

1 EDMUND G. BROWN JR.
Attorney General of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 ARTHUR D. TAGGART
Supervising Deputy Attorney General
4 State Bar No. 083047
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-5339
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

10
11 In the Matter of the Accusation Against:

Case No. 2973

12 **DONALD E. BENDELE, III**
13 **4201 Wilder Way**
Denair, CA 95316

DEFAULT DECISION AND ORDER

14 **Pharmacy Technician License**
15 **No. TCH 50148,**

[Gov. Code, §11520]

16 Respondent.

17
18 **FINDINGS OF FACT**

19 1. On or about January 26, 2010, Complainant Virginia Herold, in her official capacity
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed
21 Accusation No. 2973 against Donald E. Bendele III (Respondent) before the Board of Pharmacy.

22 2. On or about December 29, 2003, the Board of Pharmacy (Board) issued Pharmacy
23 Technician License No. TCH 50148 to Respondent. The Pharmacy Technician License was in
24 full force and effect at all times relevant to the charges brought herein and will expire on
25 December 31, 2009, unless renewed.

26 3. On or about March 19, 2010, Constance A. Ward, an employee of the Department of
27 Justice, served by Certified and First Class Mail a copy of the Accusation No. 2973, Statement to
28

1 Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5,
2 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is:

3 4201 Wilder Way
4 Denair, CA 95316.

5 A copy of the Accusation is attached as exhibit A, and is incorporated herein by reference.

6 4. Service of the Accusation was effective as a matter of law under the provisions of
7 Government Code section 11505, subdivision (c).

8 5. Government Code section 11506 states, in pertinent part:

9 ~~(c) The respondent shall be entitled to a hearing on the merits if the respondent~~
10 files a notice of defense, and the notice shall be deemed a specific denial of all parts
11 of the accusation not expressly admitted. Failure to file a notice of defense shall
12 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
13 may nevertheless grant a hearing.

14 6. Respondent failed to file a Notice of Defense within 15 days after service upon him
15 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
16 2973.

17 7. California Government Code section 11520 states, in pertinent part:

18 (a) If the respondent either fails to file a notice of defense or to appear at the
19 hearing, the agency may take action based upon the respondent's express admissions
20 or upon other evidence and affidavits may be used as evidence without any notice to
21 respondent.

22 8. Pursuant to its authority under Government Code section 11520, the Board finds
23 Respondent is in default. The Board will take action without further hearing and, based on the
24 evidence on file herein, finds that the allegations in Accusation No. 2973 are true.

25 9. The total cost for investigation and enforcement in connection with the Accusation
26 are One Thousand Two Hundred Twenty-Two Dollars and Fifty Cents (\$1,222.50) as of April 13,
27 2010.

28 DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Donald E. Bendele III has
subjected his Pharmacy Technician License No. TCH 50148 to discipline.

- 1 2. A copy of the Accusation is attached.
- 2 3. The agency has jurisdiction to adjudicate this case by default.
- 3 4. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician

4 License based upon the following violations alleged in the Accusation:

5 **Prior Misdemeanor Convictions for Possession of Marijuana and DUI**

6 5. Respondent is subject to disciplinary action pursuant to section 4301 for violating
7 Code section 4301(l) on the basis of the following convictions:

8 a. On or about March 15, 2001, Respondent was convicted of misdemeanor
9 ~~possession of marijuana in violation of Health and Safety Code section 11357(a), on the basis of a~~
10 guilty plea entered in Stanislaus County Superior Court, Case No. 1019821. His conviction was
11 based on his possession of marijuana in Stanislaus County on or about February 5, 2001.

12 b. On or about April 12, 2002, Respondent was convicted of a misdemeanor
13 violation of California Vehicle Code section 23152(a), on the basis of a guilty plea entered in
14 Stanislaus County Superior Court in Case No. 1037703. His conviction was based on his wilful
15 and unlawful driving of a vehicle while under the influence of an alcoholic beverage.

16 c. On or about December 12, 2008, Respondent was convicted of felony
17 possession of the controlled substance methamphetamine in violation of Health and Safety Code
18 section 11377(a), on the basis of a nolo contendere plea entered in Stanislaus County Superior
19 Court, Case No. 1252795.

20 d. On or about January 15, 2009, Respondent was convicted of misdemeanor
21 battery in violation of California Penal Code section 242, on the basis of a nolo contendere plea
22 entered in Stanislaus County Superior Court, Case No. 1251784.

23 e. The convictions set forth above involve crimes or acts substantially related to
24 the qualifications, functions, or duties of a pharmacy technician.

25 **Unlawful Possession of a Controlled Substance - Marijuana**

26 6. Respondent is subject to disciplinary action pursuant to Code section 4301 for
27 violating Code section 4301(j), in that he possessed controlled substances in violation of Code
28 section 4060 and Health and Safety Code sections 11350(a) and 11357(a) as set forth below:

1 a. On or about February 5, 2001, Respondent unlawfully possessed marijuana in
2 Stanislaus County.

3 b. On or about October 31, 2008, a Stanislaus County Deputy Sheriff searched
4 Respondent and found marijuana in his possession.

5 **Unlawful Possession of a Controlled Substance - Methamphetamine**

6 7. Respondent is subject to disciplinary action pursuant to Code section 4301, in that he
7 violated Code section 4301(g) by possessing a controlled substance in violation of Code section
8 4060 and Health and Safety Code section 11377(a) as set forth below.

9 a. On or about February 24, 2005, a Stanislaus County Deputy Sheriff searched
10 Respondent and found methamphetamine and a pipe used to smoke methamphetamine in his
11 possession.

12 b. On or about October 31, 2008, a Stanislaus County Deputy Sheriff searched
13 Respondent and found methamphetamine in his possession.

14 **Dangerous Use of Alcoholic Beverages**

15 8. Respondent is subject to disciplinary action pursuant to Code section 4301 for
16 violating Code section 4301(h), in that on or about January 1, 2002, he drove a vehicle under the
17 influence of alcoholic beverages, and to the extent and in a manner dangerous to himself or
18 others.

19 **Commission of Act Involving Moral Turpitude or Corruption**

20 9. Respondent is subject to disciplinary action pursuant to Code section 4301 for
21 violating Code section 4301(f), in that he committed the following acts involving moral turpitude
22 or corruption:

23 a. On or about December 19, 2008, Respondent used force and violence against
24 his uncle and elderly grandmother.

25 b. Respondent unlawfully possessed marijuana as set forth in paragraphs 13 (a)
26 and (b) above.

27 c. Respondent unlawfully possessed methamphetamine as set forth in paragraphs
28 14 (a) and (b) above.

Exhibit A

Accusation No. 2973

1 EDMUND G. BROWN JR.
Attorney General of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 ARTHUR D. TAGGART
Supervising Deputy Attorney General
4 State Bar No. 083047
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-5339
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 2973

12 **DONALD EDWARD BENDELE, III**
13 **4201 Wilder Way**
Denair, CA 95316

A C C U S A T I O N

14 **Pharmacy Technician License No.**
15 **TCH 50148,**

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, Department of Consumer Affairs.
22 2. On or about December 29, 2003, the Board of Pharmacy issued Pharmacy Technician
23 License Number 50148 to Donald Edward Bendele, III (Respondent). Respondent's license will
24 expire on December 31, 2009, unless renewed.

25 **JURISDICTION**

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

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

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. . . ."

5. 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:

"(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.

* * *

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

* * *

"(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 the Pharmacy Law." (Bus. & Prof. Code, §§ 4000, et seq.)

6. 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

1 naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued
2 by a certified nurse-midwife

3 7. Health and Safety Code section 11350 states:

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

13 8. Health and Safety Code section 11357 states:

14 “(a) Except as authorized by law, every person who possesses any
15 concentrated cannabis shall be punished by imprisonment in the county jail for a
16 period of not more than one year or by a fine of not more than five hundred dollars
17 (\$500), or by both such fine and imprisonment, or shall be punished by
18 imprisonment in the state prison.”

19 9. Health and Safety Code section 11377 states:

20 “(a) Except as otherwise provided by law . . . , every person who
21 possesses any controlled substance which is (1) classified in Schedule III, IV, or
22 V, and which is not a narcotic drug, (2) specified in subdivision (d) of Section
23 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified
24 in paragraph 11 of subdivision (c) of section 11056, (4) specified in paragraph (2)
25 or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e),
26 or (f) of Section 11055, unless upon the prescription of a physician, dentist,
27 podiatrist, or veterinarian, licensed to practice in the state, shall be punished by
28 imprisonment in a county jail for a period of not more than one year or in a state
prison.”

California Code of Regulations, title 16, section 1772, states:

“For the purpose of denial, suspension, or revocation of a personal or
facility license . . . , a crime or act shall be considered substantially related to the
qualifications, 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.”

///

DRUGS

1
2 11. (a) "Methamphetamine" is a Schedule II controlled substance as designated by
3 Health and Safety Code section 11055(d) (2).

4 (b) "Marijuana" is a Schedule I controlled substance as designed by Health and
5 Safety Code section 11054(d) (13).

6 FIRST CAUSE FOR DISCIPLINE

7 (Prior Misdemeanor Convictions for Possession of Marijuana and DUI)

8 12. Respondent is subject to disciplinary action pursuant to section 4301 for violating
9 Code section 4301(l) on the basis of the following convictions:

10 a. On or about March 15, 2001, Respondent was convicted of misdemeanor
11 possession of marijuana in violation of Health and Safety Code section 11357(a), on the basis of a
12 guilty plea entered in Stanislaus County Superior Court, Case No. 1019821. His conviction was
13 based on his possession of marijuana in Stanislaus County on or about February 5, 2001.

14 b. On or about April 12, 2002, Respondent was convicted of a misdemeanor
15 violation of California Vehicle Code section 23152(a), on the basis of a guilty plea entered in
16 Stanislaus County Superior Court in Case No. 1037703. His conviction was based on his wilful
17 and unlawful driving of a vehicle while under the influence of an alcoholic beverage.

18 c. On or about December 12, 2008, Respondent was convicted of felony
19 possession of the controlled substance methamphetamine in violation of Health and Safety Code
20 section 11377(a), on the basis of a nolo contendere plea entered in Stanislaus County Superior
21 Court, Case No. 1252795.

22 d. On or about January 15, 2009, Respondent was convicted of misdemeanor
23 battery in violation of California Penal Code section 242, on the basis of a nolo contendere plea
24 entered in Stanislaus County Superior Court, Case No. 1251784.

25 e. The convictions set forth above involve crimes or acts substantially related to
26 the qualifications, functions, or duties of a pharmacy technician.

27 ///

28 ///

1 SECOND CAUSE FOR DISCIPLINE

2 ((Unlawful Possession of a Controlled Substance - Marijuana))

3 13. Respondent is subject to disciplinary action pursuant to Code section 4301 for
4 violating Code section 4301(j), in that he possessed controlled substances in violation of Code
5 section 4060 and Health and Safety Code sections 11350(a) and 11357(a) as set forth below:

6 a. On or about February 5, 2001, Respondent unlawfully possessed marijuana in
7 Stanislaus County.

8 b. On or about October 31, 2008, a Stanislaus County Deputy Sheriff searched
9 Respondent and found marijuana in his possession.

10 THIRD CAUSE FOR DISCIPLINE

11 ((Unlawful Possession of a Controlled Substance - Methamphetamine))

12 14. Respondent is subject to disciplinary action pursuant to Code section 4301, in that he
13 violated Code section 4301(g) by possessing a controlled substance in violation of Code section
14 4060 and Health and Safety Code section 11377(a) as set forth below.

15 a. On or about February 24, 2005, a Stanislaus County Deputy Sheriff searched
16 Respondent and found methamphetamine and a pipe used to smoke methamphetamine in his
17 possession.

18 b. On or about October 31, 2008, a Stanislaus County Deputy Sheriff searched
19 Respondent and found methamphetamine in his possession.

20 FOURTH CAUSE FOR DISCIPLINE

21 (Dangerous Use of Alcoholic Beverages)

22 15. Respondent is subject to disciplinary action pursuant to Code section 4301 for
23 violating Code section 4301(h), in that on or about January 1, 2002, he drove a vehicle under the
24 influence of alcoholic beverages, and to the extent and in a manner dangerous to himself or
25 others.

26 ///

27 ///

1 FIFTH CAUSE FOR DISCIPLINE

2 (Commission of Act Involving Moral Turpitude or Corruption)

3 16. Respondent is subject to disciplinary action pursuant to Code section 4301 for
4 violating Code section 4301(f), in that he committed the following acts involving moral turpitude
5 or corruption:

6 a. On or about December 19, 2008, Respondent used force and violence against
7 his uncle and elderly grandmother.

8 b. Respondent unlawfully possessed marijuana as set forth in paragraphs 13 (a)
9 and (b) above.

10 c. Respondent unlawfully possessed methamphetamine as set forth in paragraphs
11 14 (a) and (b) above.

12 d. Respondent drove a vehicle under the influence of alcohol as set forth in
13 paragraph 15 above.

14 PRAYER

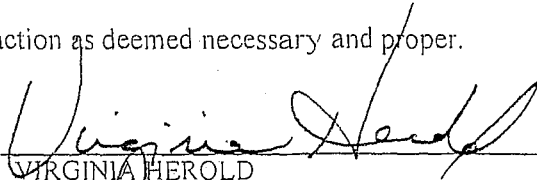
15 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
16 and that following the hearing, the Board of Pharmacy issue a decision:

17 1. Revoking or suspending Pharmacy Technician License Number 50148, issued to
18 Donald Edward Bendele, III.

19 2. Ordering Donald Edward Bendele, III, to pay the Board of Pharmacy the reasonable
20 costs of the investigation and enforcement of this case, pursuant to Business and Professions
21 Code section 125.3;

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

23 DATED: 1/26/10

24 
25 VIRGINIA HEROLD
26 Executive Officer
27 Board of Pharmacy
28 Department of Consumer Affairs
State of California
Complainant

SA2006100483
10518984.doc

Exhibit B
Cost-of-Suit Summary

EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE
1300 I Street, Sacramento, CA 95814
Billing Inquiries: (916) 324-5090



Cost-of-Suit Summary

As Of 04/13/2010

Total Legal Costs: \$1,222.50

Matter ID: SA2006100483

Date Opened: 02/09/2006

Cost-of-Suit: \$0.00

Description Bendele, Donald Edward, III

Grand Total: \$1,222.50

Matter Time Activity Summary		
Rate	Hrs Workd	Amount
Professional Type: Attorney		
FY: 2006-2007		
\$158.00	1.50	\$237.00
FY 2006-2007 Total:		\$237.00
FY: 2005-2006		
\$146.00	6.75	\$985.50
FY 2005-2006 Total:		\$985.50
Attorney Total:		\$1,222.50
Total Legal Costs:		\$1,222.50

Cost-of-Suit							
Entry #	Journal Date	Vendor #	Vendor	Schedule	Reference	Amount	
Client Agency:							
FY:							
Component Description:							\$0.00
Total:							\$0.00
FY Total:							\$0.00
Client Agency Total:							\$0.00
Cost-of-Suit:							\$0.00
Denotes cost which are not included in total							