

1
2
3
4
5
6 **BEFORE THE**
7 **BOARD OF PHARMACY**
8 **DEPARTMENT OF CONSUMER AFFAIRS**
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 4188

11 **RYAN NEIL PANOPIO**
12 **2549 Stanton Hill Road**
13 **Castro Valley, CA 94546**
14 **Pharmacy Technician License No. TCH**
15 **110086**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

Respondent.

16 **FINDINGS OF FACT**

17 1. On or about February 22, 2012, Complainant Virginia Herold, in her official capacity
18 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed
19 Accusation No. 4188 against Ryan Neil Panopio (Respondent) before the Board of Pharmacy.
20 (Accusation attached as Exhibit A.)

21 2. On or about January 26, 2011, the Board of Pharmacy (Board) issued Pharmacy
22 Technician License No. TCH 110086 to Respondent. The Pharmacy Technician License was in
23 full force and effect at all times relevant to the charges brought in Accusation No. 4188 and will
24 expire on October 31, 2012, unless renewed.

25 3. On or about February 27, 2012, Respondent was served by Certified and First Class
26 Mail copies of the Accusation No. 4188, Statement to Respondent, Notice of Defense, Request
27 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
28 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
section 4100, is required to be reported and maintained with the Board. Respondent's address of
record was and is:

2549 Stanton Hill Road
Castro Valley, CA 94546.

4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c) and/or Business & Professions Code section 124.

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

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

6. Respondent failed to file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 4188.

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

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

8. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the Board's offices regarding the allegations contained in Accusation No. 4188, finds that the charges and allegations in Accusation No. 4188, are separately and severally, found to be true and correct by clear and convincing evidence.

9. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement is \$992.50 as of March 29, 2012.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Ryan Neil Panopio has subjected his Pharmacy Technician License No. TCH 110086 to discipline.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

2
3
4

5
6
7

8
9

10

11
12

13
14
15
16

17

18

19
20

21
22

25

26

27

28

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 BRETT KINGSBURY
Deputy Attorney General
4 State Bar No. 243744
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-1192
6 Facsimile: (415) 703-5480
Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 4188

11 **RYAN NEIL PANOPIO**
12 **2549 Stanton Hill Road**
Castro Valley, CA 94546
13 **Pharmacy Technician License No. TCH**
110086

A C C U S A T I O N

14 Respondent.
15
16

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 January 26, 2011, the Board of Pharmacy issued Pharmacy Technician
23 License Number TCH 110086 to Ryan Neil Panopio (Respondent). The Pharmacy Technician
24 License was in full force and effect at all times relevant to the charges brought herein and will
25 expire on October 31, 2012, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
28 Consumer Affairs, under the authority of the following laws. All section references are to the

1 Business and Professions Code unless otherwise indicated.

2 4. Section 4011 of the Code provides that the Board shall administer and enforce both
3 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
4 Act [Health & Safety Code, § 11000 et seq.].

5 5. Section 4300 of the Code provides that every license issued by the Board may be
6 suspended or revoked.

7 STATUTORY AND REGULATORY PROVISIONS

8 6. Section 490 of the Code states:

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

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

17 (c) A conviction within the meaning of this section means a plea or verdict of guilty or a
18 conviction following a plea of nolo contendere. Any action that a board is permitted to take
19 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
20 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
21 made suspending the imposition of sentence, irrespective of a subsequent order under the
22 provisions of Section 1203.4 of the Penal Code.

23 (d) The Legislature hereby finds and declares that the application of this section has been
24 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th
25 554, and that the holding in that case has placed a significant number of statutes and regulations
26 in question, resulting in potential harm to the consumers of California from licensees who have
27 been convicted of crimes. Therefore, the Legislature finds and declares that this section
28 establishes an independent basis for a board to impose discipline upon a licensee, and that the

1 amendments to this section made by Senate Bill 797 of the 2007-08 Regular Session do not
2 constitute a change to, but rather are declaratory of, existing law.

3 7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action
4 against any holder of a license who is guilty of "unprofessional conduct," defined to include, but
5 not be limited to, any of the following:

6
7 (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
8 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
9 whether the act is a felony or misdemeanor or not.

10
11 (l) The conviction of a crime substantially related to the qualifications, functions, and duties
12 of a licensee under this chapter. The record of conviction of a violation of Chapter 13
13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
14 substances or of a violation of the statutes of this state regulating controlled substances or
15 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
16 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
17 The board may inquire into the circumstances surrounding the commission of the crime, in order
18 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
19 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
20 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
21 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
22 of this provision. The board may take action when the time for appeal has elapsed, or the
23 judgment of conviction has been affirmed on appeal or when an order granting probation is made
24 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
25 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
26 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
27 indictment.

8. 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.

COST RECOVERY

9. Section 125.3 of the Code provides, in pertinent part, that a Board may request the administrative law judge to direct a licensee 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.

FIRST CAUSE FOR DISCIPLINE

(Criminal Conviction)

10. Respondent is subject to disciplinary action under Code sections 490(a) and 4301(1), in that he has been convicted of a crime substantially related to the qualifications, functions, and duties of a licensee. The circumstances are as follows:

11. On or about July 27, 2011, in Alameda Superior Court Case No. 137237, Respondent was convicted of having violated California Penal Code section 503 (embezzlement). The conviction was based on the fact that, between December 17, 2010 and April 1, 2011, while he was employed at a Macy's store in Pleasanton, California, Respondent embezzled money by altering prices on merchandise.

SECOND CAUSE FOR DISCIPLINE

(Acts of Dishonesty)

12. Respondent is subject to disciplinary action under section 4301(f), in that he committed an act involving moral turpitude, dishonesty, fraud, deceit or corruption, as follows:

13. Between December 17, 2010 and April 1, 2011, while he was employed at a Macy's store in Pleasanton, California, Respondent embezzled money by altering prices on merchandise.

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:

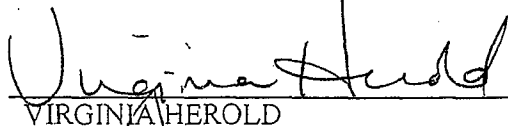
1. Revoking or suspending Pharmacy Technician License Number TCH 110086, issued to Ryan Neil Panopio;

2. Ordering Ryan Neil Panopio 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:

2/22/12



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