

1 KAMALA D. HARRIS  
Attorney General of California  
2 ARMANDO ZAMBRANO  
Supervising Deputy Attorney General  
3 MARC D. GREENBAUM  
Supervising Deputy Attorney General  
4 State Bar No. 138213  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2579  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*  
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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. 5368

12 **FERNANDO LUIS CLAUSTRO**  
13 139 Stillman Way #3  
Upland, CA 91786

**A C C U S A T I O N**

14 Pharmacy Technician Registration License  
15 No. TCH 109536

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 (Board).  
22 2. On or about December 27, 2010, the Board issued Pharmacy Technician Registration  
23 License No. TCH 109536 to Fernando Luis Claustro (Respondent). The Pharmacy Technician  
24 Registration License was in full force and effect at all times relevant to the charges brought herein  
25 and will expire on July 31, 2014, unless renewed.

26 **JURISDICTION**

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

1        4.    Section 4300, subdivision (a), states that “[e]very license issued may be suspended or  
2    revoked.”

3        5.        Section 4300.1 states:

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

9    **STATUTORY PROVISIONS**

10       6.        Section 492 states:

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

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

22       7.        Section 4301 states, in pertinent part:

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

26        . . . .

27            "(f)    The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or  
28    corruption, whether the act is committed in the course of relations as a licensee or otherwise, and

1 whether the act is a felony or misdemeanor or not.

2 . . . .

3 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous  
4 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to  
5 oneself, to a person holding a license under this chapter, or to any other person or to the public, or  
6 to the extent that the use impairs the ability of the person to conduct with safety to the public the  
7 practice authorized by the license.

8 . . . .

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

11 . . . .

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

16 8. Section 4314 states:

17 "(a) The board may issue citations containing fines and orders of abatement for any  
18 violation of Section 733, for any violation of this chapter or regulations adopted pursuant to this  
19 chapter, or for any violation of Division 116 (commencing with Section 150200) of the Health and  
20 Safety Code, in accordance with Sections 125.9, 148, and 4005 and the regulations adopted  
21 pursuant to those sections.

22 "(b) Where appropriate, a citation issued by the board, as specified in this section, may  
23 subject the person or entity to whom the citation is issued to an administrative fine.

24 "(c) Notwithstanding any other provision of law, where appropriate, a citation issued by  
25 the board may contain an order of abatement. The order of abatement shall fix a reasonable time  
26 for abatement of the violation. It may also require the person or entity to whom the citation is  
27 issued to demonstrate how future compliance with the Pharmacy Law, and the regulations adopted  
28 pursuant thereto, will be accomplished. A demonstration may include, but is not limited to,

1 submission of a corrective action plan, and requiring completion of up to six hours of continuing  
2 education courses in the subject matter specified in the order of abatement. Any continuing  
3 education courses required by the order of abatement shall be in addition to those required for  
4 license renewal.

5 “(d) Nothing in this section shall in any way limit the board from issuing a citation, fine, and  
6 order of abatement pursuant to Section 4067 or Section 56.36 of the Civil Code, and the  
7 regulations adopted pursuant to those sections.”

### 8 PHARMACY LAW

9 9. Section 4059 provides that a person may not furnish any dangerous drug except upon  
10 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor  
11 pursuant to Section 3640.7. A person may not furnish any dangerous device, except upon the  
12 prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor  
13 pursuant to Section 3640.7.

14 10. Section 4060 states:

15 "No person shall possess any controlled substance, except that furnished to a person upon  
16 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor  
17 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified  
18 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a  
19 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,  
20 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of  
21 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply  
22 to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,  
23 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified  
24 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly  
25 labeled with the name and address of the supplier or producer.

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

1 **DRUG STATUTES**

2 11. Health and Safety Code section 11007 states:

3 “Controlled substance,” unless otherwise specified, means a drug, substance, or immediate  
4 precursor which is listed in any schedule in Section 11054, 11055, 11056, 11057, or 11058.”

5 12. Health and Safety Code section 11173, subdivision (a), provides that it is illegal to  
6 possess a controlled substance without a valid prescription.

7 13. United States Code Service, title 21, section 844 states, in pertinent part:

8 “(a) Unlawful acts; penalties. It shall be unlawful for any person knowingly or intentionally  
9 to possess a controlled substance unless such substance was obtained directly, or pursuant to a  
10 valid prescription . . .

11 “(c) "Drug, narcotic, or chemical offense" defined. As used in this section, the term " drug,  
12 narcotic, or chemical offense" means any offense which proscribes the possession, distribution,  
13 manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute,  
14 manufacture, cultivate, sell or transfer any substance the possession of which is prohibited under  
15 this title.”

16 **REGULATORY PROVISION**

17 14. California Code of Regulations, title 16, section 1770 states:

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

24 **COST RECOVERY**

25 15. Section 125.3 provides that the Board may request the administrative law judge to  
26 direct a licentiate found to have committed a violation or violations of the licensing act to pay a  
27 sum not to exceed the reasonable costs of the investigation and enforcement of the case.

28 ///

1 **CONTROLLED SUBSTANCES / DANGEROUS DRUGS**

2 16. Cocaine is a Schedule II controlled substance as designated in Health and Safety Code  
3 section 11055(b)(6), and is categorized as a dangerous drug according to section 4022.

4 17. Marijuana is a hallucinogenic Schedule I controlled substance under State and federal  
5 law (Health & Saf. Code § 11054 subd. (d)(13); and 21 U.S.C. § 812.), and a dangerous drug  
6 pursuant to section 4022.

7 **FIRST CAUSE FOR DISCIPLINE**

8 **(Dangerous Use of Controlled Substance(s))**

9 18. Respondent is subject to disciplinary action under section 4300, and 4301, subdivision  
10 (h), on the grounds of unprofessional conduct, in that on or about July 4, 2014, Respondent used  
11 Cocaine and / or Marijuana, controlled substances and dangerous drugs, to the extent or in a  
12 manner as to be dangerous or injurious to himself or others, as follows:

13 a. On or about July 5, 2014, Respondent was stopped by a law enforcement officer for  
14 driving a vehicle that was playing extremely loud music, music that could be heard more than 50  
15 feet away. Respondent informed the officer that he did not realize that he was playing music that  
16 loud and was unable to maintain his balance when standing. While the officer noticed a smell of  
17 marijuana emit from Respondent, Respondent admitted that he smoked marijuana earlier and  
18 directed the officer's gaze with his finger to small pieces of marijuana cigarettes in the vehicle's  
19 ashtray. During a consented search of Respondent and his vehicle, Respondent was found in  
20 possession of 0.8 grams of cocaine and 4.2 grams of marijuana, admittedly belonging to  
21 Respondent. Respondent informed the officer that the baggies and scale found in his vehicle's  
22 trunk were from over a month ago when he used to sell drugs, but he does not sell drugs anymore  
23 because he turned things around, and forgot to take the scale and baggies out of his trunk.

24 b. Subsequently, on or about September 8, 2014, after Respondent plead guilty to  
25 violating Health and Safety Code section 11350(a) [possession of a controlled substance, to wit,  
26 cocaine] in the criminal proceeding entitled *The People of the State of California v. Fernando Luis*  
27 *Claustro* (Super. Ct. San Bernardino County, 2014, No. FWV1403375), the Court ordered him  
28 placed on supervised probation for 36 months in the Proposition 36 program. In addition, the

1 Court ordered Respondent to register as a controlled substance offender, pursuant to Health and  
2 Safety Code section 11590/11594.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Drug Statute Violation)**

5 19. Respondent is subject to disciplinary action under section 4300, 4301, subdivision (j),  
6 for violating Health and Safety Code section 11173, subdivision (a), on the grounds of  
7 unprofessional conduct, in that on or about July 4, 2014, Respondent was in possession of Cocaine  
8 and Marijuana, controlled substances and dangerous drugs, without valid prescriptions.  
9 Complainant refers to and by this reference incorporates the allegations set forth above in  
10 paragraph 18, subparagraphs a and b, inclusive, as though set forth fully.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Pharmacy Law Violations)**

13 20. Respondent is subject to disciplinary action under section 4300, 4301, subdivision (o),  
14 for violating section 4059 and 4060, on the grounds of unprofessional conduct, in that on or about  
15 July 4, 2014, Respondent was in possession of Cocaine and Marijuana, controlled substances and  
16 dangerous drugs, without valid prescriptions. Complainant refers to and by this reference  
17 incorporates the allegations set forth above in paragraph 18, subparagraphs a and b, inclusive, as  
18 though set forth fully.

19 **FOURTH CAUSE FOR DISCIPLINE**

20 **(Failure to Comply with Board Issued Citation)**

21 21. Respondent is subject to disciplinary action under section 4300, 4301, subdivision (o),  
22 for violating section 4314, on the grounds of unprofessional conduct, in that Respondent failed to  
23 comply with a Board issued citation with circumstances as follows:

24 a. On or about May 17, 2013, the Board issued administrative Citation No.  
25 CI 2012 54644 with a \$400.00 fine, due on or about June 16, 2013. Citation No. CI 2012 54644  
26 is final and unpaid. Citation No. CI 2012 54644 alleged violations of:

27 i. Section 4301, subdivision (h) [unprofessional conduct – administering to oneself, of  
28 any controlled substance, or the use of any dangerous drug or of alcoholic beverages. . . ]. On or

1 about August 4, 2012, Respondent was arrested for violating misdemeanor Vehicle Code Section  
2 23152(a) – Driving Under the Influence of Alcohol or Drugs and misdemeanor Vehicle Code  
3 Section 23152(b) – DUI/0.08 Percent.

4 ii. Section 4301, subdivision (l) [unprofessional conduct – conviction of a crime  
5 substantially related to the practice of pharmacy]. On or about February 14, 2013, Respondent  
6 was convicted of misdemeanor Vehicle Code Section 23152(a) – driving under the influence of  
7 alcohol or drugs and misdemeanor Vehicle Code section 23152(b) – DUI/0.08 percent.

8 **FIFTH CAUSE FOR DISCIPLINE**

9 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

10 22. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision  
11 (f), on the grounds of unprofessional conduct, in that Respondent committed acts involving moral  
12 turpitude, dishonesty, fraud, deceit, or corruption. Complainant refers to and by this reference  
13 incorporates the allegations set forth above in paragraphs 18 - 21, inclusive, as though set forth  
14 fully.

15 **PRAYER**

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

- 18 1. Revoking or suspending Pharmacy Technician Registration License No. TCH 109536,  
19 issued to Fernando Luis Claustro;
- 20 2. Ordering Fernando Luis Claustro to pay the Board the reasonable costs of the  
21 investigation and enforcement of this case, pursuant to section 125.3; and
- 22 3. Taking such other and further action as deemed necessary and proper.

23  
24 DATED: 5/4/15

  
25 VIRGINIA HEROLD  
26 Executive Officer  
27 Board of Pharmacy  
28 Department of Consumer Affairs  
State of California  
*Complainant*

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