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8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 3355

13 **JESSE NUNEZ**
445 N. Fresno Street
Los Angeles, California 90063

ACCUSATION

14 Pharmacy Technician License No. TCH-74636

15 Respondent.

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18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about April 16, 2007, the Board of Pharmacy (Board) issued Pharmacy
23 Technician License Number TCH-74636 to Jesse Nunez (Respondent). The Pharmacy
24 Technician License was in full force and effect at all times relevant to the charges brought herein
25 and will expire on February 28, 2011, unless renewed.

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

14 **REGULATORY PROVISIONS**

15 7. California Code of Regulations, title 16, section 1770, states:

16 “For the purpose of denial, suspension, or revocation of a personal or facility license
17 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
18 crime or act shall be considered substantially related to the qualifications, functions or duties of a
19 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
20 licensee or registrant to perform the functions authorized by his license or registration in a manner
21 consistent with the public health, safety, or welfare.”

22 **CONTROLLED SUBSTANCE CLASSIFICATION**

23 8. Marijuana is a Schedule I controlled substance as defined in Health and Safety Code
24 section 11054, subdivision (d)(13).

25 **COST RECOVERY**

26 9. Section 125.3 of the Code states, in pertinent part, that the Board may request the
27 administrative law judge to direct a licentiate found to have committed a violation or violations of
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1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Conviction of Substantially-Related Crime)**

5 10. Respondent is subject to disciplinary action under section 4301, subdivision (l), as a
6 result of Respondent's conviction of a crime that is substantially related to the qualifications,
7 functions, and duties of a licensed pharmacy technician. On or about September 3, 2008, after
8 pleading nolo contendere, Respondent was convicted of one misdemeanor count of violating
9 Vehicle Code section 23152, subdivision (b) [driving with a blood-alcohol content level greater
10 than .08%] in the criminal proceeding entitled *The People of the State of California v. Jesse*
11 *Nunez* (Super. Ct. Los Angeles County, 2008, No. 8EA08980). Respondent was placed on three
12 years probation and ordered to complete a three-month first-offender drug and alcohol education
13 and counseling program. The underlying factual circumstances occurred on or about August 4,
14 2008, when Respondent was arrested by officers of the City of Vernon Police Department after
15 exhibiting objective signs of intoxication during a traffic stop.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Dangerous Use of Alcohol)**

18 11. Respondent is subject to disciplinary action under section 4301, subdivision (h), in
19 that Respondent used alcohol in a manner dangerous to himself and others, as follows:

20 a. Respondent used alcohol in a manner dangerous to himself and others when he
21 drove with a blood-alcohol content level greater than .08% on or about August 4, 2008.

22 Complainant refers to and incorporates all the allegations contained in paragraph 10, as though set
23 forth fully.

24 b. Respondent used alcohol in a manner dangerous to himself and others on or
25 about May 3, 2009, when officers of the County of Los Angeles Sheriff's Department arrested
26 Respondent after observing him swaying back and forth on the sidewalk, and stumbling as he
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1 tried to walk.¹ During a booking search, Respondent was also found to be in possession of a
2 small amount of marijuana. He was charged with one misdemeanor count of violating Penal
3 Code section 647, subdivision (f) [disorderly conduct], and one misdemeanor count of violating
4 Health and Safety Code section 11357, subdivision (b) [possession of less than one ounce of
5 marijuana].

6 **THIRD CAUSE FOR DISCIPLINE**

7 **(Unlawful Possession of Marijuana)**

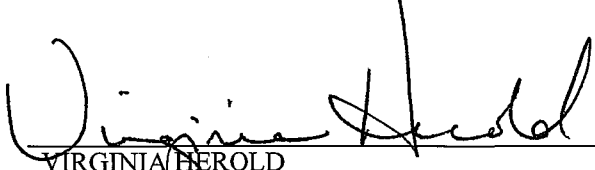
8 12. Respondent is subject to disciplinary action under section 4301, subdivision (j)
9 [violation of a statute regulating controlled substances], for violating Health and Safety Code
10 section 11357, subdivision (b) [possession of less than one ounce of marijuana] on or about
11 May 3, 2009. Complainant refers to and incorporates all the allegations contained in
12 paragraph 12, subparagraph b, as through set forth fully.

13 **PRAYER**

14 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
15 and that following the hearing, the Board issue a decision:

- 16 1. Revoking or suspending Pharmacy Technician License Number TCH-74636, issued
17 to Respondent;
- 18 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
19 enforcement of this case, pursuant to section 125.3; and
- 20 3. Taking such other and further action as deemed necessary and proper.

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23 DATED: 1/25/10


24 VIRGINIA HEROLD
25 Executive Officer
26 Board of Pharmacy
27 Department of Consumer Affairs
28 State of California
Complainant

27 ¹ An official inquiry has been made with the Superior Court of California, County of
28 Los Angeles, to determine whether criminal charges have been filed as a result of this arrest.