

1 KAMALA D. HARRIS
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 PHILLIP L. ARTHUR
Deputy Attorney General
4 State Bar No. 238339
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 322-0032
Facsimile: (916) 327-8643
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 G. FINLEY**
617 N. School St.
13 Lodi, CA 95240
14 **Pharmacy Technician Registration No. TCH**
15 **30996**
16 Respondent.

Case No. 5874

A C C U S A T I O N

17 Virginia Herold ("Complainant") alleges:

18 **PARTIES**

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

21 **Pharmacy Technician Registration**

22 2. On or about October 5, 1999, the Board issued Pharmacy Technician Registration
23 Number TCH 30996 to Robert G. Finley ("Respondent"). The Pharmacy Technician Registration
24 expired on October 31, 2015, and has not been renewed.

25 ///
26 ///
27 ///

1 JURISDICTION

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

5 4. Business and Professions Code ("Code") section 4300 states, in pertinent part:

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

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

9 (1) Suspending judgment.

10 (2) Placing him or her upon probation.

11 (3) Suspending his or her right to practice for a period not exceeding one year.

12 (4) Revoking his or her license.

13 (5) Taking any other action in relation to disciplining him or her as the board in
14 its discretion may deem proper

15 5. Code section 4300.1 states:

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

20 STATUTORY PROVISIONS

21 6. Code section 4301 states, in pertinent part:

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

25 . . .

26 (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
27 licensee or otherwise, and whether the act is a felony or misdemeanor or not.

28 . . .

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

2 ...

3 (l) The conviction of a crime substantially related to the qualifications,
4 functions, and duties of a licensee under this chapter. The record of conviction of a
5 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
6 States Code regulating controlled substances or of a violation of the statutes of this
7 state regulating controlled substances or dangerous drugs shall be conclusive
8 evidence of unprofessional conduct. In all other cases, the record of conviction shall
9 be conclusive evidence only of the fact that the conviction occurred. The board may
10 inquire into the circumstances surrounding the commission of the crime, in order to
11 fix the degree of discipline or, in the case of a conviction not involving controlled
12 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.

13 ...

14 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
15 abetting the violation of or conspiring to violate any provision or term of this chapter
16 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. . . .

17 7. Code section 4022 states:

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

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

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

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

25 8. Code section 4060 states, in pertinent part:

26 A person shall not possess any controlled substance, except that furnished to a
27 person upon the prescription of a physician, dentist, podiatrist, optometrist,
veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant
28 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a
nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to

1 Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist
2 pursuant to Section 4052.1, 4052.2, or 4052.6. . . .

3 9. Health and Safety ("H&S") Code section 11170 states, "No person shall prescribe,
4 administer, or furnish a controlled substance for himself."

5 10. H&S Code section 11350(a) states:

6 Except as otherwise provided in this division, every person who possesses (1)
7 any controlled substance specified in subdivision (b) or (c), or paragraph (1) of
8 subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of
9 subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section
10 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled
11 substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon
12 the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to
13 practice in this state, shall be punished by imprisonment pursuant to subdivision (h)
14 of Section 1170 of the Penal Code.

15 11. H&S Code section 11377(a) states:

16 Except as authorized by law and as otherwise provided in subdivision (b) or
17 Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of
18 Division 2 of the Business and Professions Code, every person who possesses any
19 controlled substance which is (1) classified in Schedule III, IV, or V, and which is not
20 a narcotic drug, (2) specified in subdivision (d) of Section 11054, except paragraphs
21 (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph (11) of
22 subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision
23 (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055,
24 unless upon the prescription of a physician, dentist, podiatrist, or veterinarian,
25 licensed to practice in this state, shall be punished by imprisonment in a county jail
26 for a period of not more than one year or pursuant to subdivision (h) of Section 1170
27 of the Penal Code.

28 COST RECOVERY

12. Code section 125.3 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 investigation and enforcement
of the case, with failure of the licentiate to comply subjecting the license to not being renewed or
reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a
stipulated settlement.

DRUG

13. *Methamphetamine* is a schedule II controlled substance as designated by H&S Code
section 11055(d)(2).

///

1 14. *Percocet* is a brand of oxycodone, a Schedule II controlled substance as designated by
2 H&S Code section 11055(b)(1).

3 **FIRST CAUSE FOR DISCIPLINE**

4 (Criminal Conviction)

5 15. Respondent is subject to disciplinary action pursuant to Code section 4301(*l*), on the
6 grounds of unprofessional conduct, in that Respondent has been convicted of a crime
7 substantially related to the qualifications, functions, and duties of a pharmacy technician. The
8 facts and circumstances are as follows:

9 16. On or about December 23, 2015, in *People v. Robert Gary Finley* (Superior Court of
10 California, San Joaquin County, case no. LOD-CR-MI-2015-0015259), Respondent was
11 convicted by the court, based upon his plea of guilty, of violating Health and Safety Code section
12 11350(a) (possess narcotic controlled substance). Respondent was ordered to attend and
13 complete the Deferred Entry of Judgment program by December 11, 2018 and to pay a restitution
14 fine. The circumstances of the crime are as follows:

15 17. On or about November 12, 2015, Respondent was detained by the Lodi Police
16 Department after he was observed riding down a street in the wrong direction on a bicycle.
17 Respondent agreed to empty his pockets and when he did so a plastic bag containing 20 pills fell
18 out of his pocket. Respondent identified the pills as Percocet. Respondent explained that he used
19 to work at a pharmacy and knew they were Schedule II controlled drugs. A further search ensued
20 and two baggies with a white crystalline substance later identified as methamphetamine were
21 found on Respondent.

22 **SECOND CAUSE FOR DISCIPLINE**

23 (Violation of State Laws Regulating Controlled Substances)

24 18. Respondent is subject to disciplinary action pursuant to Code section 4301(*j*), on the
25 grounds of unprofessional conduct, in that Respondent violated statutes regulating controlled
26 substances and dangerous drugs, as follows:

27 a. Respondent possessed methamphetamine, a controlled substance, in violation of H&S
28 Code section 11377(a), as described with more particularity in paragraph 17, above.

1 b. Respondent possessed Percocet, a controlled substance and a dangerous drug, when
2 he did not have a lawful prescription for it, in violation of H&S Code section 11350(a), as
3 described with more particularity in paragraph 17, above.

4 **THIRD CAUSE FOR DISCIPLINE**

5 (Violation of the Pharmacy Law)

6 19. Respondent is subject to disciplinary action pursuant to Code section 4301(o), on the
7 grounds of unprofessional conduct, in that on or about November 12, 2015, Respondent violated
8 or attempted to violate, directly or indirectly, a provision or term of the Pharmacy Law (Code
9 section 4000, et seq.), as follows:

10 a. Respondent possessed Percocet without a lawful prescription from a physician,
11 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor, in violation of Code section
12 4060, as described with more particularity in paragraph 17, above..

13 b. Respondent possessed Methamphetamine without a lawful prescription from a
14 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor, in violation of
15 Code section 4060, as described with more particularity in paragraph 17, above.

16 **PRAYER**

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

19 1. Revoking or suspending Pharmacy Technician Registration Number TCH 30996,
20 issued to Robert G. Finley;

21 2. Ordering Robert G. Finley to pay the Board of Pharmacy the reasonable costs of
22 investigation and enforcement of this case, pursuant to Business and Professions Code section
23 125.3; and,

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

25 DATED: 11/28/16

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