

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA L. SUN
Supervising Deputy Attorney General
3 KATHERINE MESSANA
Deputy Attorney General
4 State Bar No. 272953
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2554
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:
12 **ROBERT ANTHONY PLYLEY**
13 7211 Haven Ave., Suite #E
14 Rancho Cucamonga, CA 91701
15 Pharmacy Technician Registration No. TCH
145939
16 Respondent.

Case No. 5830

A C C U S A T I O N

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 February 18, 2015, the Board issued Pharmacy Technician Registration
23 Number TCH 145939 to Robert Anthony Plyley (Respondent). Said registration was in full force
24 and effect at all times relevant to the charges brought herein and will expire on May 31, 2018,
25 unless renewed.

26 **JURISDICTION AND STATUTORY PROVISIONS**

- 27 3. This Accusation is brought before the Board under the authority of the following laws.
28 Unless otherwise indicated, all references are to the Business and Professions Code (Code).

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4. Section 4300 of the Code states:

“(a) Every license issued may be suspended or revoked.

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

- (1) Suspending judgment.
- (2) Placing him or her upon probation.
- (3) Suspending his or her right to practice for a period not exceeding one year.
- (4) Revoking his or her license.
- (5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy, including, but not limited to, the following:

- (1) Medical or psychiatric evaluation.
- (2) Continuing medical or psychiatric treatment.
- (3) Restriction of type or circumstances of practice.
- (4) Continuing participation in a board-approved rehabilitation program.
- (5) Abstention from the use of alcohol or drugs.
- (6) Random fluid testing for alcohol or drugs.
- (7) Compliance with laws and regulations governing the practice of pharmacy.

(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary certificate of licensure for any violation of the terms and conditions of probation. Upon satisfactory completion of probation, the board shall convert the probationary certificate to a regular certificate, free of conditions.

(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure.”

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1 5. Section 490 of the Code states:

2 “(a) In addition to any other action that a board is permitted to take
3 against a licensee, a board may suspend or revoke a license on the ground that the
4 licensee has been convicted of a crime, if the crime is substantially related to the
5 qualifications, functions, or duties of the business or profession for which the license
6 was issued.

7 (b) Notwithstanding any other provision of law, a board may exercise any
8 authority to discipline a licensee for conviction of a crime that is independent of the
9 authority granted under subdivision (a) only if the crime is substantially related to the
10 qualifications, functions, or duties of the business or profession for which the licensee's
11 license was issued.

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

19 (d) The Legislature hereby finds and declares that the application of this
20 section has been made unclear by the holding in *Petropoulos v. Department of Real*
21 *Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a
22 significant number of statutes and regulations in question, resulting in potential harm
23 to the consumers of California from licensees who have been convicted of crimes.
24 Therefore, the Legislature finds and declares that this section establishes an
25 independent basis for a board to impose discipline upon a licensee, and that the
26 amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session
27 do not constitute a change to, but rather are declaratory of, existing law.”

28 6. Section 4301 of the Code provides, in pertinent part:

 “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:

 ...

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

9 **REGULATORY PROVISIONS**

10 7. 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 related
14 to the qualifications, functions or duties of a licensee or registrant if to a substantial
15 degree it evidences present or potential unfitness of a licensee or registrant to perform
16 the functions authorized by his license or registration in a manner consistent with the
17 public health, safety, or welfare.”

15 **FIRST CAUSE FOR DISCIPLINE**

16 **(Substantially Related Criminal Conviction)**

17 8. Respondent is subject to disciplinary action under section 490 and section 4301,
18 subdivision (I) of the Code, in conjunction with California Code of Regulations, title 16, section
19 1770 in that Respondent was convicted of a crime substantially related to the qualifications,
20 functions and duties of a pharmacy technician. Specifically, on March 11, 2016, Respondent was
21 convicted of one felony count of violating Health and Safety Code section 11397.6 [manufacture a
22 controlled substance] and one felony count of violating Penal Code section 498(d) [theft of utility
23 service] in the criminal proceeding entitled *The People of the State of California v. Robert*
24 *Anthony Phyley* (Super. Ct. of California, County of Riverside, Case No. RIF1500496). The
25 circumstances underlying the criminal conviction are that on or about July 2, 2014, Respondent
26 manufactured, compounded, converted, produced, derived, processed, and prepared hashish oil, a
27 controlled substance.

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SECOND CAUSE FOR DISCIPLINE

(Act Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

9. Respondent is subject to disciplinary action under section 4301, subdivision (f) of the Code in that Respondent committed an act involving moral turpitude, dishonesty, fraud, deceit, or corruption. The conduct is described in more particularity in paragraph 8 above, inclusive, and hereby incorporated by reference.

THIRD CAUSE FOR DISCIPLINE

(Violation of Statutes Regulating Controlled Substances and Dangerous Drugs)

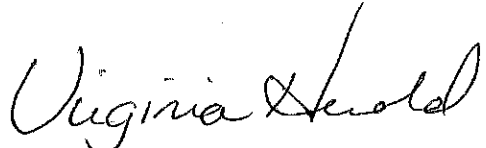
10. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the Code in that Respondent violated statutes of this state, or any other state, or of the United States regulating controlled substances and dangerous drugs. The conduct is described in more particularity in paragraph 8 above, inclusive, and hereby incorporated by reference.

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 Number TCH 145939, issued to Robert Anthony Plyley;
2. Ordering Robert Anthony Plyley 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: 7/30/16



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