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

12 In the Matter of the Accusation Against:
13 **ANDREW ISAAC FOSTER**
14 **11015 Marygold Way**
Corona, CA 92883
15 **Pharmacy Technician Registration No. TCH**
142423
16
17 Respondent.

Case No. 5628

A C C U S A T I O N

18
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about September 10, 2014, the Board issued Pharmacy Technician Registration
24 Number TCH 142423 to Andrew Isaac Foster (Respondent). The Pharmacy Technician
25 Registration was in full force and effect at all times relevant to the charges brought herein and will
26 expire on May 31, 2016, unless renewed.

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1 **JURISDICTION**

2 3. This Accusation is brought before the Board under the authority of the following laws.

3 All section references are to the Business and Professions Code unless otherwise indicated.

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

6 5. Section 4300.1 of the Code states:

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

11 **STATUTORY PROVISIONS**

12 6. Section 492 of the Code states:

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

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

20 7. Section 4301 of the Code states:

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

24 ...

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

27 ...

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

3

4 8. Health and Safety Code section 11377, subdivision (a) states:

5 (a) A person shall not use, or be under the influence of any controlled substance
6 that is (1) specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of
7 Section 11054, specified in paragraph (14), (15), (21), (22), or (23) of subdivision (d) of
8 Section 11054, specified in subdivision (b) or (c) of Section 11055, or specified in
9 paragraph (1) or (2) of subdivision (d) or in paragraph (3) of subdivision (e) of Section
10 11055, or (2) a narcotic drug classified in Schedule III, IV, or V, except when
11 administered by or under the direction of a person licensed by the state to dispense,
12 prescribe, or administer controlled substances. It shall be the burden of the defense to
13 show that it comes within the exception. A person convicted of violating this subdivision
14 is guilty of a misdemeanor and shall be sentenced to serve a term of not more than one
15 year in a county jail. The court may also place a person convicted under this subdivision
16 on probation for a period not to exceed five years.

17 9. Health and Safety Code section 11364.1, subdivision (a) states:

18 It is unlawful to possess an opium pipe or any device, contrivance, instrument, or
19 paraphernalia used for unlawfully injecting or smoking (1) a controlled substance specified
20 in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054,
21 specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, specified in
22 subdivision (b) or (c) of Section 11055, or specified in paragraph (2) of subdivision (d) of
23 Section 11055, or (2) a controlled substance which is a narcotic drug classified in
24 Schedule III, IV, or V.

25 REGULATORY PROVISIONS

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

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

COST RECOVERY

11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
administrative law judge to direct a licentiate found to have committed a violation or violations of
the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
enforcement of the case, with failure of the licentiate to comply subjecting the license to not being

1 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
2 included in a stipulated settlement.

3 **DRUGS AT ISSUE**

4 ~~12. Methamphetamine is a schedule II controlled substance as designated by Health and~~
5 ~~Safety Code section 11055, subdivision (d)(2), and is a dangerous drug pursuant to Business and~~
6 ~~Professions Code section 4022.~~

7 13. Amphetamine is a Schedule II controlled substance as designated by Health and
8 Safety Code section 11055, subdivision (d), and a dangerous drug pursuant to Business and
9 Professions Code section 4022.

10 **FIRST CAUSE FOR DISCIPLINE**

11 **(Unprofessional Conduct)**

12 14. Respondent has subjected his registration to discipline under section 4301, of the Code
13 for unprofessional conduct in that on April 25, 2015, Respondent was observed sitting nude at an
14 elementary school and masturbating, while under the influence of Methamphetamine.

15 a. The circumstances are that on or about the early morning of Saturday, April 25,
16 2015, a deputy with the Riverside County Sheriff Department was dispatched to a nearby
17 elementary school. A witness observed a man sitting nude and masturbating at an elementary
18 school table. The man had a black backpack. The witness yelled at the Respondent, which caused
19 Respondent to run away. The witness observed Respondent jump into the backyard of a nearby
20 residence, which was later identified as Respondent's house. Based upon the witness
21 observations, the deputy went to the identified residence and interviewed Respondent. During a
22 consensual search of his residence, the deputy seized a glass smoking pipe used to smoke
23 methamphetamine, he also found a black backpack, which was described by the witness.
24 Respondent, admitted he has a methamphetamine addiction, and that he indigested
25 methamphetamine the night before. Respondent admitted he went for a walk and that he sat at a
26 table at the elementary school. The officer arrested Respondent for possession of the glass meth
27 pipe. Respondent admitted that he was under the influence and snapped out of his fog when he
28

1 realized his behavior was inappropriate. During booking, Respondent provided his blood sample
2 which confirmed the presence of methamphetamine and amphetamine.

3 b. On or about June 19, 2015, in the criminal proceeding entitled *The People of the*
4 ~~*State of California v. Andrew Isaac Foster*~~, in the Riverside County Superior Court, case no. RIM-
5 1508840, Respondent was charged with violating Health and Safety Code section 11550,
6 subdivision (a), willfully and unlawfully used and was under the influence of a controlled substance
7 and Health and Safety Code section 11364, possession of an opium pipe and a device, contrivance,
8 instrument, and paraphernalia used for unlawfully injecting a smoking a controlled substance. The
9 court referred Respondent to Veterans Court, pursuant to a military diversion program, Penal
10 Code section 1001.80, Penal Code section 1000, and Penal Code section 1210.1.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Violation of Statutes Involving Controlled Substances)**

13 15. Respondent has subjected his registration to discipline under section 4301, subdivision
14 (j) of the Code for unprofessional conduct in that on April 25, 2015, Respondent knowingly
15 violated Health and Safety Code sections 11364 and 11550, when he was in possession of
16 paraphernalia and use of a controlled substance, as described in paragraph 14, above.

17 **THIRD CAUSE FOR DISCIPLINE**

18 **(Dangerous Use of a Controlled Substance)**

19 16. Respondent is subject to disciplinary action under Code section 4301, subdivision
20 (h) in that on April 25, 2015, Respondent was under the influence of a controlled substance, to
21 wit, methamphetamine and amphetamine. Respondent admitted to having a methamphetamine
22 addiction. Complainant refers to, and by reference incorporates, the allegations set forth above in
23 paragraph 14, subparagraph (a), as though fully set forth herein.

24 **PRAYER**

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

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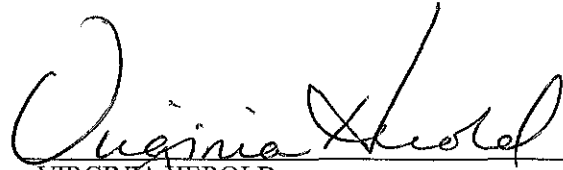
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1. Revoking or suspending Pharmacy Technician Registration Number TCH 142423, issued to Andrew Isaac Foster;
2. Ordering Andrew Isaac Foster to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED:

1/22/16



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

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