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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. 3202

12 JEANA MARIE JOHNSON
1920 Encina Avenue
13 Modesto, CA 95354

A C C U S A T I O N

14 Pharmacy Technician License No. TCH 57609

15 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 August 16, 2004, the Board of Pharmacy issued Pharmacy
22 Technician License Number TCH 57609 to Jeana Marie Johnson (Respondent). The Pharmacy
23 Technician License was in full force and effect at all times relevant to the charges brought herein
24 and will expire on March 31, 2010, unless renewed.

25 **JURISDICTION**

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

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4. Code section 492 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 121 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 (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 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

STATUTORY PROVISIONS

5. Section 4300 of the Code states 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.

6. Section 4301 of the Code states in pertinent part:

"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:

"(f) The commission of any act involving moral turpitude, dishonesty,

1 fraud, deceit, or corruption, whether the act is committed in the course of relations as a
2 licensee or otherwise, and whether the act is a felony or misdemeanor or not.

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

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

24 7. Code section 4060 states, in pertinent part, that no person shall
25 possess any controlled substance, except that furnished to a person upon the
26 prescription by a physician, dentist, podiatrist, or veterinarian.

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1 13. Health & Safety Code section 11377, subdivision (a), provides,
2 in relevant part:

3 [E]very person who possesses any controlled substance which is . . .
4 specified in subdivision (d), (e), or (f) of Section 11055, unless upon the
5 prescription of a physician, dentist, podiatrist, or veterinarian, licensed to
6 practice in this state, shall be punished by imprisonment in a county jail
7 for a period of not more than one year or in the state prison.

8 14. **DRUG:**

9 "Methamphetamine" is a Schedule II controlled substance as designated by
10 Health and Safety ("H&S) Code section 11055, subdivision (d)(2), and a dangerous drug within
11 the meaning of Code section 4022.

12 **COST RECOVERY**

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

17 **FIRST CAUSE FOR DISCIPLINE**

18 **(Conviction of a Crime)**

19 8. Respondent is subject to disciplinary action under section 4301 (f) and (l)
20 in that on or about November 27, 2006, in *People v. Jeana Marie Johnson*, Stanislaus County
21 Superior Court; Case No. 1217794, respondent was convicted on her plea of nolo contendere to a
22 violation of Penal Code section 487 (a) (grand theft), a crime substantially related to the practice
23 of a pharmacy technician. The circumstances are as follows:

24 9. On or about October 28, 2006, respondent did wilfully, unlawfully and
25 feloniously take the property of another of a value exceeding Four Hundred Dollars (\$400.00)

26 **SECOND CAUSE FOR DISCIPLINE**

27 **(Possession of a Controlled Substance)**

28 10. Respondent is subject to disciplinary action under section 4301 (f) and (l)
on the grounds of unprofessional conduct, in that on or about January 6, 2006, in the city of
Modesto, during a security check on a small child, Modesto Police Officer Arguelles found

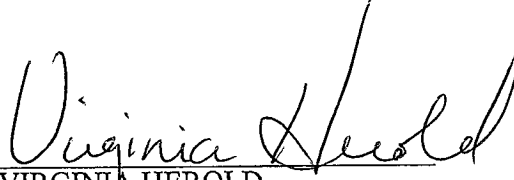
1 Respondent in possession of a controlled substance, to wit: Methamphetamine. Such act of
2 Respondent constitutes violations of Health & Safety Code section 11377, subdivision (a), Code
3 section 4060, subdivision (b), and constitutes unprofessional conduct within the meaning of
4 Code section 4301, subdivisions (f) and (l).

5 PRAYER

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

- 8 1. Revoking or suspending Pharmacy Technician License Number TCH
9 57609, issued to Jeana Marie Johnson.
- 10 2. Ordering Respondent Jeana Marie Johnson to pay the Board of Pharmacy
11 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
12 Professions Code section 125.3;
- 13 3. Taking such other and further action as deemed necessary and proper.

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15 DATED: 12/8/08

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18 VIRGINIA HEROLD
19 Executive Officer
20 Board of Pharmacy
21 Department of Consumer Affairs
22 State of California
23 Complainant

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