1 2	EDMUND G. BROWN JR., Attorney General of the State of California JAMES M. LEDAKIS		
3	Supervising Deputy Attorney General G. MICHAEL GERMAN, State Bar No. 103312		
4	Deputy Attorney General 110 West "A" Street, Suite 1100		
5	San Diego, CA 92101		
6	P.O. Box 85266 San Diego, CA 92186-5266		
7	Telephone: (619) 645-2617		
8	Attorneys for Complainant		
9	BEFORE THE BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
10			
11	STATE OF CAL		
12	In the Matter of the Accusation Against:	Case No. 3239	
13	MANUEL ARMENDARIZ 9019 Lemoran Avenue	ACCUSATION	
14	Downey, CA 90240		
15	Pharmacy Tech. Registration No. TCH 49698		
16	Respondent.		
17		1	
18	Complainant alleges:		
19	PARTIE	<u>AS</u>	
20	1. Virginia Herold (Complainan	t) brings this Accusation solely in her	
21	official capacity as the Executive Officer of the Boa	rd of Pharmacy, Department of Consumer	
22	Affairs.		
23	2. On or about August 29, 2003,	, the Board of Pharmacy issued Pharmacy	
24	Technician Registration Number TCH 49698 to Ma	nuel Armendariz (Respondent). The	
25	Pharmacy Technician Registration was in full force and effect at all times relevant to the charge		
26	brought herein and will expire on February 8, 2009, unless renewed.		
27	111	,	
28	///		
	1		

1	JURISDICTION
2	3. This Accusation is brought before the Board of Pharmacy (Board),
3	Department of Consumer Affairs, under the authority of the following laws. All section
4	references are to the Business and Professions Code unless otherwise indicated.
5	4. Section 118, subdivision (b), of the Code provides that the suspension,
6	expiration, surrender, or cancellation of a license shall not deprive the Board to proceed with a
. 7	disciplinary action during the period within which the license may be renewed, restored, reissued
8	or reinstated.
9	5. Section 490 of the Code provides, in pertinent part, that a board may
10	suspend or revoke a license on the ground that the licensee has been convicted of a crime
11	substantially related to the qualifications, functions, or duties of the business or profession for
12	which the license was issued.
13	6. Section 493 of the Code states:
14	Notwithstanding any other provision of law, in a proceeding conducted by
15	a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a
16	person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions,
17	and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact and the based may in guine into the circumstances surrounding the
18	fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if
19	the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.
20	As used in this section, "license" includes "certificate," "permit,"
21	"authority," and "registration."
22	7. Section 4300, subdivision (a) of the Code states "Every license issued may
23	be suspended or revoked."
24	8. Section 4301 of the Code states:
25	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
26	misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:
27	is not minted to, any of the following.
28	
	2

(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.

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

(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.

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

(p) Actions or conduct that would have warranted denial of a license.

9. Section 4022 of the Code states

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, 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.

(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a \_\_\_\_\_\_," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

1 2	(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.
3	10. Section 4059 of the Code states, in pertinent part, that a person may not
4	furnish any dangerous drug except upon the prescription of a physician, dentist, podiatrist,
5	optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not
6	furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist,
7	optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.
8	11. Section 4060 of the Code states:
9	No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist,
10	veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
11	2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or
12	a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.
13	This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
14	optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled
15	with the name and address of the supplier or producer.
16	••••
17	12. California Code of Regulations, title 16, section 1770 states:
18	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
19	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
20	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
21	manner consistent with the public health, safety, or welfare.
22	13. California Code of Regulations, title 16, section 1769 states:
23	
24	(b) When considering the suspension or revocation of a facility or a personal license on the ground that the licensee or the registrant has been
25	convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:
26	(1) Nature and severity of the act(s) or offense(s).
27	(2) Total criminal record.
28	
	4

-		
.1	(3) The time that has elapsed since commission of the act(s) or offense(s).	
. 2 3	(4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.	
4	(5) Evidence, if any, of rehabilitation submitted by the licensee.	
5	14. Section 125.3 of the Code provides, in pertinent part, that the Board may	
6	request the administrative law judge to direct a licentiate found to have committed a violation or	
7	violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation	
8	and enforcement of the case.	
9	DRUGS	
10	15. <u>Cocaine</u> is a Schedule II controlled substance as designated by Health and	
11	Safety Code section 11055, subdivision (b)(6), and is a dangerous drug pursuant to Business &	
12	Professions Code section 4022.	
13	16. <u>Methamphetamine</u> is a Schedule II controlled substance as designated by	
14	Health and Safety Code section 11055, subdivision (d)(2), and is a dangerous drug pursuant to	
15	Business and Professions Code section 4022.	
16	FIRST CAUSE FOR DISCIPLINE	
17	(July 21, 2008 Criminal Conviction for Possession of Cocaine for Sale)	
18	17. Respondent has subjected his license to discipline under sections 490 and	
19	4301, subdivision (1) of the Code in that he was convicted of a crime that is substantially related	
20	to the qualifications, duties, and functions of a pharmacy technician. The circumstances are as	
21	follows:	
22	a. On or about July 21, 2008, in a criminal proceeding entitled <i>People</i>	
23	of the State of California v. Manuel Armendariz, in Riverside County Superior Court, case	
24	number SWF018750, Respondent was convicted on his plea of guilty to violating Health and	
25	Safety Code section 11351, possession of a controlled substance for sale, to wit, cocaine, a	
26	felony. The conviction was enhanced pursuant to Penal Code section 12022, subdivision (c) in	
27	that Respondent was in possession of a firearm in the commission of the principal offense.	
28	///	
:	5	

b. As a result of the conviction, on or about July 21, 2008, the court
sentenced Respondent to 365 days in the custody of the sheriff, with credit for 13 days, stayed
until September 2, 2008. Formal probation was granted for a period of 60 months. Respondent
was ordered to attend 52 Narcotics Anonymous meetings, participate in drug counseling or a
rehabilitation program, and not use or possess illegal controlled substances. Respondent was
further required to submit to search, biological chemical testing, not own or possess firearms or
deadly weapons for life, and payment of fees, fines, and court costs.

The facts that lead to the conviction were that on or about the 8 c. 9 afternoon of November 1, 2006, a deputy from the Riverside County Sheriff's Department conducted a traffic stop on Respondent who was driving a Cadillac Escalade with overly tinted 10 windows. Respondent appeared to be very nervous, so the deputy requested and received 11 permission to search the vehicle. Under the back seat of the vehicle, the deputy located an 12 13 eyeglass case containing 1.48 ounces of what later tested positive for methamphetamine. Based on the quantity of the methamphetamine, the deputy contacted the department's narcotics unit to 14 conduct a search of Respondent's residence. Respondent's wife was intercepted while picking 15 her children up from school and she waited with a deputy outside the residence until the search 16 17 warrant was issued. During a search of the residence, three handguns were located in the closet of the master bedroom: a Ruger 6-shot revolver, a Smith & Wesson six-shot revolver, and a 18 19 Smith & Wesson 9mm semi-automatic loaded with five rounds in the magazine. A records 20 check revealed the revolvers were stolen. Additional ammunition and \$211 in U.S. currency was 21 located in the closet. A one-ounce bag of cocaine was found in a linen cabinet in the master bathroom. All of the items found were in locations easily accessible by Respondent's two 22 23 children. Respondent agreed to speak with the deputies and stated that the cocaine was for 24 personal use purchased for an upcoming family trip to Las Vegas. Respondent stated that he was 25 selling methamphetamine because of financial problems and he needed the money. Respondent 26 had \$500 in U.S. currency in his right front pants pocket. Respondent also exhibited the signs 27 and symptoms of being under the influence of a central nervous system stimulant. Child 28 Protective Services were called and the two minor children were removed from the residence.

6

1	SECOND CAUSE FOR DISCIPLINE
2	(Unprofessional Conduct - Illegal Possession & Sale of Controlled Substances)
3	18. Respondent is subject to disciplinary action under sections 4301,
4	subdivision (j), 4059, and 4060 of the Code in that Respondent violated California and federal
5	statutes regulating controlled substances and dangerous drugs, in that on or about November 1,
6	2006, Respondent possessed controlled substances without a prescription, and possessed
7	methamphetamine for the purpose of sale, as detailed in paragraph 17, above.
8	THIRD CAUSE FOR DISCIPLINE
9	(Unprofessional Conduct - Use of Dangerous Drugs)
10	19. Respondent is subject to disciplinary action under sections 4301,
11	subdivisions (h) and (j) of the Code, in that on or about November 1, 2006, while being
12	interviewed by a Riverside County deputy sheriff, Respondent was determined to be under the
13	influence of a controlled substance, as detailed in paragraph 17, above.
14	FOURTH CAUSE FOR DISCIPLINE
15	(Conduct That Would Have Warranted Denial of a License)
16	20. Respondent is subject to disciplinary action under sections 4301,
17	subdivision (p) of the Code, in that Respondent's conviction, as detailed in paragraph 17, above,
18	would have warranted the denial of a pharmacy technician registration.
19	///
20	111
21	///
22	///
23	111
24	///
25	///
26	///
27	///
28	111
	7

1	PRAYER	
2	WHEREFORE, Complainant requests that a hearing be held on the matters herein	
3	alleged, and that following the hearing, the Board of Pharmacy issue a decision:	
4	1. Revoking or suspending Pharmacy Technician Registration Number TCH	
5	49698, issued to Manuel Armendariz;	
6	2. Ordering Manuel Armendariz to pay the Board of Pharmacy the	
7	reasonable costs of the investigation and enforcement of this case, pursuant to Business and	
8	Professions Code section 125.3;	
9	3. Taking such other and further action as deemed necessary and proper.	
10		
11	DATED: 4/16/09	
12		
13	in in the da	
14	VIRGINIA HEROLD	
15	Executive Officer Board of Pharmacy	
16	Department of Consumer Affairs State of California	
17	Complainant	
18		
19		
20		
21		
22		
23		
24		
25	SD2008803167	
26		
27	·	
28		
	8	