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) .	7 [.]	Attorneys for Complainant		
•	. 8	BEFORE T BOARD OF PHA		
		DEPARTMENT OF CON	SUMER AFFAIRS	
	9	STATE OF CAL	IFORNIA	
•	10	In the Matter of the Assuration Assinct.	Case No. 3280	
	11	In the Matter of the Accusation Against:	Case No. 5280	
	12	TRISTAN ANDREW TOLOSA 832 Antoinette Lane E.	ACCUSATION	
· ·	13	South San Francisco, CA 94080		
		Pharmacy Technician License No. TCH 50743		
	14	Respondent.		
	15			
	16			
	17	Complainant alleges:		
	18	PARTIES		
	19	1. Virginia Herold (Complainan	t) brings this Accusation solely in her official	
	20	capacity as the Executive Officer of the Board of Ph	armacy, Department of Consumer Affairs.	
	21	2. On or about September 11, 2003, the Board of Pharmacy issued Pharmacy		
	22	Technician License Number TCH 50743 to Tristan	Andrew Tolosa (Respondent). The Pharmacy	
	23	Technician License was in full force and effect at all	l times relevant to the charges brought herein	
	24	and will expire on May 31, 2009, unless renewed.		
	25	JURISDICT	TION	
• ·	26	3. This Accusation is brought be	efore 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	(Code) unless otherwise indicated.	
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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.].

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5. Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked.

6 6. Section 118(b) of the Code provides, in pertinent part, that the suspension, 7 expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to 8 proceed with a disciplinary action during the period within which the license may be renewed, 9 restored, reissued or reinstated. Section 4402(a) of the Code provides that any pharmacist license 10 that is not renewed within three years following its expiration may not be renewed, restored, or 11 reinstated and shall be canceled by operation of law at the end of the three-year period. Section 12 4402(e) of the Code provides that any other license issued by the Board may be canceled by the 13 Board if not renewed within 60 days after its expiration, and any license canceled in this fashion 14 may not be reissued but will instead require a new application to seek reissuance.

STATUTORY PROVISIONS

16 7. Section 4301 of the Code provides, in pertinent part, that the Board shall
17 take action against any holder of a license who is guilty of "unprofessional conduct," defined to
18 include, but not be limited to, any of the following:

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

(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.

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1	8. Section 4060 of the Code provides, in pertinent part, that no person shall		
2	possess any controlled substance, except that furnished upon a valid prescription/drug order.		
3	9. Health and Safety Code section 11170 provides that no person shall		
• 4	prescribe, administer, or furnish a controlled substance for himself or herself.		
5.	10. Health and Safety Code section 11377, in pertinent part, makes it unlawful		
6	to possess any controlled substance in Schedule II, subdivision (d), without a prescription.		
7	11. Health and Safety Code section 11550, in pertinent part, makes it unlawful		
8	for any person to use or be under the influence of any controlled substance in Schedule II (Health		
9	and Safety Code section 11055), subdivision (d)(1) or (d)(2), or any narcotic drug in Schedules		
10	III-V, except when administered by or under the direction of an authorized licensee.		
11	12. Section 125.3 of the Code provides, in pertinent part, that the Board may		
12	request the administrative law judge to direct a licentiate found to have committed a violation of		
13	the licensing act to pay a sum not to exceed its reasonable costs of investigation and enforcement.		
14	CONTROLLED SUBSTANCES / DANGEROUS DRUGS		
15	13. Section 4021 of the Code states:		
16	"Controlled substance' means any substance listed in Chapter 2 (commencing		
17	with Section 11053) of Division 10 of the Health and Safety Code."		
18	14. Section 4022 of the Code states, in pertinent part:		
19	"Dangerous drug' or 'dangerous device' means any drug or device unsafe for		
20	self-use, except veterinary drugs that are labeled as such, and includes the following:		
21	"(a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing		
22	without prescription,' 'Rx only,' or words of similar import.		
23	· · · · · · · · · · · · · · · · · · ·		
24	"(c) Any other drug or device that by federal or state law can be lawfully		
25	dispensed only on prescription or furnished pursuant to Section 4006."		
26	15. Methamphetamine is a Schedule II controlled substance as designated by		
27	Health and Safety Code section 11055(d)(2) and a dangerous drug as designated by Business and		
28	Professions Code section 4022. It is a stimulant drug.		

FACTUAL BACKGROUND

2	16. On or about August 7, 2007, Respondent was stopped while driving by
3	Daly City Police for not having a front license plate on the vehicle. Respondent admitted upon
4	questioning to having methamphetamine in his pants pocket that he had just purchased. Daly
5	City Police found a small plastic baggie containing 0.02 grams gross weight methamphetamine
6	(as confirmed by a presumptive positive field test). Respondent stated that he had purchased the
7	methamphetamine at/outside a nearby convenience store, and also told police that he regularly
8	consumed methamphetamine one-two times per week.
9	
10	FIRST CAUSE FOR DISCIPLINE
11	(Self-Administration of Controlled Substance)
12	17. Respondent is subject to discipline under section 4301(h) of the Code, in
13	that Respondent, as described in paragraph 16 above, self-administered methamphetamine, a
14	controlled substance, on repeated occasions prior to and/or on or about August 7, 2007.
15	
16	SECOND CAUSE FOR DISCIPLINE
17	(Possession of Controlled Substance)
18	18. Respondent is subject to discipline under section 4301(j) and/or (o) and/or
19	section 4060 of the Code, and/or Health and Safety Code section 11377 in that Respondent, as
20	described in paragraph 16 above, possessed, conspired to possess, and/or assisted in or abetted
21	possession of methamphetamine, a controlled substance, without a prescription.
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23	THIRD CAUSE FOR DISCIPLINE
24	(Self-Administration/Use of Controlled Substance)
25	19. Respondent is subject to discipline under section 4301(j) and/or (o) of the
26	Code, and/or Health and Safety Code section(s) 11170 and/or 11550, in that Respondent, as
27	described in paragraph 16 above, self-administered/used, conspired to self-administer/use, and/or
28	assisted in/abetted self-administration/use of a controlled substance, without prescription.

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1	FOURTH CAUSE FOR DISCIPLINE
2	(Unprofessional Conduct)
3	20. Respondent is subject to discipline under section 4301 of the Code in that
4	Respondent, as described in paragraphs 16-19 above, engaged in unprofessional conduct.
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[.] 6	PRAYER
7	WHEREFORE, Complainant requests that a hearing be held on the matters herein
8	alleged, and that following the hearing, the Board of Pharmacy issue a decision:
- 9	A. Revoking or suspending Pharmacy Technician License Number TCH
10	50743, issued to Tristan Andrew Tolosa (Respondent);
. 11	B. Ordering Respondent to pay the Board reasonable costs of investigation
12	and enforcement of this case, pursuant to Business and Professions Code section 125.3;
13	C. Taking such other and further action as is deemed necessary and proper.
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15	DATED: <u>5/14/09</u>
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17	VIRGINIA HEROLD Executive Officer
18	Board of Pharmacy Department of Consumer Affairs
19	State of California Complainant
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