

BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

GIANNA FRANCES URQUIDI
9721 E. Olney St.
Rosemead, CA 91770

Pharmacy Technician Registration
No. TCH 45225

Respondent.

Case No. 3321

OAH No. 2009120270

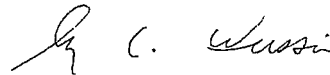
DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as its Decision in the above-entitled matter.

This decision shall become effective on August 20, 2010.

It is so ORDERED July 21, 2010.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

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PROPOSED DECISION

This matter came on regularly for hearing on May 10, 2010, in Los Angeles, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

Virginia Herold (Complainant) was represented by Scott J. Harris, Deputy Attorney General.

Gianna Frances Urquidi (Respondent) was present and represented herself.

Oral and documentary evidence was received. The record was closed on the hearing date, and the matter was submitted for decision.

FACTUAL FINDINGS

The Administrative Law Judge makes the following factual findings:

1. Virginia Herold made the Accusation in her official capacity as Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board).

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2. On November 20, 2002, the Board issued Original Pharmacy Technician Registration No. TCH 45225 to Respondent. The license will expire on November 30, 2010, unless renewed.

3. On the night of August 9, 2006, Respondent was driving her car with two male companions in the back seat. She stopped her car in the middle of a road, and her two companions exited. She then began to drive away. Two police officers witnessed the event and stopped Respondent. One of the officers found a glass pipe containing residue in the back seat of the car, and a zip-lock baggie containing crystal methamphetamine on the driver's side front floorboard. The officers considered the pipe to be drug paraphernalia. One of the men with whom Respondent had been traveling claimed ownership of the pipe.

4. Respondent admitted that the methamphetamine was hers, that she had been using crystal methamphetamine off and on for approximately six years, and that she had used it every day for the past month. She made the same admissions at the administrative hearing.

5. On August 11, 2006, in the Superior Court of California, County of Los Angeles, in Case No. 6RI04906, Respondent pled guilty and was convicted of violating Health and Safety Code section 11377, subdivision (a) (Possession of a Controlled Substance), a misdemeanor.¹ Entry of judgment was deferred for 18 months for Respondent to complete a drug treatment and awareness program. Respondent completed the program and, on February 13, 2008, the plea and judgment were set aside and the case was dismissed pursuant to Penal Code section 1000.3.

6. Respondent stopped using methamphetamine on the night of her arrest. In 2007, she resided in a sober living facility for approximately three months. During that time, she relapsed by using methamphetamine while celebrating Cinco de Mayo. She has not used any drugs since that time. Her sobriety date is May 5, 2007.

7. Respondent participated in Narcotics Anonymous and Alcoholics Anonymous but completed only approximately the first six steps. She no longer attends meetings because she does not have the time to do so and because she believes she does not need them since she is sober.

8. Respondent no longer associates with the two men who were in her car on the night of her arrest. She has not seen them since that night.

9. Except for approximately two weeks in 2004, Respondent has not worked as a pharmacy technician since 2003. She is unable to do so now because she is nursing her 10-month-old child and will do so until the child is 12 to 18 months old.

¹ The conviction is not a charging allegation in the Accusation. In fact, the record of the conviction and subsequent dismissal was Respondent's exhibit.

10. Respondent is remorseful for her conduct in 2006.

11. Pursuant to Business and Professions Code section 125.3, Complainant's counsel requested that Respondent be ordered to pay to the Board \$4,275.50 for its costs of prosecution of the case. The costs are deemed just and reasonable. However, as is set forth in Legal Conclusions Nos. 1 and 2, below, Complainant established only one of the two causes for discipline alleged in the Accusation. Respondent shall be entitled to an offset of 50 percent of the claimed costs. Accordingly, Respondent shall pay prosecution costs of \$2,137.75. She will be required to do so only upon reinstatement of her pharmacy technician registration.

LEGAL CONCLUSIONS

Pursuant to the foregoing factual findings, the Administrative Law Judge makes the following legal conclusions:

1. Cause exists to discipline Respondent's pharmacy technician's registration, pursuant to Business and Professions Code section 4301, subdivisions (j) and (o), for unprofessional conduct, in that she possessed a controlled substance in violation of Business and Professions Code section 4060, and Health and Safety Code section 11377, subdivision (a), as set forth in Findings 3, 4, and 6.

2. Cause does not exist to discipline Respondent's pharmacy technician's registration, pursuant to Business and Professions Code section 4301, subdivision (h), for unprofessional conduct in that, although she administered a controlled substance to herself, Complainant failed to prove that she did so "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" (*ibid.*), as set forth in Findings 3, 4, and 6.

3. Cause exists to order Respondent to pay costs claimed under Business and Professions Code section 125.3, as set forth in Finding 11.

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4. Respondent argued that her registration should not be disciplined because, pursuant to Penal Code section 1000.4, her completion of a deferred entry of judgment program renders her arrest as if it never occurred. Penal Code section 1000.4, subdivision (a), states:

Any record filed with the Department of Justice shall indicate the disposition in those cases deferred pursuant to this chapter. Upon successful completion of a deferred entry of judgment program, the arrest upon which the judgment was deferred shall be deemed to have never occurred. The defendant may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or granted deferred entry of judgment for the offense, except as specified in subdivision (b). A record pertaining to an arrest resulting in successful completion of a deferred entry of judgment program shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

5. Respondent's argument is not applicable to this case. Complainant did not assert either Respondent's arrest or her conviction as a cause for discipline. The two causes for discipline in the Accusation alleged only her actual conduct of possessing and using methamphetamine.

6. Respondent has not established her full rehabilitation. She relapsed three years ago while residing in a sober living facility, and she left her 12-step programs after only a few months and after completing only approximately one-half of the programs. Aside from her resolve to raise her two children in a proper lifestyle and with good morals, she demonstrated no support system to assist her in maintaining her sobriety. She used methamphetamine for a significant amount of time before her arrest, and she used it regularly during the month prior. Except for approximately two weeks in 2004, Respondent has not worked as a pharmacy technician for approximately seven years. Without more evidence of rehabilitation, the public would not be well served if the Department permitted Respondent to be exposed to the temptations of a pharmacy should she return to her licensed profession.

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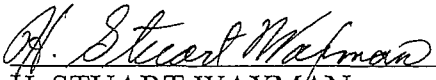
ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

1. Pharmacy technician registration number TCH 45225, issued to Respondent, Gianna Frances Urquidi, is revoked pursuant to Legal Conclusions 1, 4, 5, and 6, separately and together. Respondent shall relinquish her wall license and pocket renewal license, if any, to the Board within 10 days of the effective date of this decision. Respondent may not petition the Board for reinstatement of her revoked license for three years from the effective date of this decision.

2. Should Respondent seek reinstatement of her revoked registration, upon any reinstatement, Respondent shall reimburse the Board for its costs of prosecution in the amount of \$2,137.75. That amount shall be paid in full prior to the reinstatement of her license. If Respondent fails to pay the amount specified, her license shall remain revoked.

DATED: May 20, 2010


H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings

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

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11 In the Matter of the Accusation Against:

Case No. 3321

12 **GIANNA FRANCES URQUIDI**
9721 E. Olney St.
13 Rosemead, CA 91770
14 **Pharmacy Technician Registration**
No. TCH 45225

A C C U S A T I O N

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about November 20, 2002, the Board issued Pharmacy Technician Registration
22 Number TCH 45225 to Gianna Frances Urquidi (Respondent). The Pharmacy Technician
23 Registration was in full force and effect at all times relevant to the charges brought herein and
24 will expire on November 30, 2010, unless renewed.

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JURISDICTION

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 unless otherwise indicated.

4. 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.

"This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division."

5. 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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1 6. Section 4301 of the Code states:

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

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

11

12 "(j) The violation of any of the statutes of this state, or any other state, or of the United
13 States regulating controlled substances and dangerous drugs.

14

15 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
16 violation of or conspiring to violate any provision or term of this chapter or of the applicable
17 federal and state laws and regulations governing pharmacy, including regulations established by
18 the board or by any other state or federal regulatory agency.

19 7. Section 4060 of the Code states:

20 "No person shall possess any controlled substance, except that furnished
21 to a person upon the prescription of a physician, dentist, podiatrist, optometrist,
22 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant
23 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a
24 nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to
25 Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist
26 pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
27 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section
28 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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1 8. Health and Safety Code section 11377, subsection (a), stated, in pertinent part:

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

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

17 CONTROLLED SUBSTANCE

18 10. Methamphetamine is a Schedule II controlled substance as defined in Health and
19 Safety Code section 11055, subdivision (d)(2), and is characterized as a dangerous drug pursuant
20 to section 4022 of the Code

21 FIRST CAUSE FOR DISCIPLINE

22 (Unprofessional Conduct – Possession of Controlled Substance)

23 11. Respondent is subject to disciplinary action under section 4301, subdivision (j) and
24 (o), in that Respondent possessed a controlled substance, Methamphetamine, in violation of
25 section 4060 of the Code and Health and Safety Code section 11377, subdivision (a). The
26 circumstances are as follows:

27 a. On or about August 9, 2006, Respondent was the driver of a vehicle blocking a
28 roadway. During a routine traffic stop, an El Monte Police Department Officer found Respondent
in possession of Methamphetamine. Respondent later admitted to possessing the
Methamphetamine.

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1 SECOND CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct – Use of Controlled Substance)

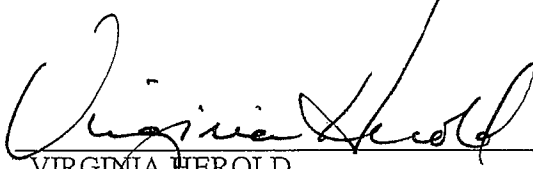
3 12. Respondent is subject to disciplinary action under section 4301, subdivision (h), in
4 that Respondent administered herself a controlled substance, Methamphetamine, to an extent that
5 the use impairs her ability to conduct with safety to the public the practice authorized by her
6 pharmacy technician registration. During the incident discussed in paragraph 11, above,
7 Respondent admitted using Methamphetamine for approximately six (6) years; and also having
8 used Methamphetamine on a daily basis during the month preceding August 9, 2006.

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 45225,
13 issued to Gianna Frances Urquidi;
- 14 2. Ordering Gianna Frances Urquidi to pay the Board of Pharmacy the reasonable costs
15 of the 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: 10/5/09


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

25 LA2009602914
26 accusation.rtf