

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

In the Matter of the Accusation Against:

CONCHA ZARAGOZA
13517 Estelle Street
Corona, CA 92879

Pharmacy Technician Registration No. TCH
66515

Respondent.

Case No. 4246

OAH No. 2013040504

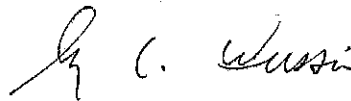
DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on January 2, 2014.

It is so ORDERED on December 3, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STAN C. WEISSER
Board President

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PROPOSED DECISION

This matter was heard by Humberto Flores, Administrative Law Judge, Office of Administrative Hearings, on July 16, 2013, in Los Angeles, California.

Deputy Attorney General Leslie A. Walden represented complainant. Concha Zaragoza (respondent) was represented by David Welch, Attorney at Law. Evidence was received and the matter was submitted for decision.

FACTUAL FINDINGS

1. Virginia Herold made and filed the Accusation in her official capacity as Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, State of California.
2. On March 10, 2006, the Board issued Pharmacy Technician Registration No. TCH 66515 to respondent. Said license is in full force and effect.
3. On June 3, 2010, deputies from the Los Angeles County Sheriff's Department responded to an anonymous tip that marijuana was being sold at a business that was licensed by the City of Rosemead to sell food in connection with the operation of an organic food co-op. The business was not licensed to sell medical marijuana. Deputy Patricia Ruiz testified that she along with other deputies and a code enforcement officer from the City of Rosemead drove to the facility to investigate the anonymous tip. Deputy Ruiz rang the door-bell of the establishment and was buzzed in. Upon entering the facility, Deputy Ruiz smelled the order of marijuana. She and other deputies observed canisters of marijuana, scales, water pipes

(known as bongs), plastic baggies, and individual marijuana cigarettes. Deputy Ruiz formed the opinion that marijuana was being sold on the premises. Deputy Ruiz and other deputies also observed a file cabinet containing what appeared to be patient files. Deputy Ruiz testified that she viewed the contents of some of the files which she said contained physician statements, applications and a copy of some form of identification. There was a file with respondent's name but Deputy Ruiz did not remember the contents of respondent's file.

4. Deputy Ruiz questioned respondent during the search of the facility. Respondent told Deputy Ruiz that she was a "volunteer" at the facility. Respondent made no other statement. Deputy Ruiz placed respondent under arrest for possessing marijuana for sale, in violation of Health and Safety Code section 11359. At the time of her arrest, respondent did not have any illegal drugs on her person and none was found in her vehicle.

5. Charges were eventually filed against respondent in the superior court, charging a violation of Health and Safety Code section 11359. On November 2, 2011, the court granted the prosecution's motion to dismiss the charge against respondent in furtherance of justice pursuant to Penal Code section 1385.

6. The facility was owned and operated by an individual who did not testify at the hearing. It is assumed that the owner/manager of the facility also owned the marijuana found at the facility. Respondent was not called to testify by either side at the hearing. As a result, there was insufficient evidence to establish the contents of respondent's file that was maintained at the facility; whether respondent was aware that the facility was operating in violation of a city ordinance; or whether respondent sold marijuana while working as a volunteer at the facility. In fact, there was no evidence that showed the type of work or activity respondent was performing as a "volunteer" for the facility. However, a reasonable inference can be drawn that respondent was aware that marijuana was being sold at the facility.

7. Complainant submitted certification of costs of enforcement totaling \$7,027.50 pursuant to Business and Professions Code section 125.3.

LEGAL CONCLUSIONS

1. The standard of proof which must be met to establish the charging allegations herein is "clear and convincing" evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) This means the burden rests with Complainant to offer proof that is clear, explicit and unequivocal--so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478.)

2. Grounds do not exist to suspend or revoke respondent's pharmacy technician registration pursuant to Business and Professions Code section 4301, subdivision (j), for possessing marijuana for sale. The evidence did not establish that respondent was in actual possession of the marijuana or that she sold marijuana. Further, complainant did not present legal authority establishing that respondent's presence at the facility as a "volunteer" was sufficient to conclude that she was in legal possession of the marijuana found at the facility or that she was aiding or abetting the illegal sale of the marijuana.


3. Grounds do not exist to suspend or revoke respondent's pharmacy technician's license for unprofessional conduct pursuant to Business and Professions Code sections 4301, subdivision (o), for possessing marijuana without a prescription. The evidence did not establish that respondent was in actual possession of the marijuana found at the facility or that her presence at the facility as a "volunteer" was sufficient to conclude that she was in legal possession of the marijuana found at the facility.

4. Grounds do not exist to order respondent to pay the Board \$7,027.50 under Business and Professions Code section 125.3, for reasonable costs of investigation and prosecution of this matter.

ORDER

The Accusation is dismissed.

DATED: August 22, 2013


HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings

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

12 In the Matter of the Accusation Against;

Case No. 4246

13 **CONCHA ZARAGOZA**
13517 Estelle Street
14 Corona, CA 92879

15 **Pharmacy Technician Registration No. TCH 66515**

A C C U S A T I O N

Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about March 10, 2006, the Board of Pharmacy issued Pharmacy Technician
22 Registration Number TCH 66515 to Concha Zaragoza (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 June 30, 2013, 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 (Code) unless otherwise indicated.

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8. Health & Safety Code section 11359 states:

Every person who possesses for sale any marijuana, except as otherwise provided by law, shall be punished by imprisonment pursuant to subdivision (h) of section 1170 of the Penal Code.

COST RECOVERY

9. 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

10. Marijuana is a Schedule I controlled substance as designated by Health and Safety Code section 11054, subdivision (d)(13).

FIRST CAUSE FOR DISCIPLINE

(Unauthorized Possession of Marijuana for Sale)

11. Respondent has subjected her license to discipline under Code section 4301, subdivision (j), in that she violated California Health & Safety Code (HSC) section 11359 when she possessed marijuana for purposes of sale. The circumstances are as follows.

12. On or about June 3, 2010, Sheriff's Deputies from the County of Los Angeles Sheriff's Department responded to an anonymous tip that marijuana was being sold at an organic food co-op business licensed only to sell food, located at 8907 Valley Boulevard in Rosemead, California. The Deputies were able to gain entry through the locked door to the business by someone inside unlocking the door. As soon as the Deputies got inside the establishment, they immediately smelled a strong odor of marijuana. In plain view on a counter were 14 large clear labeled plastic containers containing marijuana. They also found rolled marijuana cigarettes, 14 plastic containers of marijuana brownies, numerous glass narcotics pipes, two dry erase boards depicting various types of marijuana and their prices by various quantities, numerous bongs, and a metal file cabinet containing miscellaneous customer files.

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1 13. Respondent was among the three persons found inside the business premises. She
2 stated that she was a volunteer at the store. Files found during the search indicate that she was
3 also a customer. When the three were arrested and transported to Temple Station, two more
4 persons arrived at the business premises. One, who was identified as the manager, stated that the
5 three arrested earlier, including Respondent, were working at the premises.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Violation of Drug Laws)**

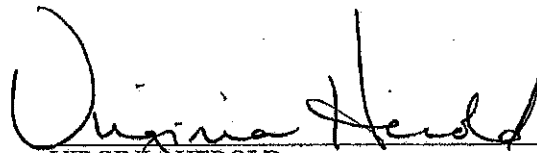
8 14. Respondent has subjected her license to discipline under Code section 4301,
9 subdivision (o), in that she possessed the controlled substance, marijuana, without a prescription,
10 in violation of Code section 4060, as detailed in paragraphs 12 and 13, above, which are
11 incorporated herein by reference.

12 **PRAYER**

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

- 15 1. Revoking or suspending Pharmacy Technician Registration Number TCH 66515,
16 issued to Concha Zaragoza;
- 17 2. Ordering Concha Zaragoza to pay the Board of Pharmacy the reasonable costs of
18 the investigation and enforcement of this case, pursuant to Business and Professions Code section
19 125.3;
- 20 3. Taking such other and further action as deemed necessary and proper.

21
22
23 DATED: 6/15/12



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

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