

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

In the Matter of the First Amended
Accusation Against:

FLORENTINO M. ESCORCIA,

Pharmacy Technician Registration
No. TCH 89588

Respondents.

Case No. 5844

OAH No. 2016110745

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 at 5:00 p.m. on May 10, 2017.

It is so ORDERED on April 10, 2017.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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PROPOSED DECISION

Matthew Goldsby, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on February 22, 2017, at Los Angeles, California.

Katherine M. Messina, Deputy Attorney General, appeared and represented complainant Virginia Herold, Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, State of California.

Respondent Florentino M. Escorcía appeared and represented himself.

The parties submitted the matter for decision at the conclusion of the hearing.

FACTUAL FINDINGS

1. On March 10, 1999, the Board issued Pharmacy Technician Registration number TCH 89588 to respondent. Respondent's license is valid and is scheduled to expire on March 31, 2017.

2. Complainant brought the Accusation in her official capacity. Respondent timely submitted a Notice of Defense. Complainant thereafter brought the First Amended Accusation, deemed controverted by the Notice of Defense filed previously by respondent.

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3. On June 16, 2015, two California Highway Patrol officers noticed a white Kia sedan parked with its headlights on in a turnout on the northbound shoulder of State Route 330. The officers approached the vehicle and observed respondent in the driver's seat and a female passenger. Respondent displayed objective signs of drug intoxication, including constricted pupils and relaxed facial features. The officers also observed "a lot of cigarette filters and some small pieces of cotton on the driver floor boards." (Ex. 4.) Respondent admitted to the officers that he was in possession of drugs and that, approximately six hours earlier, he had injected approximately 30 cubic centimeters of heroin into his upper right forearm. The officers searched a black case that respondent retrieved from underneath the driver seat and discovered four syringes, multiple plastic bags with black tar residue, a razor blade with black tar residue, and multiple cotton swabs.

4. The officers placed respondent under arrest for driving under the influence of drugs in violation of Vehicle Code section 13152, subdivision (e), for possession of heroin in violation of Health and Safety Code section 11350, and for possession of drug paraphernalia in violation Health and Safety Code section 11364, subdivision (a), all misdemeanors. The officers issued respondent a Notice to Appear, which respondent signed and acknowledged.

5. Respondent produced a blood specimen that was sent to a laboratory for a drug screen. Opiates were detected in the blood sample. Heroin is considered an opiate.

6. A criminal case was filed in the Superior Court of California, Los Angeles County, entitled *People v. Escorcia*, case number TSB1501768. On February 2, 2016, the court dismissed the case under Penal Code section 1385 based on respondent's having filed a plea bargain agreement and completed an "alternate program." (Ex. 5.)

7. Respondent used heroin four times per day for approximately five months. He continued to use heroin for approximately one month after his arrest when he started searching for methadone treatment. Respondent voluntarily attended some meetings at both Alcoholics Anonymous and Narcotics Anonymous, but stopped going to meetings because the time spent with other drug users tended to stimulate, rather than control, his impulse to use drugs. He found rehabilitative programming involving discipleship to be more effective. He enrolled in the Christian Discipleship Program at Set Free Men's Ranch in Lake Elsinore, California. The director of the program furnished a letter to verify that respondent completed a 30-day program on December 16, 2015. Respondent last used heroin on October 8, 2015.

8. Respondent currently works full-time as a pharmacy technician at Rite Aid. He disclosed to a former supervisor about his prior drug use. No evidence was presented to show that the employer has disciplined respondent for drug use or for any other cause, nor that a current supervisor has in fact been advised of respondent's past drug use. At the time of his arrest, respondent was unemployed. No evidence was presented to show that respondent ever diverted any prescription medication or controlled substances while working as a pharmacy technician.

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9. Respondent is engaged to the female passenger who was in his car the night of his arrest. Respondent testified that his fiancée also used heroin and sought rehabilitation by completing the same program that respondent completed, except that she was enrolled in program designed for women. They live together and have a four-month-old son, born October 12, 2016.

10. Complainant incurred reasonable costs in the amount of \$3,717.50 relating to the prosecution and investigation of the case.

LEGAL CONCLUSIONS

1. Complainant has the burden of proving cause for discipline by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.)

2. The Board shall take disciplinary action against the holder of a pharmacy technician registration guilty of unprofessional conduct. (Bus. & Prof. Code, § 4301.)

3. Unprofessional conduct includes the self-administration of any controlled substance, or the use of any dangerous drug to an extent or in a manner as to be dangerous or injurious to oneself, to any other person, or to the public. (Bus. & Prof. Code, § 4301, subd. (h).)

4. Unprofessional conduct includes the violation of any law regulating controlled substances and dangerous drugs, including the possession of a controlled substance without a prescription. (Bus. & Prof. Code, §§ 4060 and 4301, subd. (j).)

5. By injecting himself with heroin and driving a vehicle, respondent used a dangerous drug to an extent or in a manner as to be dangerous or injurious to himself, to his passenger, and to all other drivers on the road. Although he was not convicted of a crime after completing an alternate court program, clear and convincing evidence established that respondent violated the law by driving under the influence of drugs in violation of Vehicle Code section 13152, subdivision (e), for possession of heroin in violation of Health and Safety Code section 11350, and for possession of drug paraphernalia in violation Health and Safety Code section 11364, subdivision (a).

6. Cause exists to discipline respondent's pharmacy technician registration under Business and Professions Code section 4301, subdivisions (h) and (j), because he engaged in unprofessional conduct. (Factual Findings 3-7.)

7. When considering the revocation or suspension of a pharmacy technician registration, the Board must consider evidence of rehabilitation. (Cal. Code Regs., tit. 16, § 1769). To evaluate respondent's rehabilitation, the Board must consider the following criteria:

- (A) The nature and severity of the act.
- (B) The total criminal record.
- (C) The time that has elapsed since commission of the act.
- (D) Whether respondent has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.
- (E) Whether respondent has complied with any terms of parole, probation, restitution, or other sanctions lawfully imposed against respondent.
- (F) Evidence, if any, of rehabilitation submitted by respondent.

8. In this case, respondent presented evidence of rehabilitation, in that he successfully completed a 30-day discipleship program. Also, the birth of his son four months ago is a change of circumstance that may positively influence his recovery. Although the nature of respondent's offense involved drug abuse, a serious offense that conflicts with the duties and responsibilities of a pharmacy technician, respondent has no criminal record, he complied with the terms of an alternative court program, and the court dismissed his criminal case under Penal Code section 1385. More than one year has passed since respondent engaged in the unprofessional conduct and there is no evidence to refute his testimony that he has not used heroin since October 8, 2015. Respondent has recently worked as a pharmacy technician without employment discipline, and no evidence was presented to show that respondent has ever diverted any controlled substance while exercising his authority as a pharmacy technician.

9. The task in disciplinary cases is preventative, protective and remedial, not punitive. (*In re Kelley* (1990) 52 Cal. 3d 487.) Respondent has provided sufficient evidence to indicate the likelihood of his future compliance with any Board-ordered probationary terms, such that outright revocation of his registration would be unduly harsh and punitive. Imposing optional terms of probation to require random drug screening, work site monitoring, and other conditions designed to prevent a recurrence of drug abuse will foster respondent's remedial efforts and continuing rehabilitation, and provide adequate protection of the public health, safety, and welfare. A minimum five-year probation period has been established by the Board as appropriate where self-administration of controlled substances is involved.

10. The Board is entitled to recover all reasonable costs incurred to investigate and prosecute this matter. (Bus. & Prof. Code, § 125.3.) Complainant has established that reasonable prosecution costs were incurred in the amount of \$3,717.50. (Factual Finding 10.)

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ORDER

Respondent's Pharmacy Technician Registration number TCH 89588 is revoked. However, the revocation is stayed for a period of five years, and respondent is placed on probation under the following terms and conditions:

1. Certification Prior to Returning to Work

Respondent shall be automatically suspended from working as a pharmacy technician until he or she is certified as defined by Business and Professions Code section 4202(a)(4) and provides satisfactory proof of certification to the Board. Respondent shall not resume working as a pharmacy technician until notified by the board. Failure to achieve certification within one year shall be considered a violation of probation. Respondent shall not resume working as a pharmacy technician until notified by the Board.

During suspension, respondent shall not enter any pharmacy area or any portion of any other board licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer, or assist any licensee of the board. Respondent shall not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances. Respondent shall not resume work until notified by the Board.

Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises by the board in which he or she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

2. Obey All Laws

Respondent shall obey all state and federal laws and regulations. Respondent shall report any of the following occurrences to the board, in writing, within 72 hours of such occurrence:

(a) An arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws;

(b) A plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment;

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(c) A conviction of any crime;

(d) Discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's pharmacy technician registration or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

Failure to timely report any such occurrence shall be considered a violation of probation.

3. Report to the Board

Respondent shall report to the Board quarterly, on a schedule as directed by the Board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether he has complied with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the Board.

4. Interview with the Board

Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the Board or its designee, at such intervals and locations as are determined by the Board or its designee. Failure to appear for any scheduled interview without prior notification to Board staff, or failure to appear at two or more scheduled interviews with the Board or its designee during the period of probation, shall be considered a violation of probation.

5. Cooperate with Board Staff

Respondent shall timely cooperate with the Board's inspection program and with the Board's monitoring and investigation of respondent's compliance with the terms and conditions of his probation, including but not limited to: timely responses to requests for information by Board staff; timely compliance with directives from Board staff regarding requirements of any term or condition of probation; and timely completion of documentation pertaining to a term or condition of probation. Failure to timely cooperate shall be considered a violation of probation.

6. Reporting of Employment and Notice to Employers

During the period of probation, respondent shall provide the Board with written consent authorizing communication with all employers and shall notify all present and

prospective employers of the Decision in case number 5844 (OAH Number 2016110745) and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within 30 days of the effective date of this Decision, and within 15 days of undertaking any new employment, respondent shall report to the Board in writing the name, physical address, and mailing address of all of his employers, and the names and telephone numbers of all of his direct supervisors, as well as any pharmacist-in-charge, designated representative-in-charge, or other compliance supervisor. Respondent shall sign and return to the Board a written consent authorizing the Board or its designee to communicate with all of respondent's employers and supervisors, and authorizing those employers or supervisors to communicate with the Board or its designee, concerning respondent's work status, performance, and monitoring. Failure to comply with the requirements or deadlines of this condition shall be considered a violation of probation.

Within 30 days of the effective date of this decision, and within 15 days of respondent undertaking any new employment, respondent shall cause (a) his direct supervisor, (b) his pharmacist-in-charge, designated representative-in-charge, or other compliance supervisor, and (c) the owner or owner representative of his employer, to report to the Board in writing acknowledging that each of the listed individuals has read the decision in case number 5844 (OAH Number 2016110745), and terms and conditions imposed thereby. If one person serves in more than one role described in (a), (b), or (c), the acknowledgment shall so state. It shall be respondent's responsibility to ensure that these acknowledgements are timely submitted to the Board. In the event of a change in the persons serving the roles described in (a), (b), or (c) during the term of probation, respondent shall cause each person taking over any of those roles to report to the Board in writing within 15 days of the change, acknowledging that he or she has read the decision in case number 5844 (OAH Number 2016110745), and the terms and conditions imposed thereby.

If respondent works for, or is employed by or through, a pharmacy employment service, respondent must notify each person described in (a), (b), and (c) above at every entity licensed by the Board, of the decision in case number 5844 (OAH Number 2016110745), and the terms and conditions imposed thereby in advance of respondent commencing work at such licensed entity. A record of this notification must be provided to the Board on request.

Furthermore, within 30 days of the effective date of this Decision, and within 15 days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause his direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that he or she has read the decision in case number 5844 (OAH Number 2016110745) and the terms and conditions imposed thereby.

It shall be respondent's responsibility to ensure that these acknowledgements are timely submitted to the Board.

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Failure to timely notify each present or prospective employer or failure to cause those employers to submit timely written acknowledgments to the Board shall be considered a violation of probation.

“Employment” within the meaning of this provision shall include any full-time, part-time, temporary, relief, or employment/management service position as a pharmacy technician, or any position for which a pharmacy technician registration is a requirement or criterion for employment, whether respondent is an employee, independent contractor or volunteer.

7. Notification of Change in Employment, Name, Address, or Phone Number

Respondent shall notify the Board in writing within 10 days of any change of employment. Said notification shall include the reasons for leaving, the address of the new employer, the name of the supervisor and owner, and the work schedule, if known. Respondent shall further notify the Board in writing within 10 days of any change in name, residence address, mailing address, or phone number. Failure to timely notify the Board of any change in employer, name, address, or phone number shall be considered a violation of probation.

8. Reimbursement of Board Costs

As a condition precedent to successful completion of probation, respondent shall pay to the Board its costs of prosecution in the amount of \$3,717.50. Respondent shall be permitted to pay these costs in a payment plan as follows: Beginning the first day of the month after the effect date of this Decision, respondent shall pay \$105 per month for 36 months or until paid in full. There shall be no deviation from this schedule absent prior written approval by the Board or its designee. Full payment must be completed no later than one year prior to the end date of probation. Failure to pay costs by the deadlines as directed shall be considered a violation of probation.

9. Probation Monitoring Costs

Respondent shall pay any costs associated with probation monitoring as determined by the Board each and every year of probation. Such costs shall be payable to the Board on a schedule as directed by the Board or its designee. Failure to pay such costs by the deadlines as directed shall be considered a violation of probation.

10. Status of License

Respondent shall, at all times while on probation, maintain an active, current pharmacy technician registration with the Board, including any period during which suspension or probation is tolled. Failure to maintain an active, current pharmacy technician registration shall be considered a violation of probation.

If respondent's pharmacy technician registration expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof due to tolling or otherwise, upon renewal or reapplication respondent's registration shall be subject to all terms and conditions of this probation not previously satisfied.

11. License Surrender While on Probation/Suspension

Following the effective date of this decision, should respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender his pharmacy technician registration to the Board for surrender. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the pharmacy technician registration, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the respondent's license history with the Board.

Upon acceptance of the surrender, respondent shall relinquish his pharmacy technician registration to the Board within 10 days of notification by the Board that the surrender is accepted. Respondent may not reapply for any license, permit, or registration from the Board for three years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

12. Current Certification Required

Respondent shall maintain an active, current certification as defined by Business and Professions Code section 4202, subdivision (a)(4), for the entire period of probation, and shall submit proof of re-certification or renewal of certification to the Board within 10 days of receipt. Failure to maintain active, current certification or to timely submit proof of same shall be considered a violation of probation.

13. License Practice Requirement – Tolling

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of 80 hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation unless respondent is otherwise notified in writing by the Board or its designee.

If respondent does not practice as a pharmacy technician in California for a minimum of 80 hours in any calendar month, for any reason (including vacation), respondent shall notify the Board in writing within 10 days of the conclusion of that calendar month. This notification shall include at least: the date, location, and hours of last practice; the reasons

for the interruption or decline in practice; and the anticipated date on which respondent will resume practice at the required level. Respondent shall further notify the Board in writing within 10 days following the calendar month during which respondent resumes practice as a pharmacy technician in California for a minimum of 80 hours. Any failure to timely provide such notification shall be considered a violation of probation.

It is a violation of probation for respondent's probation to remain tolled pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding 36 months.

14. Attend Substance Abuse Recovery Relapse Prevention and Support Groups

Within 30 days of the effective date of this decision, respondent shall begin regular attendance at a recognized and established substance abuse recovery support group in California, (e.g., Alcoholics Anonymous, Narcotics Anonymous, a discipleship program, etc.) which has been approved by the Board or its designee. Respondent must attend at least one group meeting per week unless otherwise directed by the board or its designee. Respondent shall continue regular attendance and submit signed and dated documentation confirming attendance with each quarterly report for the duration of probation. Failure to attend or submit documentation thereof shall be considered a violation of probation.

15. Random Drug Screening

Respondent, at his own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug screening program as directed by the board or its designee. Respondent may be required to participate in testing for the entire probation period and the frequency of testing will be determined by the Board or its designee. At all times respondent shall fully cooperate with the Board or its designee, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the Board or its designee may direct. Failure to timely submit to testing as directed shall be considered a violation of probation. Upon request of the board or its designee, respondent shall provide documentation from a licensed practitioner that the prescription for a detected drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall be considered a violation of probation and shall result in the automatic suspension of work by respondent. Respondent may not resume work as a pharmacy technician until notified by the board in writing.

During suspension, respondent shall not enter any pharmacy area or any portion of or any other Board licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor

shall respondent manage, administer, or assist any licensee of the Board. Respondent shall not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances. Respondent shall not resume work until notified by the Board.

Respondent shall not direct, control or perform any aspect of the practice of pharmacy. Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises in which he holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

16. Work Site Monitor

Within 10 days of the effective date of this decision, respondent shall identify a work site monitor, for prior approval by the Board, who shall be responsible for supervising respondent during working hours. Respondent shall be responsible for ensuring that the work site monitor reports in writing to the Board quarterly. Should the designated work site monitor determine at any time during the probationary period that respondent has not maintained sobriety, he or she shall notify the Board immediately, either orally or in writing as directed. Should respondent change employment, a new work site monitor must be designated, for prior approval by the Board, within 10 days of commencing new employment. Failure to identify an acceptable initial or replacement work site monitor, or to ensure quarterly reports are submitted to the Board, shall be considered a violation of probation.

17. Notification of Departure

Prior to leaving the probationary geographic area designated by the Board or its designee for a period greater than 24 hours, respondent shall notify the Board verbally and in writing of the dates of departure and return. Failure to comply with this provision shall be considered a violation of probation.

18. Abstain from Drugs and Alcohol Use

Respondent shall completely abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon request of the Board or its designee, respondent shall provide documentation from the licensed practitioner that the prescription for the drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Respondent shall ensure that he is not in the same physical location as individuals who are using illicit substances even if respondent is not personally ingesting the drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia not supported by the documentation

timely provided, and/or any physical proximity to persons using illicit substances, shall be considered a violation of probation.

19. Violation of Probation

If respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over respondent, and probation shall automatically be extended, until all terms and conditions have been satisfied or the Board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

If respondent violates probation in any respect, the Board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke probation or an accusation is filed against respondent during probation, the Board shall have continuing jurisdiction, and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

20. Completion of Probation

Upon written notice by the Board indicating successful completion of probation, respondent's pharmacy technician registration will be fully restored.

DATED: March 14, 2017

DocuSigned by:
Matthew Goldsby
BCCB11E7989041F...

MATTHEW GOLDSBY
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

10 In the Matter of the First Amended Accusation	Case No. 5844
11 Against:	
12 FLORENTINO M. ESCORCIA	FIRST AMENDED ACCUSATION
13 PO BOX 729	
14 Big Bear City, CA 92314	
15 Pharmacy Technician Registration No. TCH 89588	
16 Respondent.	

17
18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this First Amended Accusation solely in her
21 official capacity as the Executive Officer of the Board of Pharmacy (Board), Department of
22 Consumer Affairs.
- 23 2. On or about March 10, 2009, the Board issued Pharmacy Technician Registration
24 Number TCH 89588 to Florentino M. Escorcía (Respondent). Said registration was in full force
25 and effect at all times relevant to the charges brought herein and will expire on March 31, 2017,
26 unless renewed.

27 **JURISDICTION AND STATUTORY PROVISIONS**

- 28 3. This First Amended Accusation is brought before the Board under the authority of

1 the following laws. All references are to the Business and Professions Code (Code) unless
2 otherwise indicated.

3 4. Section 4300 of the Code provides, in pertinent part:

4 "(a) Every license issued may be suspended or revoked.

5 (b) The board shall discipline the holder of any license issued by the
6 board, whose default has been entered or whose case has been heard by the board and
found guilty, by any of the following methods:

7 (1) Suspending judgment.

8 (2) Placing him or her upon probation.

9 (3) Suspending his or her right to practice for a period not exceeding one
10 year.

11 (4) Revoking his or her license.

12 (5) Taking any other action in relation to disciplining him or her as the
board in its discretion may deem proper.

13 (c) The board may refuse a license to any applicant guilty of
unprofessional conduct. The board may, in its sole discretion, issue a probationary
14 license to any applicant for a license who is guilty of unprofessional conduct and who
has met all other requirements for licensure. The board may issue the license subject
15 to any terms or conditions not contrary to public policy, including, but not limited to,
the following:

16 (1) Medical or psychiatric evaluation.

17 (2) Continuing medical or psychiatric treatment.

18 (3) Restriction of type or circumstances of practice.

19 (4) Continuing participation in a board-approved rehabilitation program.

20 (5) Abstention from the use of alcohol or drugs.

21 (6) Random fluid testing for alcohol or drugs.

22 (7) Compliance with laws and regulations governing the practice of
23 pharmacy.

24 (d) The board may initiate disciplinary proceedings to revoke or suspend
any probationary certificate of licensure for any violation of the terms and conditions
25 of probation. Upon satisfactory completion of probation, the board shall convert the
probationary certificate to a regular certificate, free of conditions.

26 (e) The proceedings under this article shall be conducted in accordance
with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the
27 Government Code, and the board shall have all the powers granted therein. The
28 action shall be final, except that the propriety of the action is subject to review by the

1 superior court pursuant to Section 1094.5 of the Code of Civil Procedure.

2 5. Section 4300.1 of the Code states:

3 "The expiration, cancellation, forfeiture, or suspension of a board-issued
4 license by operation of law or by order or decision of the board or a court of law, the
5 placement of a license on a retired status, or the voluntary surrender of a license by a
6 licensee shall not deprive the board of jurisdiction to commence or proceed with any
investigation of, or action or disciplinary proceeding against, the licensee or to render
a decision suspending or revoking the license."

7 6. Section 4301 of the Code provides, in pertinent part:

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

11 ...

12 (h) The administering to oneself, of any controlled substance, or the use
13 of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be
14 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.

15 ...

16 (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.

17 **COST RECOVERY**

18 7. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
19 administrative law judge to direct a licentiate found to have committed a violation or violations of
20 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
21 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
22 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
23 included in a stipulated settlement.

24 **FACTUAL BACKGROUND**

25 8. On June 16, 2015, California Highway Patrol officers were driving northbound on
26 SR-330 when they noticed a white Kia sedan, with its headlights on, parked in a turnout on the
27 northbound shoulder. Upon conducting a welfare check, the officers observed that the vehicle
28 now had its headlights off but the interior lights were illuminated. Officers observed that

1 Respondent (driver of the vehicle) displayed the objective signs and symptoms of drug
2 intoxication. Respondent admitted to driving the vehicle. Officers observed cigarette filters and
3 some small pieces of cotton (items that the officers identified as commonly used for filtering
4 heroin¹ into a syringe) on the drivers floor board. Respondent admitted that there were drugs in
5 the vehicle and produced a black case from underneath the drivers seat. The black case contained
6 four syringes, multiple plastic bags with black tar residue, a razor blade with black tar residue,
7 and multiple cotton swabs with black tar residue. Respondent told the officers that there was
8 heroin in the black case and that the black case was his. Respondent admitted to injecting
9 approximately 30 ccs of heroin into his upper right forearm approximately 6 hours before. He
10 admitted to injecting it in his car at a house in San Bernardino. Respondent admitted to shooting
11 up four times a day every day and that he started using heroin five months ago.

12 **FIRST CAUSE FOR DISCIPLINE**

13 **(Unprofessional Conduct: Dangerous Use of Controlled Substances)**

14 9. Respondent is subject to disciplinary action under section 4301, subdivision (h) of
15 the Code in that Respondent administered or used a controlled substance and dangerous drug in a
16 manner dangerous or injurious to himself, others, and the public. The conduct is described in
17 more particularity in paragraph 8 above, inclusive, and hereby incorporated by reference.

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(Unprofessional Conduct: Violation of State Statutes Regulating Controlled Substances)**

20 10. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the
21 Code in that Respondent violated statutes of this state, or any other state, or of the United States
22 regulating controlled substances and dangerous drugs when he used and possessed heroin, a
23 controlled substance and dangerous drug. The conduct is described in more particularity in
24 paragraph 8 above, inclusive, and hereby incorporated by reference.

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27 ¹ Heroin is a schedule I controlled substance pursuant to Health and Safety Code section 11054 and is
28 categorized as a dangerous drug pursuant to section 4022 of the Code.

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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 89588, issued to Florentino M. Escorcía;
2. Ordering Florentino M. Escorcía 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; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: 2/2/17

Virginia Herold

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

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7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 5844

12 **FLORENTINO M. ESCORCIA**

13 PO BOX 729
14 Big Bear City, CA 92314

A C C U S A T I O N

15 Pharmacy Technician Registration No. TCH
16 89588

Respondent.

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 (Board), Department of Consumer Affairs.

22 2. On or about March 10, 2009, the Board issued Pharmacy Technician Registration
23 Number TCH 89588 to Florentino M. Escorcía (Respondent). Said registration was in full force
24 and effect at all times relevant to the charges brought herein and will expire on March 31, 2017,
25 unless renewed.

26 **JURISDICTION AND STATUTORY PROVISIONS**

27 3. This Accusation is brought before the Board under the authority of the following
28 laws. All references are to the Business and Professions Code (Code) unless otherwise indicated.

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4. Section 4300 of the Code provides, in pertinent part:

“(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.

(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy, including, but not limited to, the following:

(1) Medical or psychiatric evaluation.

(2) Continuing medical or psychiatric treatment.

(3) Restriction of type or circumstances of practice.

(4) Continuing participation in a board-approved rehabilitation program.

(5) Abstention from the use of alcohol or drugs.

(6) Random fluid testing for alcohol or drugs.

(7) Compliance with laws and regulations governing the practice of pharmacy.

(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary certificate of licensure for any violation of the terms and conditions of probation. Upon satisfactory completion of probation, the board shall convert the probationary certificate to a regular certificate, free of conditions.

(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure.”

///

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct: Dangerous Use of Controlled Substances)**

3 7. Respondent is subject to disciplinary action under section 4301, subdivision (h) of
4 the Code in that Respondent administered or used a controlled substance and dangerous drug in a
5 manner dangerous or injurious to himself, others, and the public. The conduct is described in
6 more particularity in paragraph 6 above, inclusive, and hereby incorporated by reference.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Unprofessional Conduct: Violation of State Statutes Regulating Controlled Substances)**

9 8. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the
10 Code in that Respondent violated statutes of this state, or any other state, or of the United States
11 regulating controlled substances and dangerous drugs when he used and possessed heroin, a
12 controlled substance and dangerous drug. The conduct is described in more particularity in
13 paragraph 6 above, inclusive, and hereby incorporated by reference.

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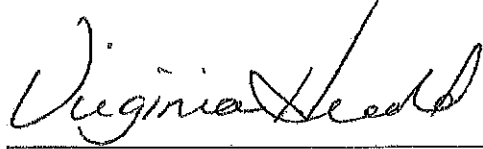
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PRAYER

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 89588, issued to Florentino M. Escorcía;
2. Ordering Florentino M. Escorcía 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; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: 10/16/16



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

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