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

11 In the Matter of the Accusation Against:

Case No. 4007

12 **DAVID PAUL ARMSTRONG, JR.**
1111 N. Orange Ave.
13 La Puente, CA 91744

A C C U S A T I O N

14 Pharmacy Technician Registration No. TCH
102594

15
16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board).
- 22 2. On or about August 24, 2010, the Board of Pharmacy issued Original Pharmacy
23 Technician Registration Number TCH 102594 to David Paul Armstrong, Jr. (Respondent). The
24 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges
25 brought herein and will expire on August 31, 2012, unless renewed.

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JURISDICTION

1 3. This Accusation is brought before the Board, under the authority of the following
2 laws. All section references are to the Business and Professions Code unless otherwise indicated.
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STATUTORY PROVISIONS

4 4. Section 118, subdivision (b), provides that the suspension, expiration, surrender, or
5 cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary
6 action during the period within which the license may be renewed, restored, reissued or
7 reinstated.
8

9 5. Section 480 states, in pertinent part:

10 “(a) A board may deny a license regulated by this code on the grounds that the applicant
11 has one of the following:

12 “(1) Been convicted of a crime. A conviction within the meaning of this section means a
13 plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a
14 board is permitted to take following the establishment of a conviction may be taken when the
15 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when
16 an order granting probation is made suspending the imposition of sentence, irrespective of a
17 subsequent order under the provisions of Section 1203.4 of the Penal Code.

18 “(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially
19 benefit himself or herself or another, or substantially injure another.

20 ...

21 “(b) Notwithstanding any other provision of this code, no person shall be denied a license
22 solely on the basis that he or she has been convicted of a felony if he or she has obtained a
23 certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of
24 Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has
25 met all applicable requirements of the criteria of rehabilitation developed by the board
26 to evaluate the rehabilitation of a person when considering the denial of a license under
27 subdivision (a) of Section 482.”

28 6. Section 4202, subdivision (d), provides that “[t]he board may suspend or revoke any

1 registration issued pursuant to this section on any ground specified in Section 4301.”

2 7. Section 4300, subdivision (a), states that “[e]very license issued may be suspended or
3 revoked.”

4 8. Section 4301 states, in pertinent part:

5 “The board shall take action against any holder of a license who is guilty of unprofessional
6 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

7 Unprofessional conduct shall include, but is not limited to, any of the following:

8 ...

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

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 “(l) The conviction of a crime substantially related to the qualifications, functions, and
20 duties of a licensee...[T]he record of conviction shall be conclusive evidence only of the fact that
21 the conviction occurred. The board may inquire into the circumstances surrounding the
22 commission of the crime, in order to fix the degree of discipline...A plea or verdict of guilty or a
23 conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
24 of this provision.

25 ...

26 “(p) Actions or conduct that would have warranted denial of a license.”

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1 **REGULATORY PROVISIONS**

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

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

9 **CONTROLLED SUBSTANCE**

10 10. “Methamphetamine” is a Schedule II controlled substance as designated by Health
11 and Safety Code section 11055, subdivision (d)(2), and is categorized as a dangerous drug
12 pursuant to section 4022 of the Business & Professions Code.

13 **COST RECOVERY**

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

18 **FIRST CAUSE FOR DISCIPLINE**

19 (Conviction of Substantially Related Crime)

20 12. Respondent is subject to disciplinary action under sections 4202, 4300, and 4301,
21 subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, for
22 unprofessional conduct in that Respondent was convicted of a crime substantially related to the
23 qualifications, functions, and duties of a Registered Pharmacy Technician. On or about
24 December 14, 2010, Respondent was convicted, upon a plea of guilty, of violating Health and
25 Safety Code sections 11364, subdivision (a) (possession of smoking device), and 11377,
26 subdivision (a) (possession of methamphetamine), both misdemeanors, in the criminal proceeding
27 entitled *The People of the State of California v. David Paul Armstrong, Jr.* (Super. Ct. Los
28 Angeles County, 2010, No. OJB11500). The Court deferred entry of judgment pursuant to Penal

1 Code sections 1000.4 *et seq.*

2 12. The conviction was sustained upon facts showing Respondent possessed a smoking
3 pipe and .23 grams of methamphetamine for personal use. On or about October 7, 2010, West
4 Covina Police Department Officer Mosley observed Respondent parked in an area known for
5 illicit drug use. Officer Mosley approached the car and noticed that Respondent was
6 accompanied by a man later identified as J.K. Both Respondent and J.K. exhibited signs of
7 methamphetamine use. Respondent in particular appeared to be nervous and sweating. He licked
8 his lips repeatedly, swallowed constantly, and at moments stuttered. When asked if there were
9 weapons or drugs in the car, Respondent stammered and swallowed before saying "no."
10 Respondent consented to a search of the car, which revealed a glass pipe in the center console, a
11 glass pipe in the glove box, and a plastic bag containing a white crystalline substance located near
12 the front passenger seat. During the course of Respondent's contact with Officer Mosley,
13 Respondent claimed ownership of the glass pipe found in the center console. He expressed to
14 Officer Mosley his belief that the pipe was "loaded," meaning packed for use. Respondent
15 attributed to J.K. ownership of the plastic bag and remaining pipe. Officer Mosley arrested
16 Respondent and J.K. for possession of a controlled substance and possession of drug
17 paraphernalia. After being Mirandized, Respondent volunteered that he had smoked
18 methamphetamine the morning of October 7, 2010, prior to driving to J.K.'s house. Respondent
19 also stated that he and J.K. smoked methamphetamine on a side street before arriving at the
20 parking lot where they planned to "chill out." The plastic bag, weighing .23 grams, tested
21 positive for the presence of methamphetamine.

22 **SECOND CAUSE FOR DISCIPLINE**

23 (Use of Controlled Substance to an Extent Dangerous to Self or Others)

24 13. Respondent is subject to disciplinary action under sections 4202, 4300, and 4301,
25 subdivision (h), for use of a controlled substance to the extent or in a manner as to be dangerous
26 or injurious to oneself or to the public. Respondent possessed .23 grams of methamphetamine
27 and two glass "meth pipes." He also admitted to the ingestion of methamphetamine during a time
28 in which he was occupying or operating a car. Respondent's conduct involved the potential for

1 harm to the public. As such, Respondent is subject to disciplinary action. Complainant refers to
2 and by this reference incorporates the allegations set forth above in paragraphs 11-12, inclusive,
3 as though set forth fully.

4 **THIRD CAUSE FOR DISCIPLINE**

5 (Commission of an Act Involving Dishonesty)

6 14. Respondent is subject to disciplinary action under sections 4300 and 4301,
7 subdivision (f), for committing an act involving dishonesty in that Respondent lied to Officer
8 Mosley about the existence of drugs in Respondent's car. Respondent denied having drugs in the
9 car when the facts and circumstances suggest that Respondent was aware of their presence. By
10 answering falsely instead of remaining silent or answering truthfully, Respondent committed an
11 act of dishonesty for which disciplinary action is appropriate. Complainant refers to and by this
12 reference incorporates the allegations set forth above in paragraphs 11-13, inclusive, as though
13 set forth fully.

14 **FOURTH CAUSE FOR DISCIPLINE**

15 (Conduct Warranting Denial)

16 15. Respondent is subject to disciplinary action under sections 4300, 4301, subdivision
17 (p), and 480, subdivisions (a)(1) and (a)(2), for conduct which would warrant denial of licensure.
18 Complainant refers to and by this reference incorporates the allegations set forth above in
19 paragraphs 11-14, inclusive, as though set forth fully.

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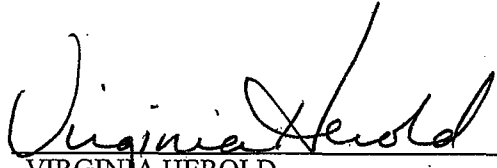
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PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 102594, 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: 6/6/11



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

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