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

10 In the Matter of the First Amended Accusation
11 Against:

Case No. 3932

12 **ELLIOT MILES STONE**
13 **42451 15th Street West**
14 **Lancaster, CA 93534**
Pharmacy Technician License No. TCH
82587

FIRST AMENDED ACCUSATION

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Virginia Herold ("Complainant") brings this First Amended Accusation solely in her
19 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer
20 Affairs.

21 2. On or about March 28, 2008, the Board of Pharmacy issued Pharmacy Technician
22 License Number TCH 82587 to Elliot Miles Stone ("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 July 31, 2011, unless renewed.

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1 **JURISDICTION**

2 3. This First Amended Accusation is brought before the Board of Pharmacy ("Board"),
3 Department of Consumer Affairs, under the authority of the following laws. All section
4 references are to the Business and Professions Code ("Code") unless otherwise indicated.

5 **STATUTORY PROVISIONS**

6 4. Section 118, subdivision (b), of the Code provides 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.

10 5. Section 490 states:

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

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

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

25 6. Section 4060 of the Code states:

26 "No person shall possess any controlled substance, except that furnished to a person upon
27 the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian. . ."

28

1 7. Section 4059, subdivision (a), of the Code provides: "A person may not furnish any
2 dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist,
3 veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any
4 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist,
5 veterinarian, or naturopathic doctor pursuant to Section 3640.7."

6 8. Section 4300 permits the Board to take disciplinary action to suspend or revoke a
7 license issued by the Board.

8 9. Section 4301 states:

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

12

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

18 . . .

19 (j) The violation of any of the statutes of this state, of any other state, or of the United
20 States regulating controlled substances and dangerous drug/

21 . . .

22 (l) The conviction of a crime substantially related to the qualifications, functions, and
23 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
24 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
25 substances or of a violation of the statutes of this state regulating controlled substances or
26 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
27 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
28 The board may inquire into the circumstances surrounding the commission of the crime, in order

1 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
2 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
3 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
4 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
5 of this provision. The board may take action when the time for appeal has elapsed, or the
6 judgment of conviction has been affirmed on appeal or when an order granting probation is made
7 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
8 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
9 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
10 indictment..."

11 REGULATORY PROVISION

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

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

19 CONTROLLED SUBSTANCE-DANGEROUS DRUGS

20 11. Marijuana is designated as a Schedule I controlled substance by Health and
21 Safety Code section 11054(d)(13) and is a dangerous drug pursuant to Business and
22 Professions Code section 4022.

23 12. Section 11357 (b) of the Health and Safety Code states, in pertinent part,

24 "Except as authorized by law, every person who possesses not more than 28.5
25 grams of marijuana, other than concentrated cannabis, is guilty of a misdemeanor
26 and shall be punished by a fine of not more than one hundred dollars (\$100)."
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SECOND CAUSE FOR DISCIPLINE

(Violate Law Regulating Controlled Substances)

21. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the Code for unprofessional conduct, in that Respondent violated a law regulating controlled substances. Complainant refers to, and by this reference incorporates, the allegations set forth in paragraphs 15 through 20, inclusive, above, as though set forth fully.

THIRD CAUSE FOR DISCIPLINE

(Conviction of Substantially-Related Crime)

22. Respondent is subject to disciplinary action under section 490, 4300, and 4301, subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, on the grounds of unprofessional conduct, in that Respondent was convicted of a crime substantially related to the qualifications, functions or duties of a registered pharmacy technician which to a substantial degree evidence her present or potential unfitness to perform the functions authorized by her registration in a manner consistent with the public health, safety, or welfare. Complainant refers to, and by this reference incorporates, the allegations set forth in paragraphs 19 through 20, inclusive, above, as though set forth fully.

FOURTH CAUSE FOR DISCIPLINE

(Dangerous Use of Marijuana)

23. Respondent is subject to disciplinary action under section 4301, subdivision (h), in that Respondent used a controlled substance, to wit marijuana, in manner dangerous to himself and others. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 15 through 20, inclusive, as though set forth fully.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

24. Respondent is subject to disciplinary action under section 4301 of the Code for unprofessional conduct. Complainant refers to, and by this reference incorporates, the allegations set forth in paragraphs 15 through 20, inclusive, above, as though set forth fully.

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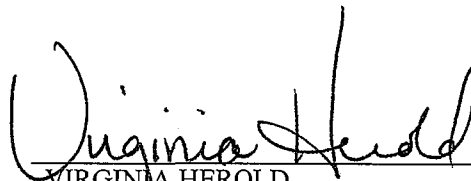
PRAYER

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

1. Revoking or suspending Pharmacy Technician License Number TCH 82587, issued to Elliot Miles Stone;
2. Ordering Elliot Miles Stone 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:

12/5/11



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

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