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

12 In the Matter of the Accusation Against:
13 ROCHELLE DOLAN
16701 Blanton Street
14 Huntington Beach, CA 92649
15 Pharmacy Technician Reg. No. TCH 45962
16 Respondent.

Case No. 3249

**DEFAULT DECISION
AND ORDER**

[Gov. Code, § 11520]

17
18 **FINDINGS OF FACT**

- 19 1. On or about February 2, 2009, Complainant Virginia Herold, in her
20 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer
21 Affairs, filed Accusation No. 3249 against Rochelle Dolan (Respondent) before the Board of
22 Pharmacy.
- 23 2. On or about July 29, 2003, the Board of Pharmacy (Board) issued
24 Pharmacy Technician Registration No. TCH 45962 to Respondent. The Pharmacy Technician
25 Registration was in full force and effect at all times relevant to the charges brought herein and
26 will expire on November 30, 2010, unless renewed.
- 27 3. On or about February 6, 2009, Jennifer Familo, an employee of the
28 Department of Justice, served by Certified and First Class Mail a copy of the Accusation

1 No. 3249, Statement to Respondent, Notice of Defense, Request for Discovery, and Government
2 Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board,
3 which was and is:

4 16701 Blanton Street
5 Huntington Beach, CA 92649

6 A copy of the Accusation is attached as Exhibit A, and is incorporated herein by reference.

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

9 5. On or about March 10, 2009, the Accusation served by certified mail was
10 returned by the U.S. Post Office as "unclaimed."

11 6. Government Code section 11506 states, in pertinent part:

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

17 7. Respondent failed to file a Notice of Defense within 15 days after service
18 upon her of the Accusation, and therefore waived her right to a hearing on the merits of
19 Accusation No. 3249.

20 8. California Government Code section 11520 states, in pertinent part:

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

25 9. Pursuant to its authority under Government Code section 11520, the Board
26 finds Respondent is in default. The Board will take action without further hearing and, based on
27 the evidence on file herein, finds that the allegations in Accusation No. 3249 are true.

28 10. The total cost for investigation and enforcement in connection with the
Accusation are \$1,433.25 as of March 10, 2009.

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DETERMINATION OF ISSUES

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1. Based on the foregoing findings of fact, Respondent Rochelle Dolan has subjected her Pharmacy Technician Registration No. TCH 45962 to discipline.

2. A copy of the Accusation is attached.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician Registration based upon the following violations alleged in the Accusation:

a. Respondent subjected her license to disciplinary action under sections 4301, subdivision (j) and 4060 of the Code in that on or about February 2, 2007, Respondent knowingly violated California statutes regulating controlled substances and dangerous drugs when she was found in possession and under the influence of methamphetamine. Such acts constitute unprofessional conduct.

b. Respondent subjected her license to disciplinary action under sections 4301, subdivision (h) of the Code in that on or about February 2, 2007, Respondent admitted to law enforcement officers that she had been smoking methamphetamine. The self-administration of an illegal controlled substance constitutes unprofessional conduct.

c. Respondent subjected her license to disciplinary action under section 4301, subdivision (p) of the Code in that Respondent's possession and being under the influence of methamphetamine on February 2, 2007, constitutes conduct that would warrant the denial of a pharmacy technician registration.

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ORDER

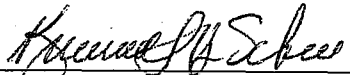
IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 45962, heretofore issued to Respondent Rochelle Dolan, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This decision shall become effective on July 24, 2009

It is so ORDERED on June 24, 2009

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By 
KENNETH H. SCHELL
Board President

DOJ docket number: SD2008803078

Exhibit A: Accusation No. 3249

Exhibit A
Accusation No. 3249

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

12 In the Matter of the Accusation Against:
13 ROCHELLE DOLAN
aka ROCHELLE CHAMBERLAIN
14 16701 Blanton Street
Huntington Beach, CA 92649
15 Pharmacy Technician Reg. No. TCH 45962
16
17 Respondent.

Case No. 3249
ACCUSATION

18 Complainant alleges:

19 PARTIES

- 20 1. Virginia Herold (Complainant) brings this Accusation solely in her
21 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer
22 Affairs.
23 2. On or about July 29, 2003, the Board of Pharmacy issued Pharmacy
24 Technician Registration Number TCH 45962 to Rochelle Dolan, also known as Rochelle
25 Chamberlain (Respondent). The Pharmacy Technician Registration was in full force and effect
26 at all times relevant to the charges brought herein and will expire on November 30, 2010, unless
27 renewed.

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JURISDICTION

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

4. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 492 of the Code states:

Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

.....

6. 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.

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7. 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:

....

(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.

....

(p) Actions or conduct that would have warranted denial of a license.

....

8. Section 4313 of the Code states:

In determining whether to grant an application for licensure or whether to discipline or reinstate a license, the board shall give consideration to evidence of rehabilitation. However, public protection shall take priority over rehabilitation and, where evidence of rehabilitation and public protection are in conflict, public protection shall take precedence.

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, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. 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.

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

For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, 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.

11. Section 125.3 of the Code states, 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 the investigation and enforcement of the case.

DRUG

12. Methamphetamine is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (d)(2), and is a dangerous drug pursuant to Business and Professions Code section 4022.

13. Section 4022 of the Code states

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

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

FACTS

14. On or about the early morning hours of February 2, 2007, a patrol officer from the Huntington Beach Police Department observed Respondent, who was driving a Ford Explorer, make a right turn without utilizing her turn signal. The officer conducted a traffic stop. There were two people sitting in the passenger seat without seatbelts. Upon contacting Respondent, the officer immediately noticed that Respondent's pupils were dilated and her lips

1 appeared chapped and burned. One of the passengers stated he was on probation for drug sales.
2 All persons were removed from the vehicle. Respondent stated she had nothing illegal in her
3 vehicle and did not object to a search. Underneath the driver's seat floor mat, a second officer
4 located a white sock containing a glass pipe commonly used to smoke methamphetamine.
5 Respondent told the officer she had never smoked methamphetamine before. When the officer
6 told Respondent about his observations regarding her dilated pupils and burnt lips, she stated she
7 smoked "meth" once or twice in the past. Respondent finally admitted that she had smoked
8 methamphetamine earlier in the evening. Respondent produced a small Ziploc baggie containing
9 2.1 grams of methamphetamine that she had concealed in her bra. Respondent was arrested and
10 transported to the Huntington Beach Police Department for booking. After reading Respondent
11 her *Miranda* rights, Respondent told the officer that she had been smoking methamphetamine for
12 a few months and had smoked it earlier in the evening at a friend's house.

13 15. In a court proceeding on or about May 9, 2007, entitled *People of the State*
14 *of California v. Rochelle Jo Chamberlain*, in Orange County Superior Court, case number
15 07WF0861, the court accepted Respondent's plea of guilty of violating Health and Safety Code
16 section 11377, subdivision (a), possession of a controlled substance, a felony. Entry of judgment
17 was deferred and Respondent was ordered to enroll in a drug program pursuant to Penal Code
18 section 1000 which required she not use illegal drugs, narcotics or controlled substances, submit
19 to biological testing, and pay court-ordered fees and fines. At a hearing on or about July 13,
20 2007, the court terminated the Penal Code section 1000 diversion and ordered Respondent to
21 complete a Penal Code section 1210 drug program. At a hearing on or about October 30, 2007,
22 Respondent was arraigned on probation violations. Respondent was terminated from the drug
23 treatment program for failing to attend counseling sessions and report to probation as scheduled.
24 The Penal Code section 1210 program was reinstated and Respondent was placed on three years
25 probation. At a hearing on or about January 2, 2008, Respondent was arraigned for violating
26 probation as follows: (1) on November 20, 2007, Respondent tested positive for
27 methamphetamine; (2) on December 26, 2007, Respondent failed to submit to drug testing; and
28 (3) Respondent failed to pay her court-ordered fees and fines. Respondent's probation was

1 reinstated. Following completion of the Penal Code section 1210 drug program, Respondent's
2 conviction was dismissed by the court on November 10, 2008.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct – Violation of California Statutes Regulating**
5 **Controlled Substances & Dangerous Drugs)**

6 16. Respondent is subject to disciplinary action under sections 4301,
7 subdivision (j) and 4060 of the Code in that on or about February 2, 2007, Respondent
8 knowingly violated California statutes regulating controlled substances and dangerous drugs
9 when she was found in possession and under the influence of methamphetamine, as detailed in
10 paragraph 14, above. In Respondent's plea agreement dated May 9, 2007, Respondent stated "In
11 Orange County, California, on 2/2/07 I knowingly possessed a usable quantity of
12 methamphetamine." Such acts constitute unprofessional conduct.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Unprofessional Conduct – Self-Administration of a Controlled Substance)**

15 17. Respondent is subject to disciplinary action under sections 4301,
16 subdivision (h) of the Code in that on or about February 2, 2007, Respondent admitted to
17 smoking methamphetamine, as detailed in paragraph 14, above. The self-administration of an
18 illegal controlled substance constitutes unprofessional conduct.

19 **THIRD CAUSE FOR DISCIPLINE**

20 **(Commission of Acts That Would Have Warranted Denial of a License)**

21 18. Respondent is subject to disciplinary action under section 4301,
22 subdivision (p) of the Code in that Respondent's possession and being under the influence of
23 methamphetamine on February 2, 2007, as detailed in paragraph 14, above, is unprofessional
24 conduct that would warrant the denial of a pharmacy technician registration.

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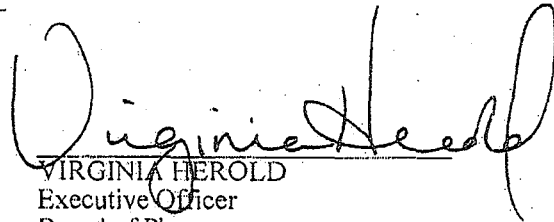
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PRAYER

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 45962, issued to Rochelle Dolan, also known as Rochelle Chamberlain;
2. Ordering Rochelle Dolan 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;
3. Taking such other and further action as deemed necessary and proper.

DATED: 2/2/09



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

SD2008803078