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

11 Case No. 3546

12 In the Matter of the Accusation Against:
13 JOSE A. RAMIREZ
6311 Inman Street
14 San Diego, CA 92111
15 Original Pharmacy Technician Registration
16 No. TCH 65747
17 Respondent.

ACCUSATION

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, Department of Consumer Affairs.
22 2. On or about October 26, 2005, the Board of Pharmacy issued Original Pharmacy
23 Technician Registration Number TCH 65747 to Jose A. Ramirez (Respondent). The Original
24 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges
25 brought herein and will expire on March 31, 2011, unless renewed.
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1 judgment of conviction has been affirmed on appeal or when an order granting
2 probation is made suspending the imposition of sentence, irrespective of a
3 subsequent order under Section 1203.4 of the Penal Code allowing the person to
4 withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
5 the verdict of guilty, or dismissing the accusation, information, or indictment.

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7 (p) Actions or conduct that would have warranted denial of a license.

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

12 8. Section 493 of the Code states:

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

24 As used in this section, "license" includes "certificate," "permit,"
25 "authority," and "registration."

26 9. Section 482 of the Code states:

27 Each board under the provisions of this code shall develop criteria to
28 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.

REGULATORY PROVISIONS

10. 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.

11. California Code of Regulations, title 16, section 1769, states:

.....

(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 of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) Evidence, if any, of rehabilitation submitted by the licensee.

COST RECOVERY

12. Section 125.3 of the Code provides, 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

(February 28, 2006 Conviction for Theft and Assault on September 10, 2005)

13. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision (1) of the Code in that he was convicted of crime that is substantially related to the qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

1 a. On or about January 18, 2006, in a criminal proceeding entitled *People of the*
2 *State of California v. Jose Ramirez*, in San Diego County Superior Court, case number
3 SCS196535, Respondent was charged in a three count felony complaint with two counts of
4 robbery, one with the use of a deadly weapon, and one count of assault with a deadly weapon. .

5 b. On or about February 28, 2006, Respondent entered a plea of guilty to violation
6 of Penal Code section 487(c), grand theft from person, which had been reduced from robbery, and
7 Penal Code section 245(A)(1) assault with a deadly weapon or force likely to cause great bodily
8 injury with an enhancement of using a deadly or dangerous weapon under Penal Code section
9 12022(B)(1).

10 c. As a result of the conviction, on or about March 28, 2006, Respondent was
11 sentenced to three years of formal probation, 180 days in the County Jail with 1 day credit for
12 time served, and required to pay a total fine of \$920.00 plus probation costs.

13 d. The facts that led to the conviction were that on or about September 10, 2005,
14 Respondent and his co-defendant, approached a male victim who was walking from the Palomar
15 Street trolley station area in Chula Vista. Respondent yelled to the victim to stop walking. After a
16 verbal exchange, Respondent told the victim not to talk back to him and then removed a knife
17 from his pocket and held it at the victim's waist level. The victim feared for his safety and
18 removed his wallet from his pocket. At this point, Respondent stated "I didn't tell you to get your
19 wallet" and then held the knife approximately twelve inches from the victim's face and demanded
20 his wallet. The co-defendant stood behind the victim and removed \$17.00 from the victim's
21 wallet. After removing the money from his wallet, Respondent asked, "Is this all you've got?"
22 and threw the victim's wallet to the ground. Respondent stated, "Next time, don't talk back" and
23 then walked back toward the trolley station.

24 e. Shortly thereafter, Respondent and his three co-defendant's approached and
25 formed a semi-circle around a second victim at the trolley station. Respondent and his co-
26 defendants had their fists clenched while encircling the victim. Respondent and one co-defendant
27 asked the victim where he was from and what he claimed. The victim asked "What's the
28 problem? I didn't do anything to you." Respondent and a co-defendant told the victim that it did

1 not matter and said, "Stop being a little bitch." Respondent took the victim's jacket and threw it
2 in the trashcan. A co-defendant removed the victim's wallet and took \$3 from it. Respondent
3 opened the victim's backpack and looked through it.

4 f. After witnessing the incident, a concerned citizen told Respondent and his co-
5 defendants to leave the victim alone. Respondent then removed the knife from his pocket and
6 threatened, "Mind your own business." At this point in time, Chula Vista Police officers
7 responded to the scene, located a kitchen knife with a three inch blade on top of a trolley ticket
8 machine, and then arrested Respondent and his co-defendants.

9 g. Following admonishment, Respondent declined to discuss his involvement in
10 the offense. Respondent was searched and found in possession of \$10. Respondent later
11 admitted that he had consumed several alcoholic beverages earlier that day. Respondent also
12 admitted to taking the first victim's wallet and displaying the knife.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Unprofessional Conduct – Moral Turpitude and Dishonesty)**

15 14. Respondent is subject to disciplinary action for unprofessional conduct under section
16 4301(f) of the Code in that Respondent's assault of his victim at knife-point and theft constitute
17 moral turpitude and dishonesty, as is detailed in paragraph 13, above.

18 **THIRD CAUSE FOR DISCIPLINE**

19 **(Conduct That Would Have Warranted Denial of a License)**

20 15. Respondent is subject to disciplinary action under section 4301(p) of the Code in that
21 on or about September 10, 2005, Respondent violated Penal Code sections 487(C), grand theft
22 from a person, and 245(A)(1), assault with a deadly weapon or force likely to cause great bodily
23 injury. Such egregious conduct would have warranted the denial of a pharmacy technician
24 registration under section 480, subdivisions (a)(1) and (a)(2) of the Code.

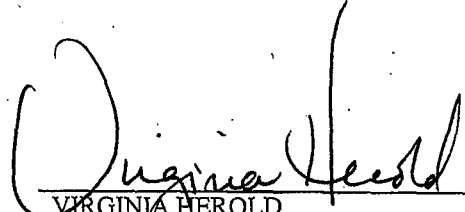
25 **PRAYER**

26 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
27 and that following the hearing, the Board of Pharmacy issue a decision:
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1. Revoking or suspending Original Pharmacy Technician Registration Number TCH 65747, issued to Jose A. Ramirez;
2. Ordering Jose A. Ramirez 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: 3/30/10



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

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