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

10 In the Matter of the Accusation Against:
11 **ANASILINI RUBY MAKASINI**
12 **aka Salini Makasini, Anasilini Pohahau**
13 **256 Laurel Avenue**
Hayward, CA 94541
14 **Pharmacy Technician License No. TCH 43918**
15 Respondent.

Case No. 3643

FIRST AMENDED ACCUSATION

16 Complainant alleges:

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18 PARTIES

- 19 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 21 2. On or about August 9, 2002, the Board of Pharmacy issued Pharmacy Technician
22 License No. TCH 43918 to Anasilini Ruby Makasini aka Salini Makasini, Anasilini Pohahau
23 (Respondent). The Pharmacy Technician License was in full force and effect at all times relevant
24 to the charges brought herein and will expire on May 31, 2012, unless renewed.

25 JURISDICTION

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

1 4. Section 4011 of the Code provides that the Board shall administer and enforce both
2 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
3 Act [Health & Safety Code, § 11000 et seq.].

4 5. Section 4300(a) of the Code provides that every license issued by the Board may be
5 suspended or revoked.

6 6. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration,
7 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
8 disciplinary action during the period within which the license may be renewed, restored, reissued
9 or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not
10 renewed within three years following its expiration may not be renewed, restored, or reinstated
11 and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of
12 the Code provides that any other license issued by the Board may be canceled by the Board if not
13 renewed within 60 days after its expiration, and any license canceled in this fashion may not be
14 reissued but will instead require a new application to seek reissuance.

15 STATUTORY AND REGULATORY PROVISIONS

16 7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action
17 against any holder of a license who is guilty of "unprofessional conduct," defined to include, but
18 not be limited to, any of the following:

19 (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
20 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
21 whether the act is a felony or misdemeanor or not.

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

27 (j) The violation of any of the statutes of this state, of any other state, or of the United
28 States regulating controlled substances and dangerous drugs.

1 (l) The conviction of a crime substantially related to the qualifications, functions, and duties
2 of a licensee under this chapter.

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

7 8. Section 490 of the Code provides, in pertinent part, that the Board may suspend or
8 revoke a license when it finds that the licensee has been convicted of a crime substantially related
9 to the qualifications, functions or duties of the license.

10 9. California Code of Regulations, title 16, section 1770, states:

11 "For the purpose of denial, suspension, or revocation of a personal or facility license
12 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
13 crime or act shall be considered substantially related to the qualifications, functions or duties of a
14 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
15 licensee or registrant to perform the functions authorized by her license or registration in a
16 manner consistent with the public health, safety, or welfare."

17 10. Health and Safety Code section 11170 provides that no person shall prescribe,
18 administer, or furnish a controlled substance for himself or herself.

19 11. Health and Safety Code section 11364, in pertinent part, makes it unlawful to possess
20 an opium pipe or other paraphernalia used to inject or smoke controlled substances.

21 12. Health and Safety Code section 11550, in pertinent part, makes it unlawful for any
22 person to use or be under the influence of any controlled substance in Schedule II (Health and
23 Safety Code section 11055), subdivision (d)(1) or (d)(2), or any narcotic drug in Schedules III-V,
24 except when administered by or under the direction of an authorized licensee.

25 COST RECOVERY

26 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
27 administrative law judge to direct a licentiate found to have committed a violation of the licensing
28 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

1 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

2 14. Section 4021 of the Code states:

3 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
4 11053) of Division 10 of the Health and Safety Code.”

5 15. Section 4022 of the Code states, in pertinent part:

6 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self-use,
7 except veterinary drugs that are labeled as such, and includes the following:

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

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

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

15 FACTUAL BACKGROUND

16 17. On or about March 28, 2006, Respondent drove her vehicle into a parked car, causing
17 damage to both vehicles. After surveying the damage, Respondent fled the scene of the accident
18 on foot. Respondent later reported to police that she had fallen asleep at the wheel.

19 18. On or about November 29, 2006, police officers responded to a domestic disturbance
20 involving an altercation between Respondent and another woman. Respondent exhibited signs of
21 alcoholic intoxication, and witnesses reported that Respondent was repeatedly intoxicated in front
22 of her children. Respondent also admitted to having recently used **methamphetamine**, and to
23 being a habitual user of **methamphetamine** since at least February 2006.

24 19. On or about May 17, 2007, Respondent was stopped by police while driving a vehicle
25 with an expired registration but a current registration sticker. Respondent was driving, but could
26 not produce a driver’s license when requested. The officer(s) detected the smell of alcohol in the
27 vehicle. Respondent failed field sobriety testing, and testing both in the field and upon arrival at
28 the county jail showed her blood alcohol level to be above the legal limit of 0.08%.

1 20. On or about September 2, 2007, Respondent was stopped by police while driving a
2 vehicle that failed to stop at a red traffic light. The officer(s) detected the smell of alcohol in the
3 vehicle. Respondent failed field sobriety testing, and testing both in the field and upon arrival at
4 the county jail showed her blood alcohol level to be above the legal limit of 0.08%.

5 21. On or about October 18, 2007, Respondent was present in a residence where police
6 executed an arrest warrant for another occupant. During a search of the residence, police found
7 two glass pipes with residue indicating their use for smoking **methamphetamine**. Respondent
8 admitted that she had used the pipes found by the officer(s) to smoke **methamphetamine**.

9 22. On or about January 7, 2008, police officers responded to a domestic disturbance and
10 while en route observed Respondent driving a vehicle away from the property. Police stopped the
11 vehicle, and detected the smell of alcohol. Respondent also exhibited signs of intoxication.
12

13 FIRST CAUSE FOR DISCIPLINE

14 (Conviction of Substantially Related Crime(s))

15 23. Respondent is subject to discipline under section 4301(l) and/or section 490 of the
16 Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of
17 substantially related crime(s), in that on or about May 21, 2007, in the criminal case *People v.*
18 *Anasilini R. Makasini*, Case No. 395496 in Alameda County Superior Court, Respondent was
19 convicted on the basis of the conduct described in paragraph 17 of violating Vehicle Code section
20 20002(a) (Failure to stop/hit and run), a misdemeanor. The conviction was entered as follows:

21 a. On or about August 3, 2006, based on the conduct described in paragraph 17,
22 Respondent was charged by criminal Complaint in Case No. 395496 with violating Vehicle Code
23 section 20002(a) (Failure to stop/hit and run), a misdemeanor.

24 b. On or about November 31, 2006, based on the conduct described in paragraph
25 18, Respondent was separately charged by criminal Complaint in *People v. Salini Makasini*, Case
26 No. 398440 in Alameda County Superior Court, with violating Penal Code section 273g (Lewd
27 practices in presence of minor), a misdemeanor. On or about January 16, 2007, the proceedings
28 in Case No. 398440 were consolidated with the proceedings in Case No. 395496.

1 b. On or about May 21, 2007, in Case No. 395496, Respondent pleaded no contest
2 to violating Vehicle Code section 20002(a) (Failure to stop/hit and run), a misdemeanor. Per the
3 plea agreement, the charges in Case No. 398440 were dismissed by the prosecutor.

4 c. On or about May 21, 2007, imposition of sentence was suspended in favor of a
5 court probation of thirty-six (36) months on terms and conditions including time served of 1 day
6 in county jail, fines and fees, and other standard terms and conditions.

7
8 SECOND CAUSE FOR DISCIPLINE

9 (Conviction of Substantially Related Crime(s))

10 24. Respondent is subject to discipline under section 4301(l) and/or section 490 of the
11 Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of
12 substantially related crime(s), in that on or about November 29, 2007, in the criminal case *People*
13 *v. Salini Makasini*, Case No. 403437 in Alameda County Superior Court, Respondent was
14 convicted on the basis of the conduct described in paragraph 19 of violating Vehicle Code section
15 23152(b) (Driving with blood alcohol of 0.08% or more), a misdemeanor, as follows:

16 a. On or about July 16, 2007, based on the conduct described in paragraph 19,
17 Respondent was charged by criminal Complaint in Case No. 403437 with violating (1) Vehicle
18 Code section 23152(a) (Driving under influence of alcohol or drugs), a misdemeanor, (2) Vehicle
19 Code section 23152(b) (Driving with blood alcohol of 0.08% or more), a misdemeanor, and (3)
20 Vehicle Code section 12500(a) (Driving without valid license), a misdemeanor.

21 b. On or about November 29, 2007, Respondent pleaded no contest to the second
22 count of violating Vehicle Code section 23152(b) (Driving with blood alcohol of 0.08% or more),
23 a misdemeanor. Counts one and three were dismissed pursuant to the plea. A prior petition to
24 revoke probation in Case No. 395496 was also withdrawn as part of the plea agreement.

25 c. On or about November 29, 2007, imposition of sentence was suspended in
26 favor of a court probation of thirty-six (36) months on terms and conditions including 30 days in
27 county jail (3 days CTS) and an 18-month 2nd Offender Alcohol and Drug Program (concurrent
28 with Case No. 405054, below), fines and fees, and other standard terms and conditions.

1 THIRD CAUSE FOR DISCIPLINE

2 (Conviction of Substantially Related Crime(s))

3 25. Respondent is subject to discipline under section 4301(1) and/or section 490 of the
4 Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of
5 substantially related crime(s), in that on or about November 29, 2007, in the criminal case *People*
6 *v. Salini Makasini aka Anasilini Makasini*, Case No. 405054 in Alameda County Superior Court,
7 Respondent was convicted on the basis of the conduct described in paragraph 20 of violating
8 Vehicle Code section 23152(b) (Driving with blood alcohol of 0.08% or more), a misdemeanor,
9 with a special allegation for having blood alcohol of 0.15% or more, as follows:

10 a. On or about September 26, 2007, based on the conduct described in paragraph
11 20, Respondent was charged by criminal Complaint in Case No. 405054 with violating (1)
12 Vehicle Code section 23152(a) (Driving under influence of alcohol or drugs), a misdemeanor, (2)
13 Vehicle Code section 23152(b) (Driving with blood alcohol of 0.08% or more), a misdemeanor,
14 with a special allegation for having blood alcohol of 0.15% or more, and (3) Vehicle Code section
15 14601.1(a) (Driving when privilege is suspended or revoked), a misdemeanor.

16 b. On or about November 29, 2007, Respondent pleaded no contest to the second
17 count of violating Vehicle Code section 23152(b) (Driving with blood alcohol of 0.08% or more),
18 a misdemeanor, and admitted to the special allegation for having blood alcohol of 0.15% or more.
19 Court documents established her blood alcohol as 0.27%. Counts one and three were dismissed
20 pursuant to the plea. Respondent also admitted to a violation of probation in Case No. 395496.

21 c. On or about November 29, 2007, imposition of sentence was suspended in
22 favor of a court probation of thirty-six (36) months on terms and conditions including 30 days in
23 county jail (3 days CTS) and an 18-month 2nd Offender Alcohol and Drug Program (concurrent
24 with Case No. 403437, above), fines and fees, and other standard terms and conditions.

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1 FOURTH CAUSE FOR DISCIPLINE

2 (Conviction of Substantially Related Crime(s))

3 26. Respondent is subject to discipline under section 4301(1) and/or section 490 of the
4 Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of
5 substantially related crime(s), in that on or about July 31, 2009, in the criminal case *People v.*
6 *Salini Makasini aka Anasilini Makasini*, Case No. 408068 in Alameda County Superior Court,
7 Respondent was convicted on the basis of the conduct described in paragraph 22 of violating (1)
8 Vehicle Code section 23152(a) (Driving under influence of alcohol or drugs), a misdemeanor, (2)
9 Vehicle Code section 23152(b) (Driving with blood alcohol of 0.08% or more), a misdemeanor,
10 with a special allegation for having blood alcohol of 0.15% or more, and (3) Vehicle Code section
11 14601.1(a) (Driving when privilege is suspended or revoked), a misdemeanor, along with special
12 allegations for two prior convictions under Vehicle Code section 23152(b), as follows:

13 a. On or about February 1, 2008, based on the conduct described in paragraph 22,
14 Respondent was charged by criminal Complaint in Case No. 408068 with violating (1) Vehicle
15 Code section 23152(a) (Driving under influence of alcohol or drugs), a misdemeanor, (2) Vehicle
16 Code section 23152(b) (Driving with blood alcohol of 0.08% or more), a misdemeanor, with a
17 special allegation for having blood alcohol of 0.15% or more, and (3) Vehicle Code section
18 14601.1(a) (Driving when privilege is suspended or revoked), a misdemeanor, and with having
19 two prior convictions (both on November 29, 2007) under Vehicle Code section 23152(b).

20 b. On or about July 31, 2009, following a jury trial, Respondent was convicted of
21 all charges, allegations, and priors. Court documents established her blood alcohol as 0.16%.

22 c. On or about July 31, 2009, imposition of sentence was suspended in favor of a
23 court probation of forty-eight (48) months on terms and conditions including 180 days in county
24 jail (3 days CTS), documented attendance at AA two times a week for a year, another 18-month
25 2nd Offender Alcohol and Drug Program, fines and fees, and other standard terms and conditions.

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1 FIFTH CAUSE FOR DISCIPLINE

2 (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

3 27. Respondent is subject to discipline under section 4301(f) of the Code, in that, as
4 described in paragraphs 17 to 26, on one or more occasions Respondent committed acts involving
5 moral turpitude, dishonesty, fraud, deceit, or corruption.

6
7 SIXTH CAUSE FOR DISCIPLINE

8 (Self-Administration of Controlled Substance and/or Alcohol)

9 28. Respondent is subject to discipline under section 4301(h) of the Code, in that
10 Respondent, as described in paragraphs 17 to 26, administered a controlled substance to herself
11 and/or used alcoholic beverages in a dangerous or injurious manner.

12
13 SEVENTH CAUSE FOR DISCIPLINE

14 (Self-Administration/Use of Controlled Substance/Drug Paraphernalia)

15 29. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
16 and/or Health and Safety Code section(s) 11170, 11364, and/or 11550, in that Respondent, as
17 described in paragraphs 18 and 21, self-administered/used, conspired to self-administer/use,
18 and/or assisted in/abetted self-administration/use, of a controlled substance, without prescription,
19 and/or possessed, conspired to possessed, or assisted/abetted possession of drug paraphernalia.

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21 EIGHTH CAUSE FOR DISCIPLINE

22 (Unprofessional Conduct)

23 30. Respondent is subject to discipline under section 4301 of the Code in that, as
24 described in paragraphs 17 to 29, Respondent engaged in unprofessional conduct.

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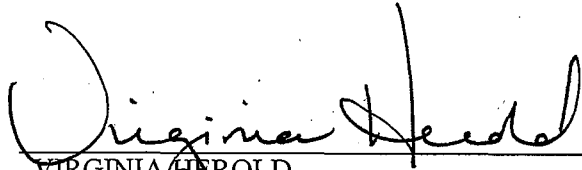
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PRAYER

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 License No. TCH 43918, issued to Anasilini Ruby Makasini aka Salini Makasini, Anasilini Pohahau (Respondent);
2. Ordering Respondent to pay the Board 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 is deemed necessary and proper.

DATED: 8/11/11


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

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