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

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13 In the Matter of the Accusation Against:

Case No. 3426

14 CHRISTOPHER DALOU
23653 Marguerite Circle
15 Moreno Valley, CA 92557

A C C U S A T I O N

16 Pharmacy Technician Registration
No. TCH 85056

17

Respondent.

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19 Complainant alleges:

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PARTIES

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

23 2. On or about August 27, 2008, the Board of Pharmacy issued Pharmacy
24 Technician Registration Number TCH 85056 to Christopher Dalou (Respondent). The
25 Pharmacy Technician registration was in full force and effect at all times relevant to the charges
26 brought herein and will expire on August 31, 2010, unless renewed.

27 3. On or about July 22, 2009, in Riverside County Superior Court Case No.
28 RIF150524, Respondent was convicted of a violation of Health and Safety Code section 11351

1 (possession for sale of a controlled substance, cocaine), a felony and Health and Safety Code
2 section 11359 (possession of marijuana for sale), a felony. As a part of Respondent's criminal
3 probation, his Pharmacy Technician Registration Number TCH 85056 was suspended effective
4 July 22, 2009. Respondent's Pharmacy Technician Registration Number TCH 85056 continues
5 to be suspended until the resolution of this administrative action against his Pharmacy
6 Technician Registration by the Board of Pharmacy.

7 JURISDICTION

8 4. This Accusation is brought before the Board of Pharmacy (Board), Department of
9 Consumer Affairs, under the authority of the following laws of the Business and Professions
10 Code (Code):

11 5. Section 118, subdivision (b), of the Code provides that the expiration of a license
12 shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period
13 within which the license may be renewed, restored, reissued or reinstated.

14 6. Section 4300(a) of the Code states in pertinent part that every license issued may
15 be suspended or revoked.

16 STATUTORY PROVISIONS

17 7. Section 482 of the Code states:

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

20

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

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

24 8. Section 490 of the Code states:

25 (a) In addition to any other action that a board is permitted to take against
26 a licensee, a board may suspend or revoke a license on the ground that the
27 licensee has been convicted of a crime, if the crime is substantially related to the
28 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

1 related to the qualifications, functions, or duties of the business or profession for
2 which the licensee's license was issued.

3 (c) A conviction within the meaning of this section means a plea or verdict
4 of guilty or a conviction following a plea of nolo contendere. Any action that a
5 board is permitted to take following the establishment of a conviction may be
6 taken when the time for appeal has elapsed, or the judgment of conviction has
7 been affirmed on appeal, or when an order granting probation is made suspending
8 the imposition of sentence, irrespective of a subsequent order under the provisions
9 of Section 1203.4 of the Penal Code.

10 (d) The Legislature hereby finds and declares that the application of this
11 section has been made unclear by the holding in *Petropoulos v. Department of
12 Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has
13 placed a significant number of statutes and regulations in question, resulting in
14 potential harm to the consumers of California from licensees who have been
15 convicted of crimes. Therefore, the Legislature finds and declares that this section
16 establishes an independent basis for a board to impose discipline upon a licensee,
17 and that the amendments to this section made by Senate Bill 797 of the 2007 -08
18 Regular Session do not constitute a change to, but rather are declaratory of,
19 existing law.

20 9. Section 493 of the Code states:

21 Notwithstanding any other provision of law, in a proceeding conducted by
22 a board within the department pursuant to law to deny an application for a license
23 or to suspend or revoke a license or otherwise take disciplinary action against a
24 person who holds a license, upon the ground that the applicant or the licensee has
25 been convicted of a crime substantially related to the qualifications, functions,
26 and duties of the licensee in question, the record of conviction of the crime shall
27 be conclusive evidence of the fact that the conviction occurred, but only of that
28 fact, and the board may inquire into the circumstances surrounding the
commission of the crime in order to fix the degree of discipline or to determine if
the conviction is substantially related to the qualifications, functions, and duties
of the licensee in question.

As used in this section, 'license' includes 'certificate,' 'permit,'
'authority,' and 'registration.'

21 10. Section 4060 of the Code states:

22 No person shall possess any controlled substance, except that furnished to
23 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
24 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
25 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
26 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant
27 pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or
28 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.

1 Nothing in this section authorizes a certified nurse-midwife, a nurse
2 practitioner, a physician assistant, or a naturopathic doctor, to order his or her
own stock of dangerous drugs and devices.

3 11. Section 4301 of the Code states in pertinent part:

4 The board shall take action against any holder of a license who is guilty of
5 unprofessional conduct or whose license has been procured by fraud or
6 misrepresentation or issued by mistake. Unprofessional conduct shall include, but
is not limited to, any of the following:

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8 (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.

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10 (l) The conviction of a crime substantially related to the qualifications,
11 functions, and duties of a licensee under this chapter. The record of conviction of
12 a violation of Chapter 13 (commencing with Section 801) of Title 21 of the
13 United States Code regulating controlled substances or of a violation of the
14 statutes of this state regulating controlled substances or dangerous drugs shall be
15 conclusive evidence of unprofessional conduct. In all other cases, the record of
16 conviction shall be conclusive evidence only of the fact that the conviction
17 occurred. The board may inquire into the circumstances surrounding the
18 commission of the crime, in order to fix the degree of discipline or, in the case of
19 a conviction not involving controlled substances or dangerous drugs, to determine
if the conviction is of an offense substantially related to the qualifications,
20 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.

21

22 (o) Violating or attempting to violate, directly or indirectly, or assisting in
23 or abetting the violation of or conspiring to violate any provision or term of this
chapter or of the applicable federal and state law and regulations governing
24 pharmacy, including regulations established by the board or by any other state or
federal regulatory agency.

25 12. Health & Safety Code section 11170 provides that no person shall prescribe,
26 administer, or furnish a controlled substance for himself.

27 13. Health & Safety Code section 11173 states in pertinent part that no person shall
28 obtain a controlled substance by fraud, deceit, subterfuge or concealment of a material fact.

1 14. Health and Safety Code section 11350 states:

2 (a) Except as otherwise provided in this division, every person who
3 possesses (1) any controlled substance specified in subdivision (b) or (c), or
4 paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14),
5 (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or
6 (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any
controlled substance classified in Schedule III, IV, or V which is a narcotic drug,
unless upon the written prescription of a physician, dentist, podiatrist, or
veterinarian licensed to practice in this state, shall be punished by imprisonment
in the state prison.

7 15. California Code of Regulations, title 16 (CCR), section 1769, provides in
8 pertinent part:

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

- 13 (1) Nature and severity of the act(s) or offense(s).
- 14 (2) Total criminal record.
- 15 (3) The time that has elapsed since commission of the act(s) or offenses(s).
- 16 (4) Whether the licensee has complied with all terms of parole, probation,
restitution or any other sanctions lawfully imposed against the licensee.
- 17 (5) Evidence, if any, of rehabilitation submitted by the licensee.

18 16. CCR section 1770, provides:

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

26 COST RECOVERY

27 17. Section 125.3 of the Code states, in pertinent part, that the Board may request the
28 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.

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1 DRUGS

2 18. At all times mentioned herein, methamphetamine was and is a Schedule II
3 controlled substance as set forth in Health & Safety Code section 11055(d)(2) and is a central
4 nervous system stimulant.

5 19. At all times material herein, cocaine was and is a Schedule II controlled substance
6 as set forth in Health & Safety Code section 11054 and is an addictive narcotic drug that is a
7 stimulant.

8 20. At all times material herein, marijuana, a form of cannabis, is a Schedule I
9 controlled substance as designated by Health & Safety Code section 11054(d)(13) and is a
10 hallucinogenic.

11 FIRST CAUSE FOR DISCIPLINE

12 (July 22, 2009 Conviction for Possession of Controlled Substance On 4/21/09)

13 21. Respondent is subject to disciplinary action under sections 490 and 4301(l) for
14 conviction of a crime substantially related to the qualifications, functions, or duties of a
15 pharmacy technician, as more particularly alleged below:

16 a. On or about July 22, 2009, in the criminal proceeding titled, *People v.*
17 *Christopher Dalou* (Riverside County Superior Court Case No. RIF150529), Respondent pled
18 guilty to a violation of Health and Safety Code section 11377(a) (Possession of a controlled
19 substance, Methamphetamine), a felony.

20 b. The facts and circumstances surrounding the conviction are that on or about April
21 21 or 22, 2009, the Moreno Valley Police Special Enforcement team served a narcotics search
22 warrant at Respondent's home. Respondent was not present at the home and police officers
23 called Respondent on his cell phone to inform him that they were at his house conducting a
24 search pursuant to a warrant. Respondent returned to the home. During the search of the home,
25 officers found drugs, including methamphetamine. Respondent admitted to officers that the
26 drugs were his.

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1 c. As a result of the conviction, Respondent was sentenced to serve 180 days in jail,
2 placed on formal probation for 36 months, ordered to submit to biological fluid testing and
3 ordered to pay various fines and restitution.

4 SECOND CAUSE FOR DISCIPLINE

5 (July 22, 2009 Conviction for Possession for Sale of Controlled Substances on 3/17/09)

6 22. Respondent is subject to disciplinary action under sections 490 and 4301(l) for
7 conviction of a crime substantially related to the qualifications, functions, or duties of a
8 pharmacy technician, as more particularly alleged below:

9 a. On or about July 22, 2009, in the criminal proceeding titled, *People v.*
10 *Christopher Dalou* (Riverside County Superior Court Case No. RIF150524), Respondent pled
11 guilty to a violation of Health and Safety Code section 11351 (possession for sale of a
12 controlled substance, cocaine), a felony, and Health and Safety Code section 11359 (possession
13 of marijuana for sale), a felony.

14 b. The facts and circumstances surrounding the conviction are that on March 17,
15 2009, the Moreno Valley Police Special Enforcement team served a narcotics search warrant at
16 Respondent's home. Respondent was present during the search. Respondent's car was searched
17 and police found a large amount of marijuana concealed in an Arizona Tea container with a false
18 top. Police also found a large zip lock bag under the driver's seat that contained a large amount
19 of marijuana. Cocaine was found in a clear container inside the gas cap of Respondent's vehicle.
20 A search of Respondent's bedroom revealed an air tight container of marijuana on the floor next
21 to Respondent's bed and a pill bottle containing cocaine locked in a small safe sitting on
22 Respondent's desk.

23 c. As a result of the conviction, Respondent was sentenced to serve 180 days in jail,
24 placed on formal probation for 36 months and ordered to pay various fines and restitution. As
25 part of Respondent's criminal probation, his Pharmacy Technician Registration was suspended
26 pending the resolution of this administrative action against his Pharmacy Technician
27 Registration by the Board.

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1 THIRD CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct: Possession of a Controlled Substance W/O Prescription)

3 23. Respondent is subject to disciplinary action under section 4301(j) in conjunction
4 with section 4060 for possession of a controlled substance without a legitimate prescription,
5 when he possessed methamphetamine, cocaine and marijuana, as more particularly alleged in
6 paragraphs 21 and 22, above, and incorporated herein by reference.

7 FOURTH CAUSE FOR DISCIPLINE

8 (Unprofessional Conduct: Violating State Law Governing Pharmacy)


9 24. Respondent's license is subject to discipline for unprofessional conduct under
10 section 4301(o) and Health and Safety Code section 11350(a) for violating state law governing
11 pharmacy in that on March 17, 2009 and April 21, 2009, Respondent was in possession of
12 methamphetamine, cocaine and marijuana in violation of the law as set forth in paragraphs 21
13 and 22, above, and incorporated herein by reference.

14 PRAYER

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

- 17 1. Revoking or suspending Pharmacy Technician Registration Number TCH 85056,
18 issued to Christopher Dalou;
- 19 2. Ordering Christopher Dalou to pay the Board of Pharmacy the reasonable costs of
20 the investigation and enforcement of this case, pursuant to Business and Professions Code
21 section 125.3; and
- 22 3. Taking such other and further action as deemed necessary and proper.

23 DATED: 2/8/10

24 

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

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