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

In the Matter of the Accusation Against: **JERRY MADRUGA, JR.** **also known as JERRY MADRUGA** 10231 Elder Avenue Hanford, CA 93230 Pharmacy Technician License No. TCH 19498 Respondent.	Case No. 3315 **A C C U S A T I O N**

Complainant alleges:

PARTIES

1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

2. On or about June 24, 1996, the Board of Pharmacy issued Pharmacy Technician License Number TCH 19498 to Jerry Madruga, Jr. (Respondent). The pharmacy technician license was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2010, unless renewed.

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JURISDICTION

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

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

> (a) Every license issued may be suspended or revoked.
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> (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:
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> (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.

5. 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:
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> . . .
>
> (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.
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> (g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.
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> . . .
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> (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.
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> . . .
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> (l) 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.

6. Section 4060 of the Code states, in pertinent part:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, 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 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 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.

7. Section 118, subdivision (b), of the Code provides that the expiration 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.

8. 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 or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Criminal Convictions)

9. Respondent's pharmacy technician license is subject to discipline under Code section 430, subdivision (l), in that Respondent has been convicted of crimes that are substantially related to the qualifications, functions, and duties of a licensed pharmacy technician, as follows:

a. On December 9, 2005, in the criminal proceeding titled *People of the State of California v. Jerry Madruga* (Super. Ct. Kings County, 2005, Case No. 05CM9067), Respondent was convicted by the court on his plea of nolo contendere to two misdemeanor

violations of Penal Code section 470(D)(forgery). Respondent was initially charged with fourteen felony counts of violating Penal Code section 470(D), but two of the charges were reduced to misdemeanors, and the other twelve counts were dismissed in view of his plea, as set forth above. The circumstances of the crime are that on or about October 15, 2004, and October 25, 2004, Respondent willfully and unlawfully, with the intent to defraud, falsely made, altered, forged, counterfeited, uttered, published, passed and attempted to pass, as true and genuine, a Doctor's Medical Verification Form, knowing the same to be false, altered, forged and counterfeited.

b. On September 20, 2004, in the criminal proceeding titled *People of the State of California v. Jerry Madruga* (Super. Ct. Kings County, 2004, Case No. 04CM2910), Respondent was convicted by the court on his plea of nolo contendere to a misdemeanor violation of Vehicle Code section 12500(a)(driving without a valid driver's license), a Vehicle Code section 5200 infraction (display of vehicle license plates), and a Vehicle Code section 23222(a) infraction (possession of open container of alcoholic beverage while driving). In addition, the court found Respondent guilty of one misdemeanor violation of Vehicle Code section 40508(B)(failure to pay a fine), and a Penal Code section 1214.1 infraction (failure to pay fine).

c. On August 15, 2002, in the criminal proceeding titled *People of the State of California v. Jerry Madruga* (Super. Ct. Kings County, 2002, Case No. 02CM1580), Respondent was convicted by the court on his plea of nolo conterdere to a misdemeanor violation of Penal Code section 12025(A)(1)(carrying a concealed weapon in a vehicle).

d. On June 22, 1998, in the criminal proceeding titled *People of the State of California v. Jerry Madruga* (Super. Ct. Kings County, 1998, Case No. H981253), Respondent was convicted by the court on his guilty plea to a misdemeanor violation of Vehicle Code section 14601.2(A)(driving when driver's license is suspended or revoked for driving under the influence), and a violation of Vehicle Code section 22350 (speeding), and infraction.

e. On December 16, 1997, in the criminal proceeding titled *People of the State of California v. Jerry Madruga*, (Super. Ct., 1997, Case No. H973322), Respondent was

convicted by the Court on his plea of *nolo contendre* of violating: Vehicle Code section 23152(b) (driving with blood alcohol level of .08% or more); and Vehicle Code section 12500(a) (driving without a valid driver's license), both misdemeanors.

SECOND CAUSE FOR DISCIPLINE

(Making or Signing a False Document)

10. Respondent's pharmacy technician license is subject to discipline under Code section 4301, subdivision (g), in that Respondent made or signed a document that falsely represented the existence or nonexistence of a state of facts. On December 9, 2005, Respondent was convicted of two counts of Penal Code section 470(D) (forgery), as stated in paragraph 9, subdivision (a). The circumstances are that Respondent submitted fraudulent documents to his employer, the Department of Corrections, that appeared to be from a doctor and attempted to excuse Respondent's absence from work.

THIRD CAUSE FOR DISCIPLINE

(Possession of a Controlled Substance)

11. Respondent's pharmacy technician license is subject to discipline under Code section 4060, in that Respondent was arrested for possession and transportation of methamphetamine. On July 6, 2007, Kings County Sheriff Lieutenant Parker Sever pulled Respondent over for a traffic violation and Respondent subsequently consented to a search of his vehicle. A search of the vehicle revealed methamphetamine located in the center console and Respondent was arrested on two felony violations of the Health and Safety Code, section 11377 (possession of a controlled substance) and section 11379 (transportation of a controlled substance).

FOURTH CAUSE FOR DISCIPLINE

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

12. Respondent's pharmacy technician license is subject to discipline under Code section 4301, subdivision (f), in that Respondent has committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption, as set forth in paragraph 9.

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FIFTH CAUSE FOR DISCIPLINE

(Violation of State/Federal Statute)

13. Respondent's pharmacy technician license is subject to discipline under Code section 4301, subdivision (j), in that he violated that she violated Bus. & Prof. Code section 4060 and Health & Safety Code sections 11377 and 11379, as set forth in paragraph 11.

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:

A. Revoking or suspending Pharmacy Technician License Number TCH 19498, issued to Jerry Madruga, Jr. also known as Jerry Madruga.

B. Ordering Jerry Madruga, Jr. also known as Jerry Madruga 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;

C. Taking such other and further action as deemed necessary and proper.

DATED: 5/14/09

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

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