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

11 In the Matter of the Accusation Against:

Case No. 3720

12 **AZUL M. ANSELMO**
13 **183 Camelia Drive**
14 **Daly City, CA 94015**
15 **Pharmacy Technician License No. TCH**
16 **75317**

A C C U S A T I O N

Respondent.

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19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about July 14, 2007, the Board of Pharmacy issued Pharmacy Technician
24 License Number TCH 75317 to Azul M. Anselmo (Respondent). The Pharmacy Technician
25 License was in full force and effect at all times relevant to the charges brought here and will
26 expire on May 31, 2011, unless renewed.
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1 (j) The violation of any of the statutes of this state or of the United States regulating
2 controlled substances and dangerous drugs.

3 . . .

4 (l) The conviction of a crime substantially related to the qualifications, functions, and duties
5 of a licensee under this chapter. The record of conviction of a violation of Chapter 13
6 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
7 substances or of a violation of the statutes of this state regulating controlled substances or
8 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
9 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
10 The board may inquire into the circumstances surrounding the commission of the crime, in order
11 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
12 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
13 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
14 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
15 of this provision. The board may take action when the time for appeal has elapsed, or the
16 judgment of conviction has been affirmed on appeal or when an order granting probation is made
17 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
18 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
19 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
20 indictment."

21 8. California Code of Regulations, title 16, section 1770, states:

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

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1 9. Section 4060 of the Code states:

2 "No person shall possess any controlled substance, except that furnished to a person upon
3 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
4 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
5 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
6 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
7 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
8 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
9 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
10 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
11 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
12 labeled with the name and address of the supplier or producer.

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

16 10. Section 4022 of the Code states:

17 "Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use, and
18 includes the following:

19 "(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without
20 prescription," "Rx only," or words of similar import.

21 (b) Any device that bears the statement: "Caution: federal law restricts this device to sale
22 by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled
23 in with the designation of the practitioner licensed to use or order use of the device.

24 (c) Any other drug or device that by federal or state law can be lawfully dispensed only on
25 prescription or furnished pursuant to Section 4006."

26 11. Section 490 of the Code states, in pertinent part:

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

1 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
2 or profession for which the license was issued.

3 (b) Notwithstanding any other provision of law, a board may exercise any authority to
4 discipline a licensee for conviction of a crime that is independent of the authority granted under
5 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
6 of the business or profession for which the licensee's license was issued.

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

13 **COST RECOVERY**

14 12. Section 125.3 of the Code states, in pertinent part, that the Board may request the
15 administrative law judge to direct a licentiate found to have committed a violation or violations of
16 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
17 enforcement of the case.

18 **DRUGS**

19 13. Marijuana is a Schedule I controlled substance as designated by Health and Safety
20 Code section 11054(d)(13), and a dangerous drug as designated by Business and Professions
21 Code section 4022. It is a hallucinogenic drug.

22 14. Hydrocodone is a Schedule II controlled substance as designated by Health and
23 Safety Code section 11055(b)(1)(j), and a dangerous drug as designated by Business and
24 Professions Code section 4022.

25 15. Methylenedioxymethamphetamine (MDMA) is a Schedule I controlled substance as
26 designated by Health and Safety Code section 11054(d)(4), and a dangerous drug as designated
27 by Business and Professions Code section 4022. It is a hallucinogenic drug.

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MAY 11, 2009 ARREST

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2 16. On May 11, 2009, Neiman Marcus store detectives in San Francisco detained
3 Respondent on suspicion of shoplifting. Respondent took a shirt and a pair of shoes out of the
4 store without paying for them. At the time, Respondent also had in his possession marijuana,
5 MDMA (ecstasy), and Hydrocodone. The MDMA and Hydrocodone were in an unlabelled pill
6 bottle. Respondent stated that he stole the shirt and shoes because he was high and drunk. San
7 Francisco Police officers arrested Respondent.

8 17. On May 12, 2009, Respondent was charged in San Francisco Superior Court with one
9 count of violating Health and Safety Code section 11350(a) (possession of a controlled substance-
10 Hydrocodone), one count of violating Health and Safety Code section 11377(a) (possession of a
11 controlled substance-Methylenedioxymethamphetamine (MDMA), and one count of violating
12 Penal Code section 487(a) (Grand Theft -merchandise with a value exceeding \$400). On June 17,
13 2009, Respondent was granted the ability to enroll in a drug diversion program instead of having
14 his case proceed in court. Subsequently, Respondent completed the drug diversion program on
15 December 3, 2009, and his case was dismissed pursuant to Penal Code section 1000.3.

**FIRST CAUSE FOR DISCIPLINE
(Unprofessional Conduct)
(Bus. & Prof. Code § 4301(f))**

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19 18. Complainant realleges the allegations contained in paragraphs 16 and 17 above, and
20 incorporates them by reference as if fully set forth.

21 19. Respondent has subjected his pharmacy technician license to disciplinary action
22 under Code section 4301(f) in that on May 11, 2009, he was arrested for shoplifting at Neiman
23 Marcus in San Francisco as he stole a shirt and a pair of shoes.

**SECOND CAUSE FOR DISCIPLINE
(Unprofessional Conduct)
(Bus. & Prof. Code §§ 4301(j) and 4060)**

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27 20. Complainant realleges the allegations contained in paragraphs 16 and 17 above, and
28 incorporates them by reference as if fully set forth.

1 21. Respondent has subjected his pharmacy technician license to disciplinary action
2 under Code sections 4301(j) and 4060 in that on May 11, 2009, he was in possession of
3 Marijuana, MDMA (ecstasy), and Hydrocodone. The MDMA and Hydrocodone are controlled
4 substances and considered dangerous drugs. The MDMA and Hydrocodone were in an
5 unlabelled pill container.

6 **MAY 24, 2009 CONVICTION**

7 22. On May 24, 2009, Respondent's family members observed him acting aggressively
8 and shouting profanities at imaginary people. Respondent's family members asked him to stop
9 arguing. A physical altercation developed between Respondent and his brother-in-law.
10 Respondent brandished a knife and approached his brother-in-law. Respondent's father forcibly
11 removed the knife from Respondent. Respondent stated to family members that he had taken
12 "coke, E, and meth, and did not give a Fuck." Daly City Police responded and arrested
13 Respondent.

14 23. On July 6, 2009, Respondent was charged in San Mateo Superior Court with one
15 count of exhibiting a deadly weapon that was not a firearm (Penal Code 417(a)), a misdemeanor.

16 **THIRD CAUSE FOR DISCIPLINE**
17 **(Unprofessional Conduct)**
18 **(Bus. & Prof. Code § 4301(h))**

19 24. Complainant realleges the allegations contained in paragraphs 22 and 23 above, and
20 incorporates them by reference as if fully set forth.

21 25. Respondent has subjected his pharmacy technician license to disciplinary action
22 under Code section 4301(h) in that on May 24, 2009, Respondent admitted to being under the
23 influence of cocaine, methamphetamine, and ecstasy which resulted in an altercation with family
24 members, in which respondent brandished a knife at family members in a threatening manner.
25 Respondent admitted to a responding officer that he had consumed a number of alcoholic
26 beverages about and hour and a half before the incident occurred.

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**FOURTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct)
(Bus. & Prof. Code § 4301(j))**

26. Complainant realleges the allegations contained in paragraphs 22 and 23 above, and incorporates them by reference as if fully set forth.

27. Respondent has subjected his pharmacy technician license to disciplinary action under Code section 4301(j) in that on May 24, 2009, Respondent admitted to being under the influence of controlled substances and dangerous drugs. Specifically, he admitted to family members that he took cocaine, methamphetamine, and ecstasy. Further he admitted to consuming a number of alcoholic beverages before the incident with family members began.

**FIFTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Conviction)
(Bus. & Prof. Code §§ 4301(l) and 490)**

28. Complainant realleges the allegations contained in paragraphs 22 and 23 above, and incorporates them by reference as if fully set forth.

29. Respondent has subjected his license to discipline under Code sections 4301(l) and 490 in that on or about July 23, 2009, in a criminal proceeding entitled *The People of the State of California v. Azul Anselmo*, in the San Mateo Superior Court, Case Number NM 386018A, Respondent was convicted by a plea of nolo contendere of one count of violating California Penal Code 417(a)(1) (exhibiting a deadly weapon that was not a firearm), a misdemeanor. Respondent was sentenced to serve 16 days in jail, followed by one year of summary probation, and ordered to pay fines and fees.

DECEMBER 12, 2009 ARREST

30. On December 12, 2009, Respondent, while intoxicated, arrived at his girlfriend's (victim) home. After the victim let Respondent into the house, he became angry, twisted the victim's arm and choked her with a hair tie. Respondent then pushed the victim and punched her in the arm twice. The victim was able to yell for her father who telephoned for help. Respondent was arrested for violation of Penal Code 245(a)(1) (Force/Assault with a deadly weapon: Great bodily injury likely) and 243(e)(1) (Battery on spouse/person in dating relationship).

