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

In the Matter of the Accusation Against: **JOHN M. CALDERON** 2418 North Pacific Santa Ana, CA 92706 **Pharmacy Technician No. TCH 63110** Respondent.	Case No. 3396 **ACCUSATION**

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 13, 2005, the Board of Pharmacy issued Pharmacy Technician license number TCH 63110 to John M. Calderon (Respondent). The Pharmacy Technician license was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2011, 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:

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

"(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:

"(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.

". . . ."

"(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure."

5. Section 118, subdivision (b) of the Code provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee during the period within which the license may be renewed, restored, reissued or reinstated.

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STATUTORY PROVISIONS AND REGULATIONS

6. Section 4301 of the Code 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:

". . .

"(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.

". . .

"(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.

". . . ."

7. Section 492 of the Code states:

"Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

"This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division."

8. 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."

9. Section 482 of the Code states:

"Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

"(a) Considering the denial of a license by the board under Section 480; or

"(b) Considering suspension or revocation of a license under Section 490.

"Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee."

10. Title 16, Code of Regulations, section 1769 provides in part:

"(b) When considering the suspension or revocation of a facility or a personal license on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

"(1) Nature and severity of the act(s) or offense(s).

"(2) Total criminal record.

"(3) The time that has elapsed since commission of the act(s) or offense(s).

"(4) Whether the licensee has complied with all terms or parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

"(5) Evidence, if any, or rehabilitation submitted by the licensee."

COST RECOVERY

11. Section 125.3 of the Code provides, in pertinent part, that the Board/Registrar/Director 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.

DRUGS

12. **Methamphetamine** is a Schedule II controlled substance as designated by Health and Safety Code section 11055(d)(2) and is a dangerous drug pursuant to Business and Professions Code section 4022.

FACTS

13. On September 30, 2006 at about 2:40 a.m., a Santa Ana Police Officer was in a marked police car when the officer saw a black Honda Accord driving without headlights. The officer followed the Honda and observed that it continued traveling without headlights and had tinted front windows. The officer conducted a traffic stop and spoke with Respondent, the driver of the Honda. The officer told Respondent to keep his hands on the steering wheel. Respondent repeatedly moved around inside the vehicle, turning around to look at the officer. Fearing Respondent may have a weapon in the vehicle, the officer requested that Respondent exit the vehicle. When asked, Respondent denied having anything illegal in his possession. When asked for his driver's license, Respondent advised the officer that he had left his license in the vehicle and consented to the officer retrieving his license from the vehicle. Not finding a wallet or Respondent's license anywhere in plain view, the officer opened the center console where a glass pipe was found. Glass pipes such as the one found in Respondent's vehicle are commonly used to ingest methamphetamine. When the officer confronted Respondent, Respondent started to cry. The officer counseled Respondent to stop smoking methamphetamine and provided him with counseling resources. Respondent was arrested and charged with violating Health and Safety Code section 11364, possession of paraphernalia used for unlawfully injecting or smoking a controlled substance. Respondent entered a plea of guilty. Under Penal Code Section 1000, et seq., judgment was deferred for 18 months and on May 28, 2008, the charges were dismissed upon Respondent's completion of a deferred entry of judgment treatment program.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Possession of Controlled Substance Paraphernalia)

14. Respondent is subject to disciplinary action under Code section 4301, subdivision (j), for unprofessional conduct by violating of the laws of the State of California in that on September

30, 2006, Respondent violated Health and Safety Code section 11364 by unlawfully possessing a methamphetamine pipe as is more fully set forth in paragraph 13, above.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct- Act Involving Moral Turpitude and/or Dishonesty)

15. Respondent is subject to disciplinary action under Code section 4301, subdivision (f), for unprofessional conduct in that he acted with moral turpitude and dishonesty in that on September 30, 2006, Respondent was dishonest when he denied having anything illegal in his possession to the police officer when he unlawfully possessed a methamphetamine pipe, as more fully set forth in paragraph 13, above.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

16. Respondent is subject to disciplinary action under Code section 4301 for unprofessional conduct in that on September 30, 2006, Respondent was in possession of a methamphetamine pipe, as more fully set forth in paragraph 13, above.

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 Number TCH 63110, issued to John M. Calderon.

2. Ordering John M. Calderon 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;

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

DATED: 9/2/09

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

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