

1 KAMALA D. HARRIS
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 GEOFFREY WARD
Deputy Attorney General
4 State Bar No. 246437
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2660
6 Facsimile: (213) 897-2804
Attorneys for Complainant
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8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 5052

12 **RICHARD M. ANTONIANO**
1623 Hungerford St.
13 Long Beach, CA 90805
14 Pharmacy Technician Registration No. TCH 3639

A C C U S A T I O N

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

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

20 2. On January 26, 1993, the Board of Pharmacy issued Pharmacy Technician Registration
21 No. TCH 3639 to Respondent Richard M. Antoniano. This Registration has been active at all
22 times relevant to this pleading and expires on March 31, 2016, unless renewed.

23 **JURISDICTION**

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

26 4. Section 4300 provides, in pertinent part, that every license issued by the Board is
27 subject to discipline, including suspension or revocation.

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STATUTES

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2 4. Section 490 provides that a board, including this one, may suspend or revoke a license
3 or registration on the ground that the registrant has been convicted of a crime substantially related
4 to the qualifications, functions, or duties of the profession for which the registration was issued.

5 5. Section 4060 prohibits people from possessing any controlled substance without a
6 prescription from a physician, dentist, podiatrist, optometrist, veterinarian, or other authorized
7 prescriber.

8 6. Section 4301 authorizes the Board to discipline any licensee who is guilty of
9 unprofessional conduct and lists categories of unprofessional conduct:

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

13 ...

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

15 ...

16 (l) The conviction of a crime substantially related to the qualifications,
17 functions, and duties of a licensee under this chapter. The record of conviction of a
18 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
19 States Code regulating controlled substances or of a violation of the statutes of this
20 state regulating controlled substances or dangerous drugs shall be conclusive evidence
21 of unprofessional conduct. In all other cases, the record of conviction shall be
22 conclusive evidence only of the fact that the conviction occurred. The board may
23 inquire into the circumstances surrounding the commission of the crime, in order to fix
24 the degree of discipline or, in the case of a conviction not involving controlled
25 substances or dangerous drugs, to determine if the conviction is of an offense
26 substantially related to the qualifications, functions, and duties of a licensee under this
27 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
28 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."

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1 **BOARD REGULATIONS**

2 7. California Code of Regulations, title 16, section 1770 specifies when a criminal
3 conviction is substantially related to a registrant's qualifications, functions or duties:

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

11 **COST RECOVERY**

12 8. Section 125.3 authorizes the Board to an administrative law judge to direct a licensee
13 found to have violated the licensing act to pay a sum not to exceed the case's reasonable costs of
14 the investigation and enforcement.

15 **CONTROLLED SUBSTANCES**

16 9. Cocaine is a Schedule II controlled substance as designated by Health and Safety Code
17 section 11055 subdivision (b)(6) and is categorized as a dangerous drug pursuant to section 4022.

18 10. Vicodin is the brand name for a combination of hydrocodone and acetaminophen.
19 Hydrocodone is a Schedule II narcotic and an opiate as designated by Health and Safety Code
20 section 11055, and Vicodin is a Schedule III controlled substance under Health and Safety Code
21 section 11056, subdivision (e)(7) because it contains "[n]ot more than 500 milligrams of opium per
22 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more
23 active, nonnarcotic ingredients in recognized therapeutic amounts." As a prescription medication
24 it is also categorized as a dangerous drug pursuant to section 4022.

25 **FIRST CAUSE FOR DISCIPLINE**

26 **(Conviction of a Substantially Related Crime)**

27 11. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and
28 490, in conjunction with California Code of Regulations, title 16, section 1770, because he was
convicted of felony possession of a controlled substance, a crime substantially related to a
pharmacy technician's qualifications, functions or duties.

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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 No. TCH 3639, issued to Richard M. Antoniano;
2. Ordering Richard M. Antoniano to pay the Board of Pharmacy this case's reasonable costs of the investigation and enforcement under Business and Professions Code section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 11/10/14



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