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

12 In the Matter of the Accusation Against:

Case No. 5626

13 **JANISCE SANTOS GONZALES**
14 **7974 Mission Center Court C**
San Diego, CA 92108

A C C U S A T I O N

15 **Pharmacy Technician Registration No. TCH 78760**

16 Respondent.
17

18 Complainant alleges:

19 **PARTIES**

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

22 2. On October 4, 2007, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 78760 to Janisce Santos Gonzales (Respondent). The Pharmacy
24 Technician Registration expired on December 31, 2014, and was cancelled on April 5, 2015,

25 under Business and Professions Code section 4402, subdivision (e).

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1 **JURISDICTION**

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

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

7 5. Section 4300.1 of the Code 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 6. Section 480 of the Code 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 7. Section 482 of the Code 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 8. Section 490 of the Code provides, in pertinent part, that a board may suspend or
12 revoke a license on the ground that the licensee has been convicted of a crime substantially
13 related to the qualifications, functions, or duties of the business or profession for which the
14 license was issued.

15 9. Section 493 of the Code states:

16 Notwithstanding any other provision of law, in a proceeding conducted by
17 a board within the department pursuant to law to deny an application for a license
18 or to suspend or revoke a license or otherwise take disciplinary action against a
19 person who holds a license, upon the ground that the applicant or the licensee has
20 been convicted of a crime substantially related to the qualifications, functions, and
21 duties of the licensee in question, the record of conviction of the crime shall be
22 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
the crime in order to fix the degree of discipline or to determine if the conviction
is substantially related to the qualifications, functions, and duties of the licensee in
question.

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

24 10. Section 4022 of the Code states

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

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

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

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

7 11. Section 4060 of the Code states:

8 No person shall possess any controlled substance, except that furnished to
9 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
10 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
11 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
12 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant
13 pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or
14 a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause
15 (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This
16 section shall not apply to the possession of any controlled substance by a
17 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
18 optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
19 practitioner, or physician assistant, when in stock in containers correctly labeled
20 with the name and address of the supplier or producer.

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

24 12. Section 4301 of the Code states:

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

....

(f) The commission of any act involving moral turpitude, dishonesty,
fraud, deceit, or corruption, whether the act is committed in the course of relations
as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

....

(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.

....

(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

1 States Code regulating controlled substances or of a violation of the statutes of
2 this state regulating controlled substances or dangerous drugs shall be conclusive
3 evidence of unprofessional conduct. In all other cases, the record of conviction
4 shall be conclusive evidence only of the fact that the conviction occurred. The
5 board may inquire into the circumstances surrounding the commission of the
6 crime, in order to fix the degree of discipline or, in the case of a conviction not
7 involving controlled substances or dangerous drugs, to determine if the conviction
8 is of an offense substantially related to the qualifications, functions, and duties of
9 a licensee under this chapter. A plea or verdict of guilty or a conviction following
10 a plea of *nolo contendere* is deemed to be a conviction within the meaning of this
11 provision. The board may take action when the time for appeal has elapsed, or the
12 judgment of conviction has been affirmed on appeal or when an order granting
13 probation is made suspending the imposition of sentence, irrespective of a
14 subsequent order under section 1203.4 of the Penal Code allowing the person to
15 withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
16 the verdict of guilty, or dismissing the accusation, information, or indictment.

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

23

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

25

26 13. Health & Safety Code section 11357, subdivision (c) states:

27 Except as authorized by law, every person who possesses more than 28.5
28 grams of Marijuana, other than concentrated cannabis, shall be punished by
imprisonment in a county jail for a period of not more than six months or by a
fine of not more than five hundred dollars (\$500), or by both such fine and
imprisonment.

14. Health & Safety Code section 11359 states:

Every person who possesses for sale any marijuana, except as otherwise
provided by law, shall be punished by imprisonment pursuant to subdivision (h)
of Section 1170 of the Penal Code.

REGULATORY PROVISIONS

15. California Code of Regulations, title 16, section 1769, states:

. . . .

(b) When considering the suspension or revocation of a facility or a
personal license on the ground that the licensee or the registrant has been

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1 convicted of a crime, the board, in evaluating the rehabilitation of such person and
2 his present eligibility for a license will consider the following criteria:

- 3 (1) Nature and severity of the act(s) or offense(s).
4 (2) Total criminal record.
5 (3) The time that has elapsed since commission of the act(s) or
6 offense(s).
7 (4) Whether the licensee has complied with all terms of parole,
8 probation, restitution or any other sanctions lawfully imposed against the licensee.
9 (5) Evidence, if any, of rehabilitation submitted by the licensee.

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

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

18 **COST RECOVERY**

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

25 **DRUG**

26 18. Cannabinoids (Marijuana) are Schedule I controlled substances as designated by
27 Health and Safety Code section 11054, subdivision (d)(13) and are dangerous drugs under Code
28 section 4022.

29 **FIRST CAUSE FOR DISCIPLINE**

30 **(September 17, 2014 Convictions for Possession of Marijuana for Sale on July 22, 2014)**

31 19. Respondent has subjected her Pharmacy Technician Registration to discipline
32 under Code sections 490 and 4301, subdivision (l), in that she was convicted of crimes that are

1 substantially related to the qualifications, functions, and duties of a registered pharmacy
2 technician. The circumstances are as follows:

3 a. On September 17, 2014, in a criminal proceeding entitled *The People of*
4 *the State of California v. Janisce Santos Gonzales*, in the San Diego County Superior Court,
5 Central Division, Case Number CD257579, Respondent was convicted on her plea of guilty of
6 violating Health and Safety Code (HSC) sections 11357, subdivision (c), possession of marijuana
7 weighing more than 28.5 grams, designated a misdemeanor under Penal Code section 17,
8 subdivision (b); and 11359, possession of marijuana for sale, a felony. A felony charge for
9 violation of HSC section 11360, subdivision (a), sale or transport of marijuana, was dismissed
10 under a plea bargain.

11 b. As a result of the convictions, on October 16, 2014, Respondent was
12 sentenced to be committed to the custody of the San Diego County Sheriff for four days with
13 credit for two days served and two days for good behavior. Respondent was granted three years
14 formal probation under certain terms and conditions and ordered to pay fines, fees, restitution,
15 penalties, and assessments. Respondent was also ordered to perform 160 hours of volunteer work
16 at a non-profit organization and register as a controlled substance offender under HSC section
17 11590.

18 c. The facts that led to the convictions are that on July 22, 2014, Respondent
19 carried a large box into a courier shop in Lemon Grove, California. After a few minutes,
20 Respondent left the shop with a receipt and drove her vehicle away. A Drug Enforcement
21 Administration (DEA) officer contacted the shop's management and conducted a K9¹ sniff of the
22 box that Respondent brought earlier. The officer's K9 alerted to the presence of narcotics coming
23 from the parcel. Another officer took custody of the box. Officers went to Respondent's address,
24 introduced themselves as DEA agents, and interviewed her. Respondent admitted to mailing the

25
26 ¹ A police dog, often referred to as a "K-9" (which is a homophone of canine), is a dog
27 that is specifically trained to assist police and other law-enforcement personnel in their work,
28 such as searching for drugs and explosives, searching for lost people, looking for crime scene
evidence, and protecting their handlers.

1 parcel and consented to a search of the parcel, her car, and her residence. The parcel contained
2 9.7 kilograms of marijuana. The officers found the mail transaction receipts in Respondent's car.
3 Thereafter, Respondent was arrested and transported to the Las Colinas Detention Facility for
4 booking.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Commission of Acts Involving Moral Turpitude, Dishonesty, Fraud, or Deceit)**

7 20. Respondent subjected her Pharmacy Technician Registration to disciplinary action
8 under Code section 4301, subdivision (f), in that on July 22, 2014, Respondent possessed for sale
9 9.7 kilograms of marijuana, an act involving moral turpitude, dishonesty, fraud, or deceit.

10 **THIRD CAUSE FOR DISCIPLINE**

11 **(Unprofessional Conduct - Violation of Drug Laws)**

12 21. Respondent subjected her Pharmacy Technician Registration to disciplinary
13 action under Code section 4301, subdivision (j) in that Respondent violated Health and Safety
14 Code sections 11357, subdivision (c), and 11359, statutes of the State of California regulating
15 controlled substances and dangerous drugs, by unlawfully possessing for sale 9.7 kilograms of
16 marijuana, as detailed in paragraph 19, above, and incorporated herein by this reference.

17 **FOURTH CAUSE FOR DISCIPLINE**

18 **(Unprofessional Conduct - Violation of Pharmacy Laws)**

19 22. Respondent subjected her Pharmacy Technician Registration to disciplinary
20 action under Code section 4301, subdivision (o), in that Respondent possessed a controlled
21 substance (9.7 kilograms of marijuana) without a prescription in violation of Code section 4060,
22 as detailed in paragraph 19, above, and incorporated herein by this reference, in violation of
23 pharmacy law.

24 **FIFTH CAUSE FOR DISCIPLINE**

25 **(Conduct That Would Have Warranted Denial of a License)**

26 23. Respondent subjected her Pharmacy Technician Registration to disciplinary
27 action under Code section 4301, subdivision (p) in that Respondent was convicted of possession
28 for sale of 9.7 kilograms of Marijuana, conduct that would have warranted the denial of a

1 pharmacy technician registration under Code section 480, subdivision (a)(1), as detailed in
2 paragraph 19, above.

3 **PRAYER**

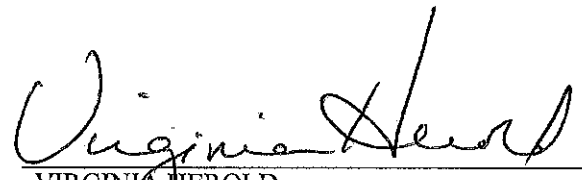
4 WHEREFORE, Complainant requests that a hearing be held on the matters herein
5 alleged, and that following the hearing, the Board of Pharmacy issue a decision:

6 1. Revoking Pharmacy Technician Registration Number TCH 78760, issued to
7 Janisce Santos Gonzales;

8 2. Ordering Janisce Santos Gonzales to pay the Board of Pharmacy the reasonable
9 costs of the investigation and enforcement of this case, pursuant to Business and Professions
10 Code section 125.3; and

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

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15 DATED: 11/9/15



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

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