

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 MARICHELLE S. TAHIMIC
Deputy Attorney General
4 State Bar No. 147392
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-3154
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

12 **ROBERT MELGOZA**
13 **2101 South Pacific #60**
Santa Ana, CA 92704

14 **Pharmacy Technician License No. TCH**
15 **45260**

16 Respondent.

Case No. 3859

A C C U S A T I O N

17 Complainant alleges:

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 April 7, 2003, the Board of Pharmacy issued Pharmacy Technician
22 License Number TCH 45260 to Robert Melgoza (Respondent). The Pharmacy Technician
23 License was in full force and effect at all times relevant to the charges brought herein and will
24 expire on February 28, 2011, 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 unless otherwise indicated.

1 any initiative act referred to in that division, from taking disciplinary action against
2 a licensee or from denying a license for professional misconduct, notwithstanding
3 that evidence of that misconduct may be recorded in a record pertaining to an arrest.

4 9. Section 493 of the Code states:

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

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

17 10. Section 4301 of the Code states:

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

22 ...
23 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
24 deceit, or corruption, whether the act is committed in the course of relations as a
25 licensee or otherwise, and whether the act is a felony or misdemeanor or not.

26 ...
27 (j) The violation of any of the statutes of this state, or any other state, or of
28 the United States regulating controlled substances and dangerous drugs.

29 ...
30 (k) The conviction of more than one misdemeanor or any felony involving
31 the use, consumption, or self-administration of any dangerous drug or alcoholic
32 beverage, or any combination of those substances.

33 (l) The conviction of a crime substantially related to the qualifications,
34 functions, and duties of a licensee under this chapter. The record of conviction of a
35 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
36 States Code regulating controlled substances or of a violation of the statutes of this
37 state regulating controlled substances or dangerous drugs shall be conclusive
38 evidence of unprofessional conduct. In all other cases, the record of conviction
39 shall be conclusive evidence only of the fact that the conviction occurred. The
40 board may inquire into the circumstances surrounding the commission of the crime,
41 in order to fix the degree of discipline or, in the case of a conviction not involving
42 controlled substances or dangerous drugs, to determine if the conviction is of an
43 offense substantially related to the qualifications, functions, and duties of a licensee
44 under this chapter. A plea or verdict of guilty or a conviction following a plea of
45 *nolo contendere* is deemed to be a conviction within the meaning of this provision.
46 The board may take action when the time for appeal has elapsed, or the judgment of
47 conviction has been affirmed on appeal or when an order granting probation is made
48 suspending the imposition of sentence, irrespective of a subsequent order under
49 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
50 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
51 dismissing the accusation, information, or indictment....

1 11. Title 16, of the Code of Regulations, section 1769, subdivision (b) sets forth the
2 following factors to consider with regard to evidence of rehabilitation:

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

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

14 12. Title 16, of the Code of Regulations, section 1770 provides:

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

22 13. Health and Safety Code section 11364 provides:

23 (a) It is unlawful to possess an opium pipe or any device, contrivance,
24 instrument, or paraphernalia used for unlawfully injecting or smoking (1) a
25 controlled substance specified in subdivision (b), (c), or (e), or paragraph (1) of
26 subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of
27 subdivision (d) of Section 11054, specified in subdivision (b) or (c) of Section
28 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.

(b) This section shall not apply to hypodermic needles or syringes that have
been containerized for safe disposal in a container that meets state and federal
standards for disposal of sharps waste.

(c) Pursuant to authorization by a county, with respect to all of the territory
within the county, or a city, with respect to the territory within in the city, for the
period commencing January 1, 2005, and ending December 31, 2018, subdivision
(a) shall not apply to the possession solely for personal use of 10 or fewer
hypodermic needles or syringes if acquired from an authorized source.

COST RECOVERY

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

28 ///

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(July 27, 2007 Conviction of Receiving Stolen Property, Petty Theft and**
3 **Possession of Drug Paraphernalia on July 15, 2007)**

4 15. Respondent is subject to disciplinary action under Code sections 490 and 4301,
5 subdivision (l) in that he was convicted of crimes that are substantially related to the
6 qualifications, functions and duties of a pharmacy technician. The circumstances are as follows.

7 16. On or about July 27, 2007, in *The People of the State of California vs. Roberto*
8 *Melgoza Camacho aka Robert Melgoza Camacho, Roberto Camacho Melgoza, Robert Camacho*
9 *Melgoza*, Orange County Superior Court, Central Justice Center, Case No. 07CM06678,
10 Respondent was convicted by his guilty plea of violation of Penal Code section 496(a), receiving
11 stolen property, and violation of Penal Code section 485, petty theft of lost property, both
12 misdemeanors. Respondent also pled guilty to possession of controlled substance paraphernalia,
13 an opium pipe, which is a violation of Health and Safety Code section 11364, but under Penal
14 Code section 1000, *et seq.*, judgment was deferred for 18 months and Respondent was required to
15 complete a deferred entry of judgment program.

16 17. The circumstances that led to the convictions are that on or about July 15, 2007,
17 Officer C.F. of the Santa Ana Police Department, while on routine patrol, observed a vehicle
18 driving southbound on South Rene Street. The vehicle, driven by Respondent, had darkened front
19 passenger windows, a violation of Vehicle Code section 26708(a)(2). Officer C.F. followed the
20 vehicle and activated his police vehicle's overhead emergency lights to initiate a traffic stop.
21 When Respondent stopped his vehicle, Officer C.F. asked him to lower all of the vehicle's
22 windows. When Officer C.F. looked inside from the rear left passenger window, he observed a
23 glass bulb pipe with burnt residue located on the vehicle's center bench seat directly behind the
24 driver. Officer C.F. recognized the glass pipe to be one commonly used to smoke
25 methamphetamines. Officer C.F. also observed an open container of Bud Light beer in the center
26 console cup holder.

27 18. During the course of the traffic stop, Officer C.F. located the driver's license and
28 social security card belonging to "J.L.M." in Respondent's right front pant pocket. During a

1 subsequent search of Respondent's vehicle, Officer C.F. found a black, plastic bag inside a
2 speaker box located in the rear storage compartment of Respondent's vehicle. The bag contained
3 numerous documents containing personal identification and account information for people other
4 than Respondent. Respondent explained that his friend, F.G. left the bag and pipe in his vehicle,
5 that he knew the documents containing personal identification and account information did not
6 belong to F.G. and since he did not want F.G. to find the bag, Respondent stated he hid the bag
7 inside the speaker box. Respondent was unable to provide Officer C.F. with F.G.'s contact
8 information. Respondent stated he did not know any of the people identified in the documents
9 and could not explain why he did not attempt to turn the documents in to the police if he believed
10 they were stolen instead of hiding them.

11 19. Respondent was placed under arrest for possession of controlled substance
12 paraphernalia and was transported to the police station. Officer C.F. attempted to contact the
13 people identified in the documents found in the plastic bag in Respondent's possession and was
14 able to speak with P, whose checkbook contained P's contact information. P. told Officer C.F.
15 that several items, including her checkbook and social security card, which was also found in
16 Respondent's possession, had been stolen from her car. P. did not know Respondent or F.G.
17 Officer C.F. was not able to contact the other people identified on the documents found in
18 Respondent's possession.

19 20. As a result of Respondent's conviction of receiving stolen property and petty theft,
20 Respondent was sentenced to 3 years probation, was ordered to pay \$160 in fines and fees,
21 ordered to pay restitution and serve 30 days in jail. On February 18, 2010, deferred entry of
22 judgment on the possession of drug paraphernalia charge was terminated and Respondent was
23 ordered to serve 20 days in jail.

24 ///

25 ///

26 ///

27 ///

28 ///

1 card receipts. On the way to the police station, the officers stopped at King Liquor Mart where
2 the clerk told them the bottles of Cazadore had been purchased there by someone who gave him a
3 credit card number verbally and that this person had been in the store before using the same credit
4 card number. Upon further investigation, the surveillance tape at King Liquor Mart earlier that
5 evening showed that Respondent made the purchase.

6 25. While at the police station, Officer M.K. questioned Respondent about a receipt from
7 Ramos Tire Service Center, Inc. Respondent stated that his girlfriend purchased tires at Ramos
8 Tire for his vehicle. Respondent stated he was not present during the purchase and also stated
9 that the tires currently on his vehicle were not the tires purchased because he sold them. It was
10 later discovered that the tires purchased at Ramos Tire Service Center had been purchased with a
11 credit card that was fraudulent and that the credit card company was conducting a fraud
12 investigation. Some of the owners of the credit cards were contacted, who confirmed that their
13 cards had been stolen when their vehicles were burglarized and that unauthorized purchases had
14 been made.

15 26. As a result of Respondent's conviction, he was sentenced to 3 years formal probation,
16 ordered to serve 90 days in jail (served concurrently with Case No. 10HF0193), pay fines and
17 fees of \$320.00, and to have no blank checks in his possession or use or possess credit cards or
18 open credit accounts unless previously approved.

19 **THIRD CAUSE FOR DISCIPLINE**

20 **(February 18, 2010 Conviction of Identity Theft and Possession of**
21 **Controlled Substance Paraphernalia on February 5, 2010)**

22 27. Respondent is subject to disciplinary action under Code sections 490 and 4301,
23 subdivision (l) in that Respondent was convicted of crimes that are substantially related to the
24 qualifications, functions and duties of a pharmacy technician. The circumstances are as follows.

25 28. On or about February 18, 2010 in *The People of the State of California vs. Roberto*
26 *Melgoza Camacho aka Robert Melgoza Camacho, Roberto Camacho Melgoza, Robert Camacho*
27 *Melgoza*, Orange County Superior Court, Harbor Justice Center, Case No. 10HF0193,
28 Respondent was convicted by his guilty plea of violation of Penal Code section 530.5(a), identity

1 theft, a felony, and violation of Health and Safety Code section 11364, possession of controlled
2 substance paraphernalia, an opium pipe, a misdemeanor.

3 29. The circumstances that led to the conviction are as follows. On February 5, 2010,
4 Officer J.O. of the Costa Mesa Police Department was dispatched to the Marriott Residence Inn.
5 Upon arrival, Officer J.O. spoke with A.B., an employee of the hotel. A.B. told Officer J.O. that
6 about half an hour earlier, she was contacted by an employee of a local pizzeria who asked A.B. if
7 a hotel employee named "Liz" ordered pizza. A.B. advised the pizzeria employee that the hotel
8 did not have any employees named "Liz" and that no hotel employees ordered any food. The
9 pizzeria employee stated that "Liz" purchased a large food order with a suspicious credit card.
10 A.B. stated that the guests in Room 1322 also used a suspicious credit card to pay for their room.
11 According to A.B., the credit card was suspicious because the activation sticker was still affixed
12 to the card and no name was imprinted on the card, just an imprint stating "Temporary Card
13 Only." A.B. and the pizzeria employee determined that the card used for the food order and the
14 guest room was the same card.

15 30. After the conversation with the pizzeria employee, A.B. became more concerned
16 about the credit card used to pay for Room 1322. The name of the person who booked the room
17 was Robert Camacho, one of Respondent's aliases. Officer J.O. obtained Respondent's name and
18 address from the hotel registration and later discovered that there was an outstanding warrant for
19 Respondent, issued by the Central Court on February 2, 2010 for receiving stolen property,
20 burglary, use of a forged credit card and grand theft. The total charges billed to Room 1322
21 included groceries, telephone calls and other miscellaneous items totaling \$929.99.

22 31. Officer J.O. and other officers went to Room 1322. Respondent was in the room with
23 other subjects. Officer J.O. saw a glass pipe with a bulb on the coffee table in the living room
24 area of the hotel room. The glass pipe had white residue on the bulb and burn marks. Officer
25 J.O. recognized the pipe as one used to smoke methamphetamine. Respondent was placed under
26 arrest. While being searched, a MasterCard credit card with an activation sticker on the front was
27 found in Respondent's pant pocket. The credit card was consistent with the description of the
28 card given by A.B. Respondent stated he met a person in a gas station parking lot who told him

1 he could get him hotel rooms for half price and that this person, known to Respondent only as
2 "Frank", told him Frank would book the room in Frank's name. Respondent claimed he only
3 used the credit card for incidentals and that he had purchased the credit card at the Check and Go.

4 32. As the search of the room continued, located inside the desk drawer of the main
5 bedroom, the officers found nine temporary bank cards, debit cards, credit cards, gift cards and
6 Respondent's driver's license. One of the credit cards was from Sears and the imprinted name on
7 the card was "H.C.V.", which did not match any of the subjects in the hotel room.

8 33. While at the police station, Officer J.O. confirmed that the Sears credit card found in
9 the hotel room had been reported lost or stolen on February 2, 2010.

10 34. As a result of Respondent's conviction, Respondent was sentenced to 3 years formal
11 probation, ordered to serve 90 days in jail, pay \$600 in fines and fees, have no blank checks in his
12 possession or use or possess credit cards or open credit accounts unless previously approved and
13 ordered not to possess any other person's identifying information or personal financial
14 information unless approved in advance by the Probation Dept.

15 **FOURTH CAUSE FOR DISCIPLINE**

16 **(Unprofessional Conduct – Commission of Acts Involving Dishonesty, Fraud, Deceit)**

17 35. Respondent is subject to disciplinary action under Code section 4301, subdivision (f)
18 for unprofessional conduct in that Respondent committed acts involving dishonesty, fraud and
19 deceit as follows:

20 a. On July 15, 2007, Respondent received stolen property and committed petty theft, as
21 more fully set forth in paragraphs 15-20 above, and incorporated herein as though set forth in full;

22 b. On December 10, 2008, Respondent received stolen property, committed commercial
23 burglary and fraudulently used an access card, as more fully set forth in paragraphs 21-26 above,
24 and incorporated herein as though set forth in full; and,

25 c. On February 5, 2010, Respondent committed identity theft, as more fully set forth in
26 paragraphs 27-34 above, and incorporated herein as though set forth in full.

27 ///

28 ///

1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct – Violation of Laws Regulating Controlled Substances)**

3 36. Respondent is subject to disciplinary action under Code section 4301, subdivision (j)
4 for unprofessional conduct in that Respondent committed acts in violation of laws regulating
5 controlled substances as follows:

6 a. On July 15, 2007, Respondent possessed controlled substance paraphernalia, a
7 misdemeanor in violation of Health and Safety Code section 11364, as more fully set forth in
8 paragraphs 15-20 above, and incorporated herein as though set forth in full; and,

9 b. On February 5, 2010, Respondent possessed controlled substance paraphernalia, a
10 misdemeanor in violation of Health and Safety Code section 11364, as more fully set forth in
11 paragraphs 27-34 above, and incorporated herein as though set forth in full.

12 **SIXTH CAUSE FOR DISCIPLINE**

13 **(December 20, 2010 Conviction of DUI on October 16, 2010)**

14 37. Respondent is subject to disciplinary action under Code sections 490 and 4301,
15 subdivision (l) in that Respondent was convicted of crimes that are substantially related to the
16 qualifications, functions and duties of a pharmacy technician. The circumstances are as follows.

17 38. On or about December 20, 2010 in *The People of the State of California vs. Roberto*
18 *Melgoza Camacho aka Robert Melgoza Camacho, Roberto Camacho Melgoza, Robert Camacho*
19 *Melgoza*, Orange County Superior Court, Central Justice Center, Case No. 10CM11243,
20 Respondent was convicted by his guilty plea of violation of Vehicle Code section 23152(a),
21 driving under the influence of alcohol or drugs; and violation of Vehicle Code section 23152(b),
22 driving under the influence of alcohol or drugs with a blood alcohol content of 0.08% or greater,
23 misdemeanors.

24 39. As a result of Respondent's conviction, he was sentenced to 3 years probation and
25 ordered to serve 8 days in jail in lieu of a fine, pay restitution and complete a 3-month First
26 Offender Alcohol Program.

27 ///

28 ///

1 DISCIPLINE CONSIDERATIONS

2 41. To determine the degree of discipline, if any, to be imposed on Respondent,
3 Complainant alleges the following under title 16, California Code of Regulations, section
4 1769(b)(2):

5 a. On July 10, 1998, in *The People of the State of California vs. Robert Melgoza*
6 *Camacho aka Roberto Melgoza Camacho, Roberto Camacho Melgoza, Robert Camacho*
7 *Melgoza*, Orange County Superior Court, Central Justice Center, Case No. 98CM02335,
8 Respondent was convicted on his guilty plea of violation of Penal Code section 243(b), battery on
9 a peace officer or emergency personnel, and violation of Penal Code section 148(a), resisting a
10 peace officer, misdemeanors.

11 b. On March 15, 2000, in *The People of the State of California vs. Roberto Melgoza*
12 *Camacho aka Robert Melgoza Camacho, Roberto Camacho Melgoza, Robert Camacho Melgoza,*
13 *Orange County Superior Court, Central Justice Center, Case No. 99CM10391, Respondent was*
14 *convicted on his guilty plea of violation of Penal Code section 422, making terrorist threats, and*
15 *violation of Penal Code section 148, resisting or obstructing a peace officer, misdemeanors.*

16 c. On March 16, 2001, in *The People of the State of California vs. Robert Melgoza*
17 *Camacho aka Robert Melgoza,, Roberto Melgoza Camacho, Roberto Camacho Melgoza, Robert*
18 *Camacho Melgoza*, Orange County Superior Court, Harbor Justice Center, Case No.
19 01HM01985, Respondent was convicted on his guilty plea of violation of Vehicle Code section
20 23152(a), driving under the influence of alcohol or drugs, a misdemeanor.

21 d. On January 25, 2002, in *The People of the State of California vs. Roberto Melgazo*
22 *Camacho aka Robert Melgoza, Roberto Melgoza Camacho, Roberto Melgoza Camacho,*
23 *Roberto Camacho Melgoza, Robert Camacho Melgoza*, Orange County Superior Court, Central
24 Justice Center, Case No. 02CM00022, Respondent was convicted on his guilty plea of violation
25 of Penal Code section 273.5(a), corporal injury on a spouse/cohabitant, a misdemeanor.

26 e. On April 22, 2002, in *The People of the State of California vs. Robert Melgoza*
27 *Camacho aka Roberto Melgoza Camacho, Roberto Camacho Melgoza, Robert Camacho*
28 *Melgoza*, Orange County Superior Court, Central Justice Center, Case No. 02CM03304,

1 Respondent was convicted on his guilty plea of violation of Penal Code section 166(c)(1),
2 violating a protective/stay away order, a misdemeanor.

3 f. On July 21, 2009 in *The People of the State of California vs. Roberto Melgoza*
4 *Camacho aka Robert Melgoza Camacho, Roberto Camacho Melgoza, Robert Camacho Melgoza,*
5 Orange County Superior Court, Harbor Justice Center, Case No. 09HM05099, Respondent was
6 convicted by his guilty plea of violation of Vehicle Code section 14601.1(a), driving with a
7 suspended license, a misdemeanor.

8 g. On July 21, 2009 in *The People of the State of California vs. Roberto Melgoza*
9 *Camacho aka Robert Melgoza Camacho, Roberto Camacho Melgoza, Robert Camacho Melgoza,*
10 Orange County Superior Court, Harbor Justice Center, Case No. 09HM05099, Respondent was
11 convicted by his guilty plea of violation of Vehicle Code section 14601.1(a), driving with a
12 suspended license on May 5, 2009, a misdemeanor.

13 **PRAYER**

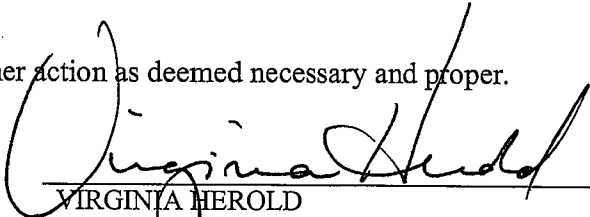
14 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
15 and that following the hearing, the Board of Pharmacy issue a decision:

16 1. Revoking or suspending Pharmacy Technician License Number TCH 45260, issued
17 to In the Matter of the Accusation Against Robert Melgoza;

18 2. Ordering Robert Melgoza to pay the Board of Pharmacy the reasonable costs of the
19 investigation and enforcement of this case, pursuant to Business and Professions Code section
20 125.3;

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

22 DATED: 2/23/11

23 
24 VIRGINIA HEROLD
25 Executive Officer
26 Board of Pharmacy
27 Department of Consumer Affairs
28 State of California
Complainant

SD2010702938/10655489.doc