1	EDMUND G. BROWN JR., Attorney General
2	of the State of California FRANK H. PACOE
3	Supervising Deputy Attorney General JOSHUA A. ROOM, State Bar No. 214663
4	Deputy Attorney General 455 Golden Gate Avenue, Suite 11000
5	San Francisco, CA 94102-7004 Telephone: (415) 703-1299
	Facsimile: (415) 703-5480
6	Attorneys for Complainant
7	BEFORE THE
8	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS
9	STATE OF CALIFORNIA
10	In the Matter of the Accusation Against: Case No. 3221
11	
12	RIHAAD ALI 843 Viceroy Way A C C U S A T I O N
13	San Jose, California 95133
14	Pharmacy Technician License No. TCH 38102
15	Respondent.
16	
17	Complainant alleges:
18	<u>PARTIES</u>
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 February 21, 2002, the Board of Pharmacy issued Pharmacy
22	Technician License No. TCH 38102 to Rihaad Ali (Respondent). The License was in full force
23	and effect at all times relevant to these charges and will expire on May 31, 2009, unless renewed.
24	<u>JURISDICTION</u>
25	3. This Accusation is brought before the Board of Pharmacy (Board),
26	Department of Consumer Affairs, under the authority of the following laws. All section
27	references are to the Business and Professions Code (Code) unless otherwise indicated.
20	

<sup>1</sup>10

- 4. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].
- 5. Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked.
- 6. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not renewed within three years following its expiration may not be renewed, restored, or reinstated and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of the Code provides that any other license issued by the Board may be canceled by the Board if not renewed within 60 days after its expiration, and any license canceled in this fashion may not be reissued but will instead require a new application to seek reissuance.

# STATUTORY PROVISIONS

- 7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action against any holder of a license who is guilty of "unprofessional conduct," defined to include, but not be limited to, any of the following:
- (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.
- (h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages 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.
- (j) The violation of any of the statutes of this state, of any other state, or of the United States regulating controlled substances and dangerous drugs.

. 0

- (l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter.
- (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.
- 8. Section 490 of the Code provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of the license.
  - 9. 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."

- 10. Section 4060 of the Code provides, in pertinent part, that no person shall possess any controlled substance, except that furnished upon a valid prescription/drug order.
- 11. Health and Safety Code section 11170 provides that no person shall prescribe, administer, or furnish a controlled substance for himself or herself.
- 12. Health and Safety Code section 11364, in pertinent part, makes it unlawful to possess an opium pipe or other paraphernalia used to inject or smoke controlled substances.
- 13. Health and Safety Code section 11377, in pertinent part, makes it unlawful to possess any controlled substance in Schedule II, subdivision (d), without a prescription.
- 14. Health and Safety Code section 11550, in pertinent part, makes it unlawful for any person to use or be under the influence of any controlled substance in Schedule II (Health and Safety Code section 11055), subdivision (d)(1) or (d)(2), or any narcotic drug in Schedules III-V, except when administered by or under the direction of an authorized licensee.

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

### CONTROLLED SUBSTANCES / DANGEROUS DRUGS

- 16. Section 4021 of the Code states:
- "'Controlled substance' means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code."
  - 17. Section 4022 of the Code states, in pertinent part:
- "Dangerous drug' or 'dangerous device' means any drug or device unsafe for self-use, except veterinary drugs that are labeled as such, and includes the following:
- "(a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing without prescription,' 'Rx only,' or words of similar import.
- "(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006."
- 18. **Methamphetamine** is a Schedule II controlled substance as designated by Health and Safety Code section 11055(d)(2) and a dangerous drug as designated by Business and Professions Code section 4022. It is a stimulant drug.

#### FACTUAL BACKGROUND

19. On or about September 10, 2006, San Jose Police responded to a report of suspicious activity, and encountered Respondent in an apparently intoxicated/drug-altered state. A search of Respondent's person uncovered a baggie with a white crystal substance, confirmed by testing as **methamphetamine**. A search of Respondent's vehicle uncovered a glass smoking pipe with white powder residue, and a wild catfish. Respondent was unable to produce a fishing license. Respondent was arrested on suspicion of violating Health and Safety Code sections 11377 (Possession of Controlled Substance), 11550 (Under Influence of Controlled Substance), and 11364 (Possession of Drug Paraphernalia), Penal Code section 647(f) (Disorderly Conduct - Public Intoxication), and Fish and Game Code section 2002 (Unlawful Possession of Animal).

20. On or about July 20, 2007, Respondent was stopped while driving by the California Highway Patrol after making a U-turn on a red light. After observing that Respondent exhibited signs of intoxication, the officer(s) administered a field sobriety test and a breath test, and blood sample(s) were taken from Respondent. Respondent was then placed under arrest and issued a misdemeanor Citation/Notice to Appear on suspicion of violating Vehicle Code sections 23152(a) (Driving While Under the Influence of Alcohol/Drugs) and 23152(b) (Driving With a Blood Alcohol Content In Excess of 0.08%). He was taken into custody.

FIRST CAUSE FOR DISCIPLINE

(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

21. Respondent is subject to discipline under section 4301(f) of the Code in that Respondent, as described in paragraphs 19-20 above, committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption.

### SECOND CAUSE FOR DISCIPLINE

(Self-Administration of Controlled Substance and/or Alcohol)

22. Respondent is subject to discipline under section 4301(h) of the Code, in that Respondent, as described in paragraphs 19-20 above, administered a controlled substance to himself and/or used alcoholic beverages in a dangerous or injurious manner.

### THIRD CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime(s))

23. Respondent is subject to discipline under section 4301(l) and/or section 490 of the Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of substantially related crime(s), in that on or about January 22, 2007 and/or June 19, 2008, in a criminal case titled *People v. Rihaad Ali*, Case No. CC646332 in Santa Clara County Superior Court, Respondent was convicted of violating Health and Safety Code sections 11377 (Possession of Controlled Substance), 11550 (Under Influence of Controlled Substance), and 11364 (Possession of Drug Paraphernalia), all three misdemeanors. Imposition of sentence was suspended in favor of a period of formal probation of two (2) years, with terms and conditions.

## FOURTH CAUSE FOR DISCIPLINE (Possession of Controlled Substance) 24. 3 Respondent is subject to discipline under section 4301(j) and/or (o) and/or 4 section 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as 5 described in paragraph 19 above, possessed, conspired to possess, and/or assisted in or abetted possession of, a controlled substance, without a prescription. 6 7 FIFTH CAUSE FOR DISCIPLINE (Self-Administration/Use of Controlled Substance) 25. Respondent is subject to discipline under section 4301(j) and/or (o) of the 10 Code, and/or Health and Safety Code section(s) 11170 and/or 11550, in that Respondent, as 11 described in paragraph 19 above, self-administered/used, conspired to self-administer/use, and/or 12 assisted in/abetted self-administration/use, of a controlled substance, without prescription. 13 SIXTH CAUSE FOR DISCIPLINE (Unprofessional Conduct) 14 15 26. Respondent is subject to discipline under section 4301 of the Code in that 16 Respondent, as described in paragraphs 19-25 above, engaged in unprofessional conduct. 17 18 19 20 21 22 **PRAYER** 23 WHEREFORE, Complainant requests that a hearing be held on the matters herein 24 alleged, and that following the hearing, the Board of Pharmacy issue a decision: 25 A. Revoking or suspending Pharmacy Technician License No. TCH 38102, 26 issued to Rihaad Ali (Respondent); 27 В. Ordering Respondent to pay the Board reasonable costs of investigation 28 and enforcement of this case, pursuant to Business and Professions Code section 125.3;

1	C. Taking such other and further action as is deemed necessary and prop	peı
2		
3	DATED: 4/10/09	
4		
5		
6	VIRGINIA HEROLD	
7	Executive Officer Board of Pharmacy	
8	Board of Pharmacy Department of Consumer Affairs State of California	
9	Complainant	
10		
11	SF2008201012	
12	40314614.wpd	
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
20		