EDMUND G. BROWN JR.
Attorney General of California
FRANK H. PACOE
Supervising Deputy Attorney General
JUSTIN R. SURBER
Deputy Attorney General
State Bar No. 226937
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 355-5437
Facsimile: (415) 703-5480
Attorneys for Complainant

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

In the Matter of the Accusation Against: **ROGER ANTHONY CHAVEZ** 24469 Alves Street Hayward, CA 94544 **Pharmacy Technician Registration No. TCH 63325** Respondent.	Case No. 3540 **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 14, 2005, the Board of Pharmacy issued Pharmacy Technician Registration Number TCH 63325 to Roger Anthony Chavez (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2011, unless renewed.

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."

5. 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.

. . .

"(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.

. . .

"(j) The violation of any of the statutes of this state, of 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.

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.

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

7. 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."

8. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

9. Health and Safety Code Section 11350 (a) states:

"Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (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.

10. Health and Safety Code Section 11364 states:

"(a) It is unlawful to possess an opium pipe or any device, contrivance, instrument, or paraphernalia used for unlawfully injecting or smoking (1) a controlled substance specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, specified in subdivision (b) or (c) of Section 11055, or specified in paragraph (2) of subdivision (d) of Section 11055, or (2) a controlled substance which is a narcotic drug classified in Schedule III, IV, or V."

11. Health and Safety Code Section 11377 (a) states:

"Except as authorized by law and as otherwise provided in subdivision (b) or Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses any controlled substance which is (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d),

(3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in a county jail for a period of not more than one year or in the state prison.

12. Section 125.3 of the Code 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.

DRUGS INVOLVED

13. Vicodin (hydrocodone / acetaminophen mixture) is a controlled substance pursuant to Health and Safety Code section 11056(e)(4) and a dangerous drug pursuant to Business of Professions Code § 4022.

14. Methamphetamine is a schedule II controlled substance pursuant to Health and Safety Code Section 11055(d)(2) and a dangerous drug pursuant to Business of Professions Code § 4022.

FACTUAL BACKGROUND

15. On or about July 9, 2008, Respondent was arrested for the possession of methamphetamine, Vicodin (without a prescription), and drug paraphernalia (a methamphetamine pipe). Mountain View police found Respondent in possession of a backpack that contained Vicodin and a methamphetamine pipe. Mountain View police also searched the vehicle Respondent was a passenger in and found a bag of methamphetamine. Respondent admitted that the pipe was his and that he used methamphetamine on previous occasions. By possessing methamphetamine and Vicodin without a prescription Respondent violated Business and Professions Code § 4060 and Health and Safety Code §§ 11350 and 11377. By Possessing the methamphetamine pipe respondent violated Health and Safety Code §§ 11364.

16. On or about December 23, 2008, Respondent stole property from a Costco in South San Francisco, CA. Respondent brought his niece and nephew to Costco when he stole the

goods. Respondent stole the goods for his niece and nephew. Respondent planned to steal the goods with his niece and nephew.

17. On or about March 16, 2009, in San Mateo County Superior Court Case No. NM381965, Respondent was convicted of grand theft in violation of Penal Code § 487(a) and contributing to the delinquency of a minor in violation of Penal code § 272(c).

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Conviction)

18. Respondent is subject to disciplinary action under sections 4301(l) and 490 of the code in that Respondent was convicted of a crime that is substantially related to the duties, functions, or qualifications of a pharmacy technician. The circumstances are described in paragraphs 16-17, above.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Moral Turpitude, Dishonesty, or Deceit)

19. Respondent is subject to disciplinary action under section 4301(f) of the Code in that Respondent committed moral turpitude, dishonesty, and /or deceit. The circumstances are described in paragraph 16, above.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct- Drug Use)

20. Respondent is subject to disciplinary action under section 4301(h) of the Code in that Respondent used controlled substances / dangerous drugs. The circumstances are described in Paragraph 15, above.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Violation of Drug Laws)

21. Respondent is subject to disciplinary action under section 4301(j) in that respondent violated statutes of California that regulate controlled substances and dangerous drugs. The circumstances are described in paragraph 15, 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 Registration Number TCH 63325, issued to Roger Anthony Chavez.

2. Ordering Roger Anthony Chavez 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;

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

DATED: 6/17/10

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