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

10 In the Matter of the Accusation Against:

Case No. 5994

11 **MICHELLE JEANINE GERARDI**

12 110 N. Olive St., Apt. E316
13 Ventura, CA 93001

A C C U S A T I O N

14 Pharmacy Technician Registration No. TCH
15 111267

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about April 21, 2011, the Board issued Pharmacy Technician Registration
23 Number TCH 111267 to Michelle Jeanine Gerardi (Respondent). The Pharmacy Technician
24 Registration was in full force and effect at all times relevant to the charges brought herein and
25 will expire on February 28, 2019, unless renewed.

26 **JURISDICTION AND STATUTORY PROVISIONS**

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

1 4. Section 4300 of the Code states:

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

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

6 (1) Suspending judgment.

7 (2) Placing him or her upon probation.

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

10 (4) Revoking his or her license.

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

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

19 (1) Medical or psychiatric evaluation.

20 (2) Continuing medical or psychiatric treatment.

21 (3) Restriction of type or circumstances of practice.

22 (4) Continuing participation in a board-approved rehabilitation program.

23 (5) Abstention from the use of alcohol or drugs.

24 (6) Random fluid testing for alcohol or drugs.

25 (7) Compliance with laws and regulations governing the practice of
26 pharmacy.

27 (d) The board may initiate disciplinary proceedings to revoke or suspend
28 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 4301 of the Code provides, in pertinent part:

2 “The board shall take action against any holder of a license who is guilty
3 of unprofessional conduct or whose license has been issued by mistake.
4 Unprofessional conduct shall include, but is not limited to, any of the following:

5 ...

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

11 ...

12 (i) The conviction of a crime substantially related to the qualifications,
13 functions, and duties of a licensee under this chapter. The record of conviction of a
14 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
15 States Code regulating controlled substances or of a violation of the statutes of this
16 state regulating controlled substances or dangerous drugs shall be conclusive
17 evidence of unprofessional conduct. In all other cases, the record of conviction shall
18 be conclusive evidence only of the fact that the conviction occurred. The board may
19 inquire into the circumstances surrounding the commission of the crime, in order to
20 fix the degree of discipline or, in the case of a conviction not involving controlled
21 substances or dangerous drugs, to determine if the conviction is of an offense
22 substantially related to the qualifications, functions, and duties of a licensee under this
23 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
24 contendere is deemed to be a conviction within the meaning of this provision. The
25 board may take action when the time for appeal has elapsed, or the judgment of
26 conviction has been affirmed on appeal or when an order granting probation is made
27 suspending the imposition of sentence, irrespective of a subsequent order under
28 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.”

19 6. Section 490 of the Code states:

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

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

 (c) A conviction within the meaning of this section means a plea or
verdict of guilty or a conviction following a plea of nolo contendere. Any action that
a board is permitted to take following the establishment of a conviction may be taken
when the time for appeal has elapsed, or the judgment of conviction has been

1 affirmed on appeal, or when an order granting probation is made suspending the
2 imposition of sentence, irrespective of a subsequent order under the provisions of
3 Section 1203.4 of the Penal Code.

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

8 **REGULATIONS**

9 7. California Code of Regulations, title 16, section 1770, states:

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

14 **COST RECOVERY**

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

21 **FIRST CAUSE FOR DISCIPLINE**

22 **(Substantially Related Criminal Conviction)**

23 9. Respondent is subject to disciplinary action under section 4301, subdivision (l) and
24 section 490 of the Code, in conjunction with California Code of Regulations, title 16, section
25 1770 in that Respondent was convicted of a crime substantially related to the qualifications,
26 functions and duties of a pharmacy technician, as follows:

27 10. On or about June 27, 2016, Respondent was convicted of one misdemeanor count of
28 violating Vehicle Code section 23152(a) [driving under the influence of alcohol or drugs] in the

1 criminal proceeding entitled *The People of the State of California v. Michelle Jeanine Gerardi*
2 (Super. Ct. of California, County of Ventura, 2013, Case No. 2013006626). Respondent was
3 placed on formal probation for 36 months, with terms and conditions. The circumstances
4 underlying the criminal conviction are that on or about February 7, 2013, California Highway
5 Patrol officers responded to reports of a vehicle driving erratically. Upon locating Respondent's
6 vehicle, officers determined that the vehicle hit the metal barricade within a parking lot.
7 Responding officers opined that Respondent was under the influence of a CNS Depressant. The
8 blood test result was positive for Butalbital¹ and Meprobamate².

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Dangerous Use of Controlled Substances and Dangerous Drugs)**

11 11. Respondent is subject to disciplinary action under section 4301, subdivision (h) of the
12 Code in that Respondent used a controlled substance or dangerous drug, to the extent or in a
13 manner as to be dangerous or injurious to herself, others, or the public. The conduct is described
14 in more particularity in paragraph 10 above, inclusive, and hereby incorporated by reference.

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27 ¹ Butalbital is a dangerous drug pursuant to section 4022 of the Code.

28 ² Meprobamate is categorized as a Schedule IV controlled substance pursuant to Health
and Safety Code section 11057 and is a dangerous drug pursuant to section 4022 of the Code.

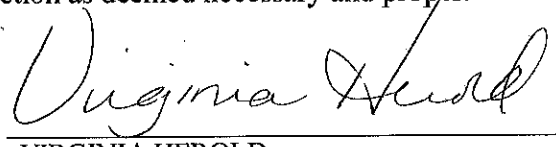
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PRAYER

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 111267, issued to Michelle Jeanine Gerardi;
2. Ordering Michelle Jeanine Gerardi 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; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: 9/12/17



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

LA2016602832