

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Senior Assistant Attorney General
3 JAMES M. LEDAKIS
Supervising Deputy Attorney General
4 State Bar No. 132645
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2105
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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. 5175

12 **TIMOTHY MICHAEL SCHALCHLIN**
13 **330 La Solidar Way**
Oceanside, CA 92057

A C C U S A T I O N

14 **Pharmacy Technician Registration No. TCH 94573**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

21 2. On September 30, 2009, the Board of Pharmacy issued Pharmacy Technician
22 Registration Number TCH 94573 to Timothy Michael Schalchlin (Respondent). The Pharmacy
23 Technician Registration was in full force and effect at all times relevant to the charges brought
24 herein and will expire on September 30, 2015, unless renewed.

25 **JURISDICTION**

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

1 4. Code section 118, subdivision (b) provides that the suspension, expiration,
2 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
3 disciplinary action during the period within which the license may be renewed, restored, reissued,
4 or reinstated.

5 5. Code section 4300, subdivision (a) provides that every license issued by the Board
6 may be suspended or revoked.

7 6. Code section 4300.1 states:

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

12 **STATUTORY PROVISIONS**

13 7. Code section 480 states:

14 (a) A board may deny a license regulated by this code on the grounds
15 that the applicant has one of the following:

16 (1) Been convicted of a crime. A conviction within the meaning of
17 this section means a plea or verdict of guilty or a conviction following a plea of
18 *nolo contendere*. Any action that a board is permitted to take following the
19 establishment of a conviction may be taken when the time for appeal has elapsed,
20 or the judgment of conviction has been affirmed on appeal, or when an order
21 granting probation is made suspending the imposition of sentence, irrespective of
22 a subsequent order under the provisions of Section 1203.4 of the Penal Code.

23 (2) Done any act involving dishonesty, fraud, or deceit with the
24 intent to substantially benefit himself or herself or another, or substantially injure
25 another.

26 (3) (A) Done any act that if done by a licentiate of the business or
27 profession in question, would be grounds for suspension or revocation of license.

28 (B) The board may deny a license pursuant to this subdivision
only if the crime or act is substantially related to the qualifications, functions, or
duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, no person shall
be denied a license solely on the basis that he or she has been convicted of a
felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5
(commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that
he or she has been convicted of a misdemeanor if he or she has met all applicable
requirements of the criteria of rehabilitation developed by the board to evaluate

1 the rehabilitation of a person when considering the denial of a license under
2 subdivision (a) of Section 482.

3 (c) A board may deny a license regulated by this code on the ground
4 that the applicant knowingly made a false statement of fact required to be
revealed in the application for the license.

5 8. Code section 482 states:

6 Each board under the provisions of this code shall develop criteria to
7 evaluate the rehabilitation of a person when:

8 (a) Considering the denial of a license by the board under Section 480; or

9 (b) Considering suspension or revocation of a license under Section 490.

10 Each board shall take into account all competent evidence of rehabilitation
furnished by the applicant or licensee.

11 9. Code section 490 provides, in pertinent part, that a board may suspend or revoke a
12 license on the ground that the licensee has been convicted of a crime substantially related to the
13 qualifications, functions, or duties of the business or profession for which the license was issued.

14 10. Code section 492 states:

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

23 11. Code section 493 states:

24 Notwithstanding any other provision of law, in a proceeding conducted by
25 a board within the department pursuant to law to deny an application for a license
26 or to suspend or revoke a license or otherwise take disciplinary action against a
27 person who holds a license, upon the ground that the applicant or the licensee has
28 been convicted of a crime substantially related to the qualifications, functions, and
duties of the licensee in question, the record of conviction of the crime shall be
conclusive evidence of the fact that the conviction occurred, but only of that fact,
and the board may inquire into the circumstances surrounding the commission of

1 the crime in order to fix the degree of discipline or to determine if the conviction
2 is substantially related to the qualifications, functions, and duties of the licensee in
3 question.

4 As used in this section, 'license' includes 'certificate,' 'permit,'
5 'authority,' and 'registration.'

6 12. Code section 4022 states

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

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

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

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

17 13. Code section 4060 states

18 No person shall possess any controlled substance, except that furnished to
19 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
20 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
21 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
22 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant
23 pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a
24 pharmacist pursuant to either Section 4052.1 or 4052.2. This section shall not
25 apply to the possession of any controlled substance by a manufacturer,
26 wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist,
27 veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or
28 physician assistant, when in stock in containers correctly labeled with the name
and address of the supplier or producer.

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

14. Code section 4301 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:

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(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.

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

....

(o) Violating or attempting to violate, directly or indirectly, or assisting 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 pharmacy, including regulations established by the board or by any other state or federal regulatory agency.

(p) Actions or conduct that would have warranted denial of a license.

....

15. Health & Safety Code (HSC) section 11350 states:

a) Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code.

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1 **REGULATORY PROVISIONS**

2 16. California Code of Regulations, title 16 (CCR), section 1769, states:

3

4 (b) When considering the suspension or revocation of a facility or a
5 personal license on the ground that the licensee or the registrant has been
6 convicted of a crime, the board, in evaluating the rehabilitation of such person and
7 his present eligibility for a license will consider the following criteria:

8 (1) Nature and severity of the act(s) or offense(s).

9 (2) Total criminal record.

10 (3) The time that has elapsed since commission of the act(s) or
11 offense(s).

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

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

15 17. CCR, section 1770, states:

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

23 **COST RECOVERY**

24 18. Code section 125.3 provides, 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
26 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
27 enforcement of the case, with failure of the licentiate to comply subjecting the license to not
28 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs
may be included in a stipulated settlement.

DRUGS AT ISSUE

19 19. Cocaine is a Schedule II controlled substance as designated by HSC section
20 11055, subdivision (b)(6), and is a dangerous drug within the meaning of Code section 4022. It is
21 a narcotic drug.

1 20. Ecstasy, the street name for Methylenedioxyamphetamine (MDMA), is a
2 Schedule I controlled substance as designated by Health and Safety Code section 11054,
3 subdivision (d)(4), and a dangerous drug within the meaning of Code section 4022. It is a
4 hallucinogenic drug.

5 21. LSD (lysergic acid diethylamide) is a Schedule I controlled substance as
6 designated by Health and Safety Code section 11054, subdivision (d)(12), and is a dangerous
7 drug within the meaning of Code section 4022. It is a hallucinogenic drug.

8 22. Methadone is a Schedule II controlled substance as designated by Health and
9 Safety Code section 11055(c)(14) and a dangerous drug within the meaning of Code section
10 4022. It is a synthetic opiate.

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(Apr. 7, 2014 Conviction for Possession for Sale of Controlled Substances on Feb. 22, 2014)**

13 23. Respondent subjected his pharmacy technician registration to discipline under
14 Code sections 490 and 4301, subdivision (l) in that Respondent was convicted of crimes that are
15 substantially related to the qualifications, functions, and duties of a registered pharmacy
16 technician. The circumstances are as follows:

17 a. On April 7, 2014, in a criminal proceeding entitled *The People of the State*
18 *of California vs. Timothy Schalchlin, aka Timothy Michael Schalchlin*, in San Diego County
19 Superior Court, Central Division, Case Number CD254237, Respondent was convicted on his
20 plea of guilty of violation of HSC sections 11351, possession for sale of cocaine, and 11378,
21 possession for sale of LSD, felonies. Respondent admitted and the court found true the allegation
22 under Penal Code (PC) section 12022, subdivision (c), that during the commission of the
23 felonies, Respondent was personally armed with a firearm, a sentencing enhancement under PC
24 section 1170, subdivision (h). Felony charges of transport for sale of a controlled substance
25 under a two-count violation of HSC section 11352, subdivision (a), one for cocaine and the other
26 for methadone, and a two-count violation of HSC section 11379, subdivision (a), one for MDMA
27 or Ecstasy and the other for LSD, were dismissed pursuant to a plea bargain. Additional felony

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1 charges of possession for sale of methadone under HSC section 11351 and Ecstasy under HSC
2 section 11378, were also dismissed pursuant to a plea bargain.

3 b. As a result of the convictions, on April 7, 2014, Respondent was
4 sentenced to be committed to the custody of the San Diego County Sheriff for 365 days, to be
5 served concurrent with four years in state prison, with credit for 42 days served and 42 days for
6 good behavior, service of the remainder of which was deferred. Respondent was granted three
7 years formal probation under treatment, therapy, counseling, drug, and alcohol conditions.
8 Respondent was ordered to pay fines, fees, assessments, restitution, and the cost of probation.
9 Respondent was also ordered to complete 20 days of volunteer work under the Public Service
10 Program, and attend and successfully complete a cognitive behavioral counseling program.

11 c. The circumstances that led to the convictions are that on February 22,
12 2014, Respondent was stopped by an officer from the San Diego State University (SDSU) Police
13 Department for violation of traffic regulations while driving in the area of Lindo Paseo and
14 College Avenues in San Diego, California. During the initial contact with Respondent, the
15 officer saw in plain view inside the Respondent's car plastic baggies consistent with narcotics
16 usage. A subsequent search of Respondent's car yielded 59 separate items of dangerous drugs,
17 money, and weapons, including two loaded firearms, metal knuckles, and a pay and owe book.
18 Respondent was arrested for narcotics and weapons, and thereafter booked into jail.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Unprofessional Conduct – Commission of Acts Involving Moral Turpitude)**

21 24. Respondent subjected his pharmacy technician registration to discipline under
22 Code section 4301, subdivision (f), in that on February 22, 2014, Respondent knowingly and
23 voluntarily participated in the transport and possession of drugs for sale. Respondent also
24 possessed two loaded firearms. Respondent committed acts involving moral turpitude when he
25 engaged in the transportation and possession of dangerous drugs while armed and while in the
26 vicinity of an educational facility, as detailed in paragraph 23, above.

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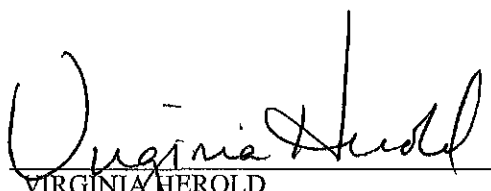
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2. Ordering Timothy Michael Schalchlin to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 11/10/14



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

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