

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Senior Assistant Attorney General  
3 GREGORY J. SALUTE  
Supervising Deputy Attorney General  
4 State Bar No. 164015  
600 West Broadway, Suite 1800  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 738-9431  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*  
8

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

12 In the Matter of the Accusation Against:

Case No. 5961

13 **JOY MELANIE PIATEK**  
14 **297 Douglas Dr. #107**  
**Oceanside, CA 92058**

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

15 **Pharmacy Technician Registration No. TCH**  
16 **52684**

17 Respondent.

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 August 12, 2004, the Board of Pharmacy (Board) issued Pharmacy Technician  
23 Registration Number TCH 52684 to Joy Melanie Piatek (Respondent). The Pharmacy Technician  
24 Registration expired on August 31, 2016, and has not been renewed.

25 **JURISDICTION**

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

1           4.     Code section 4300, subdivision (a), provides that every license issued by the  
2 Board may be suspended or revoked.

3           5.     Code section 4300.1 states:

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

#### 8                                     **STATUTORY PROVISIONS**

9           6.     Code section 482 states:

10                     Each board under the provisions of this code shall develop criteria to  
11 evaluate the rehabilitation of a person when:

- 12                     (a) Considering the denial of a license by the board under Section 480; or
- 13                     (b) Considering suspension or revocation of a license under Section 490.

14                     Each board shall take into account all competent evidence of rehabilitation  
15 furnished by the applicant or licensee.

16           7.     Code section 492 states:

17                     Notwithstanding any other provision of law, successful completion of any  
18 diversion program under the Penal Code, or successful completion of an alcohol  
19 and drug problem assessment program under Article 5 (commencing with Section  
20 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit  
21 any agency established under Division 2 (commencing with Section 500) of this  
22 code, or any initiative act referred to in that division, from taking disciplinary  
23 action against a licensee or from denying a license for professional misconduct,  
24 notwithstanding that evidence of that misconduct may be recorded in a record  
25 pertaining to an arrest. This section shall not be construed to apply to any drug  
26 diversion program operated by any agency established under Division 2  
27 (commencing with Section 500) of this code, or any initiative act referred to in  
28 that division.

24           8.     Code section 4022 states

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

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

28     ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

(b) Any device that bears the statement: "Caution: federal law restricts this 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 order use of the device.

(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.

9. Section 4060 of the Code states:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant 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 Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either Section 4052.1 or 4052.2. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

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

10. Section 4301 of the Code states:

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:

...

(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.

...

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

....

///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

11. Health and Safety Code Section 11054, states, in pertinent part:

(a) The controlled substances listed in this section are included in Schedule I.

...

(c) Opium derivatives. Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

...

(11) Heroin.

....

12. Health & Safety Code section 11055 states, in pertinent part:

(a) The controlled substances listed in this section are included in Schedule II.

(b) Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(1) Opium, opiate, and any salt, compound, derivative, or preparation of opium or opiate, with the exception of naloxone hydrochloride (N-allyl-14-hydroxy-nordihydromorphinone hydrochloride), but including the following:

...

(L) Morphine.

...

(d) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

...

(2) Methamphetamine, its salts, isomers, and salts of its isomers.

....

////  
////  
////  
////

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

13. Health & Safety Code section 11350, subdivision (a) states:

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

14. Health & Safety Code section 11364 states:

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

(b) This section shall not apply to hypodermic needles or syringes that have been containerized for safe disposal in a container that meets state and federal standards for disposal of sharps waste.

(c) Until January 1, 2021, as a public health measure intended to prevent the transmission of HIV, viral hepatitis, and other bloodborne diseases among persons who use syringes and hypodermic needles, and to prevent subsequent infection of sexual partners, newborn children, or other persons, this section shall not apply to the possession solely for personal use of hypodermic needles or syringes if acquired from a physician, pharmacist, hypodermic needle and syringe exchange program, or any other source that is authorized by law to provide sterile syringes or hypodermic needles without a prescription.

15. Health & Safety Code section 11375 in pertinent part states:

(a) As to the substances specified in subdivision (c), this section, and not Sections 11377, 11378, 11379, and 11380, shall apply.

(b) (1) Every person who possesses for sale, or who sells, any substance specified in subdivision (c) shall be punished by imprisonment in the county jail for a period of not more than one year or state prison.

(2) Every person who possesses any controlled substance specified in subdivision (c), unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be guilty of an infraction or a misdemeanor.

///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

(c) This section shall apply to any material, compound, mixture, or preparation containing any of the following substances:

- ...
- (12) Alprazolam.

16. Health & Safety Code section 11377 in pertinent part states:

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

....

**REGULATORY PROVISIONS**

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

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

///  
///  
///

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

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

7 **COST RECOVERY**

8 19. Code section 125.3 provides, in pertinent part, that the Board may request the  
9 administrative law judge to direct a licentiate found to have committed a violation or violations  
10 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
11 enforcement of the case, with failure of the licentiate to comply subjecting the license to not  
12 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs  
13 may be included in a stipulated settlement.

14 **DRUGS**

15 20. Alprazolam is a Schedule IV controlled substance as designated by Health and  
16 Safety Code section 11057, subdivision (d)(1), and is categorized as a dangerous drug under  
17 Code section 4022.

18 21. Heroin is a Schedule I controlled substance as designated by Health and Safety  
19 Code section 11054, subdivision (c)(11), and is categorized as a dangerous drug under Code  
20 section 4022.

21 22. Methamphetamine is a Scheduled II controlled substance as designated by Health  
22 and Safety Code section 11055, subdivision (d)(2), and is categorized as a dangerous drug under  
23 Code section 4022.

24 23. Morphine is a Schedule II controlled substance as designated by Health and  
25 Safety Code section 11055, subdivision (b)(1)(L) and is categorized as a dangerous drug under  
26 Code section 4022.

27 24. Tramadol, which has been reclassified on June 27, 2014, when the Drug  
28 Enforcement Agency ruled under the Controlled Substances Act that it is a Schedule IV

1 controlled substance effective August 18, 2014, has since been categorized as a dangerous drug  
2 under Code section 4022.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct – Violation of Drug Laws)**

5 25. Respondent has subjected her Pharmacy Technician Registration to discipline  
6 under Code sections 490 and 4301, subdivision (j), in that she violated Health and Safety Code  
7 (HSC) sections 11350, subdivision (a), a statute of the State of California regulating controlled  
8 substances. The circumstances are as follows:

9 a. On May 5, 2016, Respondent and a male companion sat for eight hours in  
10 her vehicle parked in the area of East Bobier Drive in Vista, California. Deputies from the San  
11 Diego County Sheriff's Department contacted the couple and conducted a search of the person of  
12 the two passengers and the vehicle. Respondent informed the deputies that her purse contained  
13 syringes. Respondent also informed the deputies that there was a syringe in her right sock and a  
14 methamphetamine pipe in her underwear. Respondent admitted to using the syringes to inject  
15 heroin and the pipe to smoke methamphetamine. The deputies located all the items mentioned.  
16 The deputies also located in Respondent's purse a burnt spoon with cotton balls, 0.15 grams of  
17 Heroin, a 2mg Alprazolam tablet, a 2mg Morphine pill, and a 50mg Tramadol pill. Respondent  
18 was arrested and booked into the Vista Detention Facility for violation of Health & Safety Code  
19 (HSC) sections 11364, possession of controlled substance paraphernalia; and 11350, subdivision  
20 (a), possession of narcotic controlled substance, and Code section 4060, possession of a  
21 controlled substance without prescription of a physician.

22 b. On May 25, 2016, in a criminal proceeding entitled *The People of the*  
23 *State of California vs. Joy Melaine Piatek*, in San Diego County Superior Court, North County  
24 Division, Case Number CN359890, Respondent was charged with violation of HSC sections  
25 11350, subdivision (a), possession of narcotic controlled substance, and 11364, both  
26 misdemeanors. On July 27, 2016, Respondent pled guilty to violation of HSC 11350, subdivision  
27 (a). The charge of violation of HSC section 11364 was dismissed under a plea bargain.

28 ///



1 c. As a result of her guilty plea, on July 27, 2016, Respondent was granted  
2 deferred entry of judgment under Penal Code (PC), section 1000. Respondent was ordered to pay  
3 fees and provide proof of enrollment in a PC section 1000 program by September 27, 2016.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Unprofessional Conduct – Violation of Pharmacy Laws)**

6 26. Respondent has subjected her Pharmacy Technician Registration to discipline  
7 under Code section 4301, subdivision (o), in that, as detailed in paragraph 25, above:

8 a. Respondent possessed Alprazolam without the prescription of a physician,  
9 dentist, podiatrist, or veterinarian, licensed to practice in this state, in violation of HSC section  
10 11375, subdivision (c)(12).

11 b. Respondent possessed Heroin, in violation of HSC section 11350,  
12 subdivision (a).

13 c. Respondent possessed Methamphetamine, in violation of HSC section  
14 11377, subdivision (a).

15 d. Respondent possessed Morphine without the written prescription of a  
16 physician, dentist, podiatrist, or veterinarian licensed to practice in this state, in violation of HSC  
17 section 11350, subdivision (a).

18 e. Respondent possessed Tramadol without the prescription of a physician,  
19 dentist, podiatrist, optometrist, veterinarian, naturopathic doctor, a certified nurse-midwife, a  
20 nurse practitioner, a physician assistant, or a pharmacist, in violation of Code section 4060.

21 **DISCIPLINARY CONSIDERATIONS**

22 27. To determine the degree of discipline, if any, to be imposed on Respondent,  
23 Complainant alleges:

24 a. On April 19, 1993, in a prior criminal proceeding entitled *The People of*  
25 *the State of California vs. Joy Melaine Piatek*, in San Diego County Superior Court, North  
26 County Division, Case Number CN158420, Respondent pled guilty to violating Vehicle Code  
27 (VC) section 10851, unauthorized taking of a vehicle not her own, without the consent of the  
28 owner thereof, and with intent either to permanently or temporarily deprive the owner thereof of

1 his or her title to or possession of the vehicle. Respondent also pled guilty to violating PC section  
2 496, subdivision (a), receipt of a stolen vehicle, knowing the vehicle to be so stolen. Respondent  
3 further pled guilty to violating HSC section 11377, subdivision (a), possession of  
4 Methamphetamine. As a result of her guilty pleas, Respondent was granted deferred entry of  
5 judgment under PC, section 1000. Respondent was ordered to pay fees and provide proof of  
6 enrollment in a PC section 1000 program.

7           b.       On September 3, 1997, in a prior criminal proceeding entitled *The People*  
8 *of the State of California vs. Joy Melaine Piatek*, in San Diego County Superior Court, North  
9 County Division, Case Number CN065262, Respondent was convicted of violating PC section  
10 602, subdivision (J), trespassing. Respondent was granted two years probation. The facts that led  
11 to her conviction are that in April 1997, Respondent was caught stealing clothes from a Sears  
12 store at The Plaza Camino Real in Carlsbad, California. Respondent filed a Petition for Relief  
13 under PC section 1203.4. On August 28, 2003, Respondent's petition was granted, her conviction  
14 was set aside, and the charge dismissed based on Respondent's fulfillment of the conditions of  
15 her probation.

16           c.       On August 12, 1998, in a prior criminal proceeding entitled *The People of*  
17 *the State of California vs. Joy Melaine Piatek*, in San Diego County Superior Court, North  
18 County Division, Case Number CN078829, Respondent was convicted of violating HSC section  
19 11352, subdivision (a), transportation, importation into this state, selling, furnishing,  
20 administering, or giving away, or offering to transport, import into this state, or sell, furnish,  
21 administer, or give away, or attempts to import into this state or transport (1) any controlled  
22 substance. Respondent was sentenced to county jail for a year. The facts that led to her  
23 conviction are that in order to support her drug habit, Respondent sold Heroin to an undercover  
24 officer on six occasions. Respondent was thereafter granted probation for three years.  
25 Respondent filed a Petition for Relief under PC sections 1203.4. On September 19, 2003,  
26 Respondent's petition was granted, her conviction was set aside, and the charge dismissed based  
27 on Respondent's fulfillment of the conditions of her probation.

28 ///

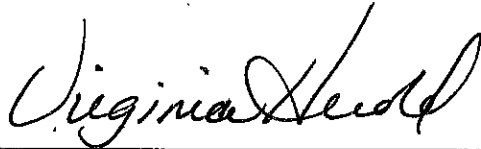
1 d. In addressing Respondent's prior convictions, investigated in case number  
2 AP 2003 26217, on August 12, 2004, the Board officially advised Respondent that her prior  
3 convictions and underlying conduct were substantially related to the qualifications, functions or  
4 duties of a registered pharmacy technician. The Board warned Respondent in a Notice of  
5 Warning that as a registered pharmacy technician, she is responsible for behaving professionally,  
6 honestly, and ethically. Future substantiated reports that Respondent has engaged in similar  
7 behavior or otherwise violated the law or regulations governing her practice as a pharmacy  
8 technician may evidence present or potential unfitness to perform the functions authorized by her  
9 registration in a manner consistent with the public health, safety, or welfare. As such, such  
10 occurrence could result in a disciplinary action against her registration.

11 **PRAYER**

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

- 14 1. Revoking or suspending Pharmacy Technician Registration Number TCH 52684,  
15 issued to Joy Melanie Piatek;
- 16 2. Ordering Joy Melanie Piatek to pay the Board of Pharmacy the reasonable costs  
17 of the investigation and enforcement of this case, pursuant to Business and Professions Code  
18 section 125.3; and,
- 19 3. Taking such other and further action as deemed necessary and proper.

20  
21  
22 DATED: 11/3/16



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

25 SD2016702384  
26 81487068.doc