1	EDMUND G. Brown Jr.
2	Attorney General of California GREGORY J. SALUTE
3	Supervising Deputy Attorney General KEVIN J. RIGLEY
4	Deputy Attorney General State Bar No. 131800
5	300 So. Spring Street, Suite 1702 Los Angeles, CA 90013
6	Telephone: (213) 620-2558 Facsimile: (213) 897-2804
7	Attorneys for Complainant
8	BEFORE THE
9	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS
10	STATE OF CALIFORNIA
11	In the Matter of the Accusation Against: Case No. 3366
12	TOMMARI RESHAD BRYANT
13	43022 Carpenter Drive Lancaster, CA 93535 ACCUSATION
14	
15	Pharmacy Technician License No. TCH 72272
16	Respondent.
17	
18	Complainant alleges:
19	<u>PARTIES</u>
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 October 3, 2006, the Board of Pharmacy (Board) issued Pharmacy
23	Technician License No. TCH 72272 to Tommari Reshad Bryant (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 August 31, 2010, unless renewed.
26	/// ·
27	///
28	///
	1

Accusation

JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

- 4. Section 118, subdivision (b) provides, in pertinent part, that the expiration of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.
 - 5. Section 490 states, in pertinent part:
- "(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.
- "(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.
- "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken 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 the provisions of Section 1203.4 of the Penal Code."
 - 6. Section 4060 of the Code states:

"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. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer."

- 7. Section 4300 provides, in pertinent part, that every license issued by the Board is subject to discipline, including suspension or revocation.
 - 8. Section 4301 states:

"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:

"(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.

- "(i) Except as otherwise authorized by law, knowingly selling, furnishing, giving away, or administering or offering to sell, furnish, give away, or administer any controlled substance to an addict.
- "(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.
- "(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

1

15 16

13

14

17

18 19

20

21 22

23

24

25

26

27

28

///

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."

REGULATORY PROVISIONS

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

"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 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 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 manner consistent with the public health, safety, or welfare."

DANGEROUS DRUGS/CONTROLLED SUBSTANCES

10. "Marijuana," is a hallucinogenic Schedule I controlled substance as defined in Health and Safety Code section 11054(d)(13) and a dangerous drug according to Business and Professions Code section 4022.

4

_

COST RECOVERY

11. Section 125.3 states, 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

(Conviction of a Crime)

12. Respondent is subject to disciplinary action under sections 4301, subdivisions (i) and (I) and 490, in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent was convicted of a crime substantially related to the qualifications, functions or duties of a pharmacy technician. On or about April 4, 2008, after pleading guilty, Respondent was convicted of one felony count of violating Health and Safety Code section 11360 [possession of marijuana for sale] in the criminal proceeding titled *The People of the State of California v. Tommari Reshad Bryant aka T-Mac*) (Super. Ct. Los Angeles County, 2008, No. MA041533). The court placed Respondent on 3 years formal probation with terms and conditions. The circumstances surrounding the conviction are that on or about March 11, 2008, during a routine stop of a vehicle being driven by Respondent, Respondent was arrested for possession of marijuana for sale after Lancaster Sheriff deputies found a digital gram scale containing marijuana residue and seventeen individual bags of high grade marijuana in Respondent's vehicle.

SECOND CAUSE FOR DISCIPLINE

(Possession of Drug Paraphernalia and a Controlled Substance)

- 10. Respondent is subject to disciplinary action under section 4300, section 4060, and section 4301, subdivisions (h) and (j), on the grounds of unprofessional conduct in that Respondent was found to be in possession of drug paraphernalia and marijuana. The circumstances are as follows:
 - a. On or about March 11, 2008, Respondent was arrested for possession of marijuana for

sale after Lancaster Sheriff deputies found a digital gram scale containing marijuana residue and 1 seventeen individual bags of high grade marijuana. 2 **PRAYER** 3 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged. 4 and that following the hearing, the Board issue a decision: 5 Revoking or suspending Pharmacy Technician License No. TCH 72272, issued to 1. 6 Respondent; 7 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and 8 enforcement of this case, pursuant to Business and Professions Code section 125.3; and 9 Taking such other and further action as deemed necessary and proper. 10 11 12 13 14 VIRGINI Executive Officer 15 Board of Pharmacy Department of Consumer Affairs 16 State of California Complainant 17 18 19 20 21 22 23 24 LA2009603211 60457498.doc 25 ST(9-10-09) 26 27

28