal Code, or successful completion of an alcohol and
26 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.

6. Section 4060 states, in pertinent part:

No person shall possess any controlled substance, except that furnished to
a person upon the prescription of a physician, dentist, podiatrist, optometrist,
veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant
to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a
nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to
Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist
pursuant to either Section 4052.1 or 4052.2. This section 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 physician assistant, when in
stock in containers correctly labeled with the name and address of the supplier or

producer.

1
2 7. Section 4300 provides in pertinent part, that every license issued by the Board is
3 subject to discipline, including suspension or revocation.

4 8. Section 4300.1 states:

5 The expiration, cancellation, forfeiture, or suspension of a board-issued
6 license by operation of law or by order or decision of the board or a court of law, the
7 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.

8 9. Section 4301 states, in pertinent part:

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

12

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

14

15 (l) The conviction of a crime substantially related to the qualifications,
16 functions, and duties of a licensee under this chapter. The record of conviction of a
17 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
18 States Code regulating controlled substances or of a violation of the statutes of this
19 state regulating controlled substances or dangerous drugs shall be conclusive
20 evidence of unprofessional conduct. In all other cases, the record of conviction shall
21 be conclusive evidence only of the fact that the conviction occurred. The board may
22 inquire into the circumstances surrounding the commission of the crime, in order to
23 fix the degree of discipline or, in the case of a conviction not involving controlled
24 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.

25

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

1 **REGULATORY PROVISIONS**

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

3 For the purpose of denial, suspension, or revocation of a personal or
4 facility license pursuant to Division 1.5 (commencing with Section 475) of the
5 Business and Professions Code, a crime or act shall be considered substantially
6 related to the 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 perform the functions authorized by his license or registration in a manner
consistent with the public health, safety, or welfare.

7 **COST RECOVERY**

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

12 **CONTROLLED SUBSTANCE**

13 12. "Marijuana," is a Schedule I controlled substance as designated by Health and Safety
14 Code section 11054, subdivision (d)(13) and is categorized as a dangerous drug pursuant to
15 section 4022.

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(Obtained or Possessed a Controlled Substance)**

18 13. Respondent is subject to disciplinary action under sections 4301, subdivisions (j) and
19 (o), for violating section 4060, in that on or about February 22, 2013, Respondent obtained or
20 possessed a controlled substance. The circumstances are as follows:

21 a. On or about April 5, 2013, pursuant to a plea agreement, after pleading guilty,
22 Respondent was convicted of one misdemeanor count of violating Health and Safety Code
23 section 11357, subdivision (a) [possession of a controlled substance], in the criminal proceeding
24 entitled *The People of the State of California v. Michael Joseph Reber* (Super. Ct. Los Angeles
25 County, 2013, No. 3JB02166). The Court deferred pronouncement of sentence for 18 months
26 pending Respondent's completion of a drug diversion program. The circumstances surrounding
27 the conviction are that on or about February 22, 2013, during a traffic stop, by the Los Angeles
28 County Sheriff's Department, Respondent was contacted. While speaking to Respondent, he

1 admitted that he had Marijuana in his vehicle. A search of Respondent's vehicle, revealed a
2 plastic container in the passenger seat, containing a small plastic baggie with remnants of
3 Marijuana leaves and a glass pipe. The glass pipe contained a black sticky substance resembling
4 tar, with a highly aromatic scent of Marijuana. Respondent was subsequently arrested for
5 violating Health and Safety Code section 11357, subdivision (a) [possession of a controlled
6 substance-Marijuana], and Health and Safety Code section 11364.1 [possession of drug
7 paraphernalia].

8 DISCIPLINARY CONSIDERATIONS

9 14. In order to determine the degree of discipline, if any to be imposed on Respondent,
10 Complainant alleges that on or about May 21, 2010, after pleading nolo contendere, Respondent
11 was convicted of one misdemeanor count of violating Business and Professions Code section
12 25662, subdivision (a) [minor in possession of alcohol] in the criminal proceeding entitled *The*
13 *People of the State of California v. Michael Joseph Reber* (Super. Ct. Los Angeles County, 2010,
14 No. 9WW07032). The Court placed Respondent on 36 months of probation and ordered him to
15 pay fines and fees. On January 13, 2012, the Court dismissed the case pursuant to Penal Code
16 Section 1203.4. The circumstances surrounding the conviction are that on or about October 9,
17 2009, Respondent and another (minor) entered a gas station for snacks, in Whittier CA, when the
18 minor ran out of the gas station with an 18-pack of beer. Respondent was subsequently arrested
19 for violating Penal Code section 459 [burglary] and Penal Code section 484, subdivision (a)
20 [petty theft].

21 PRAYER

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

- 24 1. Revoking or suspending Pharmacy Technician Registration No. TCH 118184, issued
25 to Michael Joseph Reber;
- 26 2. Ordering Michael Joseph Reber to pay the Board of Pharmacy the reasonable costs of
27 the investigation and enforcement of this case, pursuant to Business and Professions Code section
28 125.3; and

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

3. Taking such other and further action as deemed necessary and proper.

DATED: 12/6/13

Virginia Herold

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

LA2013510093
51389978_3.doc
Jz(10/22/13)
cf