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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. 3391

13 **MICHAEL JASON BUTSON**
4773 Moorpark Avenue, #12
14 Moorpark, CA 93021

ACCUSATION

15 Pharmacy Technician Registration
No. TCH 56105

16 Respondent.

17
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 (Board), Department of Consumer Affairs.
22 2. On or about April 20, 2004, the Board issued Pharmacy Technician Registration No.
23 TCH 56105 to Michael Butson (Respondent). The Pharmacy Technician Registration will expire
24 on January 31, 2011, unless renewed.

25 **JURISDICTION**

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

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1 4. Business and Professions Code section 118, subdivision (b) provides that the
2 suspension, expiration, or forfeiture by operation of law of a license does not deprive the Board of
3 authority or jurisdiction to institute or continue with disciplinary action against the license or to
4 order suspension or revocation of the license, during the period within which the certificate may
5 be renewed, restored, reissued or reinstated.

6 5. Section 4022 of the Code provides:

7 “Dangerous drug” or “dangerous device” means any drug or device unsafe for self-use in
8 humans or animals, and includes the following:

9 (a) Any drug that bears the legend: “Caution: federal law prohibits dispensing
10 without prescription,” “Rx only,” or words of similar import.

11 (b) Any device that bears the statement: “Caution: federal law
12 restricts this device to sale by or on the order of a _____,” “Rx only,” or words of similar import,
13 the blank to be filled in with the designation of the practitioner licensed to use or order use of the
14 device.

15 (c) Any other drug or device that by federal or state law can be lawfully dispensed
16 only on prescription or furnished pursuant to Section 4006.”

17 6. Section 4300 of the Code provides, in pertinent part, that every license issued by the
18 Board is subject to discipline, including suspension or revocation.

19 7. Section 4301 of the Code states:

20 “The board shall take action against any holder of a license who is guilty of unprofessional
21 conduct . . . Unprofessional conduct shall include, but is not limited to, any of the following:

22 (h) The administering to oneself, of any controlled substance, or the use of any
23 dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or
24 injurious to oneself, to a person holding a license under this chapter, or to any other person or to
25 the public, or to the extent that the use impairs the ability of the person to conduct with safety to
26 the public the practice authorized by the license.

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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.

....

(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.

....

(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. Health and Safety Code section 11550, subdivision (a) states:

2 “(a) No person shall use, or be under the influence of any controlled substance which is (1)
3 specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054,
4 specified in paragraph (14), (15), (21), (22), or (23) of subdivision (d) of Section 11054, specified
5 in subdivision (b) or (c) of Section 11055, or specified in paragraph (1) or (2) of subdivision (d)
6 or in paragraph (3) of subdivision (e) of Section 11055, or (2) a narcotic drug classified in
7 Schedule III, IV, or V, except when administered by or under the direction of a person licensed
8 by the state to dispense, prescribe, or administer controlled substances. It shall be the burden of
9 the defense to show that it comes within the exception. Any person convicted of violating this
10 subdivision is guilty of a misdemeanor and shall be sentenced to serve a term of not less than 90
11 days or more than one year in a county jail. The court may place a person convicted under this
12 subdivision on probation for a period not to exceed five years and, except as provided in
13 subdivision (c), shall in all cases in which probation is granted require, as a condition thereof, that
14 the person be confined in a county jail for at least 90 days. Other than as provided by subdivision
15 (c), in no event shall the court have the power to absolve a person who violates this subdivision
16 from the obligation of spending at least 90 days in confinement in a county jail.”

17 9. Health and Safety Code section 11055 states:

18 (a) The controlled substances listed in this section are included in Schedule II.

19

20 (d) Stimulants. Unless specifically excepted or unless listed in another schedule, any
21 material, compound, mixture, or preparation which contains any quantity of the following
22 substances having a stimulant effect on the central nervous system: . . . (2) Methamphetamine, its
23 salts, isomers, and salts of its isomers...”

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

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1 11. California Code of Regulations, title 16, section 1770, states, in pertinent part: "For
2 the purpose of denial, suspension, or revocation of a personal or facility license pursuant to
3 Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act
4 shall be considered substantially related to the qualifications, functions or duties of a licensee or
5 registrant if to a substantial degree it evidences present or potential unfitness of a licensee or
6 registrant to perform the functions authorized by his license or registration in a manner consistent
7 with the public health, safety, or welfare."

8 12. **CONTROLLED SUBSTANCES**

9 A. Methamphetamine is a Schedule II controlled substance as defined by Health and
10 Safety Code section 11055(d)(2), and is categorized as a "dangerous drug" pursuant to section
11 4022 of the Business and Professions Code.

12 **FIRST CAUSE FOR DISCIPLINE**

13 *(Unprofessional Conduct - Dangerous or Injurious Use of Controlled Substance)*

14 13. Respondent is subject to disciplinary action under Code sections 4300 and 4301,
15 subdivisions (h) and (o), on the grounds of unprofessional conduct, in that, Respondent
16 administered controlled substances to himself to the extent or in a manner to be dangerous or
17 injurious to himself or others. The circumstances are as follows:

18 14. On or about May 26, 2007, Respondent was arrested by the Ventura County Sheriff's
19 Department for being under the influence of a controlled substance, methamphetamine, in
20 violation of Health and Safety Code section 11550(a). Specifically, Respondent was driving a
21 motor vehicle in Moorpark following a verbal domestic incident with his wife, and stopped by a
22 Ventura County Sheriff Deputy. Respondent was found to be under the influence of the stimulant
23 Methamphetamine and arrested.

24 **SECOND CAUSE FOR DISCIPLINE**

25 *(Unprofessional Conduct - Violating Statutes Regulating Controlled Substances)*

26 15. Respondent is subject to disciplinary action under Code sections 4300 and 4301,
27 subdivisions (j) and (o), on the grounds of unprofessional conduct, in that, Respondent violated
28 statutes of this state regulating controlled substances as set forth in paragraph 14 above.

1 THIRD CAUSE FOR DISCIPLINE

2 (*Unprofessional Conduct - Conviction of a Substantially Related Crime*)

3 16. Respondent is subject to disciplinary action under section 4300 and 4301,
4 subdivision (l) of the Code, (as defined in Title 16, California Code of Regulations section 1770),
5 on the grounds of unprofessional conduct, in that Respondent was convicted of a crime
6 substantially related to the qualifications, functions, and duties of a licensee as set forth paragraph
7 14 above, and as follows:

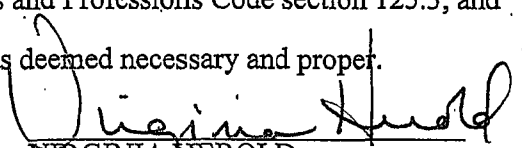
8 17. On August 8, 2007, in the Superior Court of the State of California, County of
9 Ventura, Respondent was convicted on his plea of guilty to violating Health and Safety Code
10 section 11550(a) [willful and unlawful use and under the influence of a controlled substance:
11 Methamphetamine], a misdemeanor, in the case entitled *The People of the State of California v.*
12 *Michael Jason Butson*, Case No. 2007019913.

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 Registration Number TCH 56105
17 issued to Michael Butson;
- 18 2. Ordering Michael Butson to pay the Board the reasonable costs of the investigation
19 and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
- 20 3. Taking such other and further action as deemed necessary and proper.

21 Dated: 3/8/11


22 VIRGINIA MEROLD
23 Executive Officer
24 Board of Pharmacy
25 State of California
26 Complainant