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BEFORE THE		
BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS		
STATE OF CALIFORNIA		
In the Matter of the Accusation Against. Case No. 3345		
WALDO R. PASACHE		
1519 44th Avenue San Francisco, California 94122		
Pharmacy Technician ACCUSATION		
License No. TCH 79340		
Respondent.		
Complainant alleges:		
<u>PARTIES</u>		
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 November 9, 2007, the Board of Pharmacy issued Pharmacy Technician		
License No. TCH 79340 to Waldo R. Pasache (Respondent). The License was in full force and		
effect at all times relevant to the charges herein and will expire on May 31, 2009, unless renewed.		
JURISDICTION		
3. This Accusation is brought before the Board of Pharmacy (Board), Department of		
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 (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.].
- 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 AND REGULATORY 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:
- (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.

- 8. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous drug or dangerous device except upon the prescription of an authorized prescriber.
- 9. 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.
- 10. Health and Safety Code section 11170 provides that no person shall prescribe, administer, or furnish a controlled substance for himself or herself.
- 11. Health and Safety Code section 11357, in pertinent part, makes it unlawful for any person to possess marijuana or concentrated cannabis.
- 12. 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.
- 13. 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.
- 14. 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

- 15. Section 4021 of the Code provides that a "controlled substance" is any substance listed in Division 10, Chapter 2 (Section 11053 et seq.) of the Health and Safety Code.
 - 16. 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."

- 17. **Marijuana** is a Schedule I controlled substance as designated by Health and Safety Code section 11054(d)(13), and a dangerous drug as designated by Business and Professions Code section 4022. It is a hallucinogenic drug.
- 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.
- 19. **Amphetamine** is a Schedule II controlled substance as designated by Health and Safety Code section 11055(d)(1) and a dangerous drug as designated by Business and Professions Code section 4022. It is a stimulant drug.

FACTUAL BACKGROUND

20. On or about September 10, 2008, as a condition of his employment as a Pharmacy Technician at a Walgreens Pharmacy (PHY 44028) in San Rafael, California, Respondent was subjected to random drug testing. Respondent tested positive for use of **marijuana** as well as **methamphetamine** and/or **amphetamine**. Respondent admitted to recent possession and use.

FIRST CAUSE FOR DISCIPLINE

(Self-Administration of Controlled Substance)

21. Respondent is subject to discipline under section 4301(h) of the Code, in that Respondent, as described in paragraph 20, self-administered one or more controlled substances.

SECOND CAUSE FOR DISCIPLINE

(Self-Administration/Use of Controlled Substance)

22. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code, and/or Health and Safety Code section(s) 11170 and/or 11550, in that Respondent, as described in paragraph 20, self-administered/used, conspired to self-administer/use, and/or assisted in/abetted self-administration/use of a controlled substance, without prescription.

THIRD CAUSE FOR DISCIPLINE

(Furnishing of Controlled Substance)

23. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section 4059 of the Code in that Respondent, as described in paragraph 20, furnished and/or conspired to furnish, and/or assisted or abetted furnishing, without prescription, of a controlled substance.

FOURTH CAUSE FOR DISCIPLINE

(Possession of Controlled Substance)

24. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section 4060 of the Code, and/or Health and Safety Code section 11357 and/or 11377, in that Respondent, as described in paragraph 20, possessed, conspired to possess, and/or assisted in or abetted possession of one or more controlled substances.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

25. Respondent is subject to discipline under section 4301 of the Code in that Respondent, as described in paragraphs 20 to 24 above, engaged in unprofessional conduct.

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:

- 1. Revoking or suspending Pharmacy Technician License Number TCH 79340, issued to Waldo R. Pasache (Respondent);
- 2. Ordering Respondent to pay the Board of Pharmacy reasonable costs of investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

1	 Taking such other and further a 	ction as is deemed necessary and proper.
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3	DATED: 6/12/09 (VIRGINIA HEROLD
4		Executive Officer Board of Pharmacy
5		Department of Consumer Affairs State of California
6		Complainant
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