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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. 5993

13 **JAIME PONCE**
14 **623 Bina Street**
Brawley, CA 92227

A C C U S A T I O N

15 **Pharmacy Technician Registration**
16 **No. TCH 113874**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about March 15, 2012, the Board issued Pharmacy Technician Registration
24 Number TCH 113874 to Jaime Ponce (Respondent). The Pharmacy Technician Registration was
25 in full force and effect at all times relevant to the charges brought herein and will expire on
26 February 28, 2018, unless renewed.

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1 **JURISDICTION**

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

5 4. Section 4300, subdivision (a) of the Code states, "Every license issued may be
6 suspended or revoked."

7 5. Section 4300.1 of the Code states:

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

12 **STATUTORY PROVISIONS**

13 6. Section 482 of the Code states:

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

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

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

20 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or
21 revoke a license on the ground that the licensee has been convicted of a crime substantially
22 related to the qualifications, functions, or duties of the business or profession for which the
23 license was issued.

23 8. Section 493 of the Code states:

24 Notwithstanding any other provision of law, in a proceeding conducted by a board
25 within the department pursuant to law to deny an application for a license or to suspend
26 or revoke a license or otherwise take disciplinary action against a person who holds a
27 license, upon the ground that the applicant or the licensee has been convicted of a crime
28 substantially related to the qualifications, functions, and duties of the licensee in
question, the record of conviction of the crime shall be 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,

1 functions, and duties of the licensee in question.

2 As used in this section, "license" includes "certificate," "permit," "authority," and
3 "registration."

4 9. Section 4301 of the Code states:

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

9

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

15

16 (l) The conviction of a crime substantially related to the qualifications, functions,
17 and duties of a licensee under this chapter. The record of conviction of a violation of
18 Chapter 13 (commencing with Section 801) of Title 21 of the United States Code
19 regulating controlled substances or of a violation of the statutes of this state regulating
20 controlled substances or dangerous drugs shall be conclusive evidence of unprofessional
21 conduct. In all other cases, the record of conviction shall be conclusive evidence only of
22 the fact that the conviction occurred. The board may inquire into the circumstances
23 surrounding the commission of the crime, in order to fix the degree of discipline or, in
24 the case of a conviction not involving controlled substances or dangerous drugs, to
25 determine if the conviction is of an offense substantially related to the qualifications,
26 functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a
27 conviction following a plea of nolo contendere is deemed to be a conviction within the
28 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. . . .

REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1769, subdivision (b) states:

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.

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

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

6 For the purpose of denial, suspension, or revocation of a personal or facility license
7 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions
8 Code, a crime or act shall be considered substantially related to the qualifications,
9 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.

10 **COSTS**

11 12. Section 125.3 of the Code states, in pertinent part, that the Board may request the
12 administrative law judge to direct a licentiate found to have committed a violation or violations of
13 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
14 enforcement of the case.

15 **FIRST CAUSE FOR DISCIPLINE**

16 **(March 6, 2014 Criminal Conviction for DUI on June 12, 2012)**

17 13. Respondent has subjected his registration to disciplinary action under sections 490
18 and 4301, subdivision (l) of the Code in that he was convicted of a crime that is substantially
19 related to the qualifications, duties, and functions of a pharmacy technician. The circumstances
20 are as follows:

21 a. On or about March 6, 2014, in a criminal proceeding entitled *People of the*
22 *State of California v. Jaime Galvan Ponce*, in Imperial County Superior Court, case number
23 ECM37741, Respondent was convicted on his plea of no contest of violating Vehicle Code
24 23152, subdivision (a), driving under the influence of alcohol, a misdemeanor. Additional counts
25 of violating Health and Safety Code section 11550, subdivision (a), under the influence of a
26 controlled substance, to wit, methamphetamine; Vehicle Code section 14601.1, subdivision (a),
27 driving when privilege suspended or revoked; and Vehicle Code section 23222, subdivision (a),
28 possession of open container when driving, were dismissed pursuant to the plea agreement.

1 pled guilty to violating Vehicle Code section 23152, subdivision (a), driving under the influence
2 of alcohol or drugs, a misdemeanor, and was granted five years probation. Respondent also pled
3 guilty to violating Health and Safety Code section 11377, subdivision (a), possession of a
4 controlled substance, a felony, and was granted deferred entry of judgment for 18 months.
5 Additional counts of violating Health and Safety Code section 11550, subdivision (a), under the
6 influence of a controlled substance; Penal Code section 148, subdivision (a)(1), resist, obstruct,
7 delay of peace officer or EMT; and Health and Safety Code section 11364, possession of a
8 smoking device, were dismissed pursuant to the plea agreement.

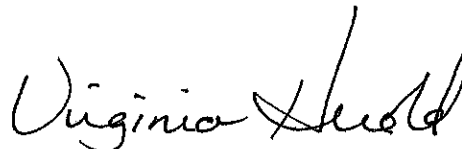
9 **PRAYER**

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

- 12 1. Revoking or suspending Pharmacy Technician Registration Number TCH 113874,
13 issued to Jaime Ponce;
- 14 2. Ordering Jaime Ponce to pay the Board of Pharmacy the reasonable costs of the
15 investigation and enforcement of this case, pursuant to Business and Professions Code
16 section 125.3;
- 17 3. Taking such other and further action as deemed necessary and proper.

18
19
20 DATED: _____

12/5/16



21 VIRGINIA HEROLD, Executive Officer
22 Board of Pharmacy
23 Department of Consumer Affairs
24 State of California
25 Complainant

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