

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 HELENE E. SWANSON
Deputy Attorney General
4 State Bar No. 130426
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 620-3005
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. 4960

12 **MARCO ANTONIO CAMPOS**
13 13962 Ragus St.
La Puente, CA 91746

A C C U S A T I O N

14 Pharmacy Technician Registration
15 No. TCH 120442

16 Respondent.

17
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 16, 2012, the Board of Pharmacy (Board) issued Pharmacy
23 Technician Registration No. TCH 120442 to Marco Antonio Campos (Respondent). The
24 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges
25 brought herein and will expire on March 30, 2014, unless renewed.

26 **JURISDICTION**

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

STATUTORY PROVISIONS

4. Section 490 states, in pertinent part:

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

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

"(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken 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."

5. Section 492 provides in pertinent part:

"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."

///

1 6. Section 4060 states in relevant part, as follows:

2 “No person shall possess any controlled substance, except that furnished to a person upon
3 prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
4 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-
5 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 28361.1, or a
6 physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5,
7 or a pharmacist pursuant to either Section 4052.1 or 4052.2. This section shall not apply to the
8 possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist,
9 physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-
10 midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled
11 with the name and address of the supplier or producer.”

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

14 8. Section 4300.1 states that:

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

20 9. Section 4301 states, in pertinent part:

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

24

25 “(h) The administering to oneself, of any controlled substance, or the use of any dangerous
26 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
27 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
28

1 to the extent that the use impairs the ability of the person to conduct with safety to the public the
2 practice authorized by the license.

3

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

6

7 ~~"(k) The conviction of more than one misdemeanor or any felony involving the use,~~
8 ~~consumption, or self-administration of any dangerous drug or alcoholic beverage, or any~~
9 ~~combination of those substances.~~

10

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

28

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

5 10. Health and Safety Code Section 11377, in pertinent part, makes it unlawful to possess
6 any controlled substance without a prescription.

7 ~~11. Health and Safety Code Section 11550, in pertinent part, makes it unlawful for any~~
8 ~~person to use or be under the influence of any controlled substance in Schedule II (Health and~~
9 ~~Safety Code Section 11055), except when administered by or under the direction of an authorized~~
10 ~~licensee.~~

11 **REGULATORY PROVISIONS**

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

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

19 **COST RECOVERY**

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

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

CONTROLLED SUBSTANCE/DANGEROUS DRUG

14. "Methamphetamine," is a Schedule II controlled substance as defined in Health and Safety Code Section 11055, subdivision (c)(14), and is categorized a dangerous drug pursuant to Section 4022.

FIRST CAUSE FOR DISCIPLINE

(Convictions of Substantially Related Crimes)

15. Respondent is subject to disciplinary action under Sections 4301, subdivisions (l) and (k), and 490, in conjunction with California Code of Regulations, title 16, Section 1770, in that, Respondent was convicted of crimes which are substantially related to the qualifications, functions or duties of a pharmacy technician, as follows:

a. On or about March 12, 2013, after pleading nolo contendere, Respondent was convicted of one misdemeanor count of violating Penal Code section 242 [battery] in the criminal proceeding entitled *The People of the State of California v. Marco Antonio Campos* (Super. Ct. Los Angeles County, 2013, No. 3RI00933.) The Court sentenced Respondent to serve three days in the Los Angeles County Jail, placed him on an 18-month deferred entry of judgment program (DEJ), ordered him not to use drugs or alcohol, to complete a controlled substance treatment and education program or programs, and complete two Narcotics Anonymous (NA) meetings per week by the next court date, among other terms and conditions.

b. On or about April 4, 2013, Respondent appeared in court with proof of completion of 27 NA meetings. The court granted his request to enroll in the Aurora Charter Oak Hospital's Intensive Outpatient Program, as a form of the DEJ program.

c. On June 19, 2013, Respondent failed to appear without sufficient excuse at a court hearing, and the court terminated his participation in the DEJ program. The court also convicted Respondent of a misdemeanor violation of Health & Safety Code Section 11377(a) [possession of a controlled substance (methamphetamine)], revoked his probation, and issued a bench warrant for his arrest.

d. On July 23, 2013, Respondent appeared in court for a second arrest which occurred on July 19, 2013, and admitted that he was in violation of the DEJ program. The court sentenced

1 Respondent concurrently with Case No. 3RIO2525, which is discussed hereinbelow in
2 subparagraph (f), to summary probation for one year, and ordered him to complete a substance
3 abuse program pursuant to Penal Code Section 1210, Proposition 36.

4 e. The circumstances surrounding the March 12, 2013 criminal conviction are that, on or
5 about March 10, 2013, the Los Angeles County Sheriff's Department responded to a call of a fight
6 in progress. When the officer arrived on the scene, Respondent's mother called them into her
7 residence because her two sons were fighting. After they were separated, the officer asked
8 Respondent if he had anything illegal on him. He stated he had a "meth pipe and a baggie of meth"
9 on him. The officer recovered the glass pipe and the baggie from Respondent's front, left shorts
10 pocket. Furthermore, Respondent stated that he had been on a methamphetamine binge for several
11 days and admitted that he was under the influence of methamphetamine. Respondent also
12 admitted to the officers that, earlier that day, he had stolen \$60.00 from his brother's wallet to buy
13 the baggie of methamphetamine that was recovered from his pocket. His brother had confronted
14 him about the theft and a fight ensued.

15 f. On or about July 23, 2013, in the criminal proceeding entitled *The People of the State*
16 *of California v. Marco Antonio Campos* (Super. Ct. Los Angeles County, 2013, No. 3RIO2525),
17 Respondent pled guilty to and was convicted of a violation of Health & Safety Code Section
18 11550(a) [under the influence of a controlled substance (methamphetamine)]. Respondent was
19 sentenced as set forth above in subparagraph (d).

20 g. The circumstances underlying Respondent's July 23, 2013 criminal conviction are that,
21 on or about July 19, 2013, Los Angeles Sheriff's Department Officers responded to a call of a
22 family disturbance, stating that the informant's son refused to come out of the bathroom, was
23 possibly under the influence of a drug, and had a warrant out for his arrest. On top of the toilet,
24 the officers recovered a glass pipe and a small plastic baggie which contained an off-white, crystal-
25 like substance that resembled methamphetamine. Officers observed Respondent exhibit objective
26 symptoms of drug use (constricted pupils, rapid speech and heavy breathing), and arrested
27 Respondent under force, because he would not follow their instructions. Respondent was carried
28 out by the officers and placed on a gurney so he could be transported to Kaiser Hospital in

1 Baldwin Park, for treatment and medical clearance. Respondent refused their request for him to
2 provide a urine sample for drug testing. Respondent submitted to a blood draw for medical
3 purposes at Kaiser Hospital, but refused to allow the Sheriff's Department to take possession of it.

4 h. On or about August 26, 2013, in the criminal proceeding entitled *The People of the*
5 *State of California v. Marco Antonio Campos* (Super. Ct. Los Angeles County, 2013, No.
6 3RI02981), Respondent pled nolo contendere and was convicted of a violation of Health & Safety
7 Code Section 11377, subdivision (a) [possession of a controlled substance (methamphetamine)].
8 Respondent was sentenced to summary probation for a period of one year under the terms and
9 conditions of Penal Code section 1210, Proposition 36, to run concurrently with the sentences in
10 Case Nos. 3RI02525 and 3RI00933.

11 i. The circumstances underlying Respondent's August 26, 2013 criminal conviction are
12 that, on or about August 22, 2013, Los Angeles Sheriff's Department Officers responded to a call
13 reporting a family disturbance. The victim stated that, during an argument with his son,
14 Respondent pushed him in the chest and tried to grab him by the shoulders. Respondent then left
15 the residence and went down the street to a friend's house. Respondent's father's wife handed
16 officers two baggies which contained a substance resembling methamphetamine, and stated she
17 had found it earlier in the day underneath Respondent's pillow. Officers contacted Respondent,
18 who denied the items were his, but admitted that the bed where they were found was his. Officers
19 subsequently arrested Respondent.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Dangerous Use of a Dangerous Drug/Controlled Substance)**

22 16. Respondent is subject to disciplinary action under Section 4301, subdivision (h), for
23 using the dangerous drug/ controlled substance methamphetamine in a manner that was dangerous
24 to himself and/or others, on or about March 10, 2013 and July 19, 2013, as set forth above in
25 Paragraph 15, subparagraphs (a)-(i), which are incorporated herein by this reference.

26 ///

27 ///

28 ///

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Violating State Laws Regulating Controlled Substances)**

3 17. Respondent is subject to disciplinary action under Section 4301, subdivision (j), in
4 that, on or about March 10, 2013, July 19, 2013 and August 22, 2013, he violated Health and
5 Safety Code Sections 11377, subdivision (a) [possession of a controlled substance
6 (methamphetamine)] and 11550, subdivision (a) [being under the influence of a controlled
7 substance (methamphetamine)]. Complainant refers to and incorporates all the allegations
8 contained in Paragraph 15, subparagraphs (a)-(i) above, as though set forth fully.

9 **FOURTH CAUSE FOR DISCIPLINE**

10 **(Unlawful Possession of a Controlled Substance)**

11 18. Respondent is subject to disciplinary action under Section 4301, subdivision (j) for
12 violating Section 4060, on the grounds of unprofessional conduct, in that Respondent was found
13 to be in illegal possession of a controlled substance, methamphetamine, on or about March 10,
14 2013, July 19, 2013 and August 22, 2013. Complainant refers to, and by this reference
15 incorporates, the allegations set forth above in Paragraph 15, subparagraphs (a)-(i), inclusive, as
16 though set forth fully.

17 **FIFTH CAUSE FOR DISCIPLINE**

18 **(Unprofessional Conduct/ Violation of Licensing Chapter)**

19 19. Respondent is subject to disciplinary action under Section 4301, subdivision (o), in
20 that Respondent committed acts of unprofessional conduct and/ or violated provisions of the
21 licensing chapter. Complainant refers to, and by this reference incorporates, the allegations set
22 forth above in Paragraphs 15-18, inclusive, as though set forth fully.

23 **PRAYER**

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

26 1. Revoking or suspending Pharmacy Technician Registration No. TCH 120442, issued
27 to Respondent;

28 ///

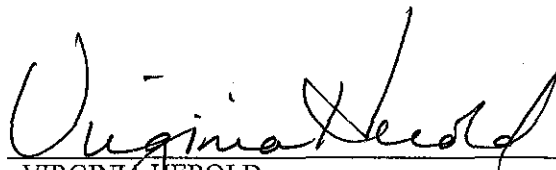
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and

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

DATED:

5/9/14



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

LA2013510513
51407933.doc