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

| In the Matter of the Accusation Against: | Case No. 3874 |
|---|---|
| **JOSE A. PACHECO**<br>**a.k.a., JOSE ANTONIO PACHECO**<br>**a.k.a., JOSE A. PACHECO RAMIREZ**<br>**a.k.a., JOSE ANTONIO RAMIREZ**<br>**a.k.a., FARIAS OMAR RODRIGUEZ**<br>10433 Midway St.<br>Bellflower, CA 90706<br><br>Pharmacy Technician Registration<br>No. TCH 72785<br><br>Respondent. | **A C C U S A T I O N** |

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.

## LICENSE APPLICATION AND HISTORY

2. On or about October 10, 2006, Jose A. Pacheco signed an Application for Registration as a Pharmacy Technician. On this application, Respondent answered "no" to Question No. 6, which asked if he had ever been convicted of, or pled no contest to, a violation of any law of the United States or a foreign country. Respondent certified under penalty of perjury

under the laws of the State of California the accuracy and truthfulness of all of his answers in his application. Respondent's application contained false information, in that he omitted from the application that he had been convicted of a crime on October 25, 2004, and was at the time on an active formal court probation, as set forth in Paragraph 11, subparagraphs (a)-(c) below.

3. On or about January 10, 2007, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 72785 to Jose A. Pacheco, also known as Jose Antonio Pacheco, Jose A. Pacheco Ramirez, Jose Antonio Ramirez, and Farias Omar Rodriguez (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2012, unless renewed.

## JURISDICTION

4. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 118, subdivision (b), provides in pertinent part, that the expiration of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

6. Section 4300 provides in pertinent part, that every license issued by the Board is subject to discipline, including suspension or revocation.

## STATUTORY PROVISIONS

7. Section 490 states, in pertinent part:

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued."

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

"(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken 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 the provisions of Section 1203.4 of the Penal Code."

8. Section 4301 states, in pertinent part:

"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.

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts."

. . . .

"(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."

## REGULATORY PROVISIONS

9. California Code of Regulations, title 16, section 1770 states, in pertinent part:

"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."

## COST RECOVERY

10. Section 125.3 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

### (Convictions of Substantially Related Crimes)

11. Respondent is subject to disciplinary action under Sections 4301, subdivision (l) and 490, in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent has been convicted of crimes substantially related to the qualifications, functions or duties of a pharmacy technician, as follows:

a. On or about June 2, 2010, after pleading nolo contendere, Respondent was convicted of one misdemeanor count of violating Penal Code section 243, subdivision (b) [battery upon an officer and emergency personnel] in the criminal proceeding entitled *People of the State of*

*California v. Jose Antonio Pacheco* (Super. Ct. Los Angeles County, 2010, No. 0BF02569). The Court sentenced Respondent to serve 24 days in Los Angeles County Jail, placed him on 36 months probation, ordered him to enroll in and complete 52 anger management counseling sessions, not to use or possess any false identifications, pay fines, fees and restitution, among other terms and conditions. The circumstances surrounding the conviction are that on or about May 20, 2010, Respondent willfully and unlawfully used force and violence upon a police officer.

b. On or about October 25, 2004, after pleading nolo contendere, Respondent was convicted of one felony count of violating Penal Code section 459 [second degree commercial burglary] in the criminal proceeding entitled *People of the State of California v. Jose Pacheco Ramirez, aka Jose Antonio Ramirez, and Farias Omar Rodriguez* (Super. Ct. Los Angeles County, 2004, No. VA078373). The Court sentenced Respondent to serve 2 days in Los Angeles County Jail and placed him on 3 years formal probation, with additional terms and conditions.

c. On or about December 20, 2006, December 20, 2006 and January 22, 2007, court hearings were held about Respondent's possible violation(s) of probation. His probation was revoked and reinstated, and the court modified the terms of his probation by ordering that it would allow Respondent to complete community service in lieu of Cal Trans. On or about September 24, 2007, Respondent failed to appear, without sufficient excuse, at the Norwalk Superior Court, with proof of completion of his community service hours. The Court found Respondent to be in violation of his probation, revoked Respondent's probation, and ordered a "no bail" bench warrant issued. On or about June 21, 2010, the case was called for a formal hearing on Respondent's probation violation. Respondent was present in court and admitted that he had violated the Court's probation order. The Court reinstated Respondent's previous probation on the same terms and conditions, but, due to the probation violation, modified the previous order to add 365 days in Los Angeles County Jail and ordered Respondent remanded to custody.

d. The circumstances surrounding the October 25, 2004 conviction are that on or about August 18, 2003, Respondent entered a commercial building occupied by Money Mart, located at 15790 Bellflower Blvd., Bellflower, CA, with the intent to commit larceny and a felony.

Respondent presented a check for $1,645.50 from Choice Enterprises, made payable to "Jose P. Ramirez", to be cashed by Money Mart. When the manager told Respondent she would contact Choice Enterprises to verify the check, Respondent said he would wait outside, and then left the facility before the check was processed. When the manager of Money Mart contacted Choice Enterprises by telephone to confirm the check, she was informed that Choice Enterprises had never issued that check, and that it was a counterfeit.

**SECOND CAUSE FOR DISCIPLINE**

**(Acts Involving Moral Turpitude, Dishonesty, Fraud, or Deceit)**

12. Respondent is subject to disciplinary action under Section 4301, subdivision (f), in that Respondent committed acts involving moral turpitude, dishonesty, fraud, or deceit, including committing battery on a peace officer and/or emergency personnel, attempting to pass a bogus check at Money Mart, and by making a false statement under penalty of perjury on his application for licensure as a pharmacy technician. Complainant refers to, and by this reference incorporates, the allegations set forth above in Paragraphs 2 and 11, subparagraphs (a)-(d), inclusive, as though set forth fully.

**THIRD CAUSE FOR DISCIPLINE**

**(Knowingly Made a False Statement of Fact)**

13. Respondent is subject to disciplinary action under section 4301, subdivision (g), in that on or about October 20, 2006, Respondent knowingly made a false statement of fact, by failing to disclose his 2004 conviction case against him on his application for licensure, and by certifying under penalty of perjury the truthfulness of the answers on his application. Complainant refers to, and by this reference incorporates, the allegations set forth above in Paragraphs 2 and 11, subparagraphs (b)-(d), as though set forth fully.

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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 issue a decision:

1. Revoking or suspending Pharmacy Technician Registration No. TCH 72785, issued to Respondent;

2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and

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

DATED: 12/6/11

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

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