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

12 In the Matter of the Accusation Against:

Case No. 4079

13 **RUSSELL R. JAVIER**
14 **4393 Tyler Street**
Riverside, CA 92503

A C C U S A T I O N e

15 **Pharmacy Technician Registration**
16 **No. TCH 72666**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

21 1.e 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.e On or about October 27, 2006, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 72666 to Russell R. Javier (Respondent). The Pharmacy Technician
25 Registration was in full force and effect at all times relevant to the charges brought herein and
26 will expire on May 31, 2012, unless renewed.

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1 **JURISDICTION**

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

5 4. Section 4300, subdivision (a) of the Code states "Every license issued may be
6 suspended or revoked."

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

11 **STATUTORY PROVISIONS**

12 6. Section 4301 of the Code states:

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

17

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

20

21 7. Section 4060 of the Code states:

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

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1 8. United States Code, title 21, section 843 states, in pertinent part:

2 (a) It shall be unlawful for any person knowingly or intentionally –

3

4 (3) to acquire or obtain possession of a controlled substance by
5 misrepresentation, fraud, forgery, deception, or subterfuge;

6

7 **COST RECOVERY**

8 9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
9 administrative law judge to direct a licentiate found to have committed a violation or violations of
10 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
11 enforcement of the case.

12 **DRUG**

13 10. Ecstasy, the street name for MDMA,3,4 (methylenedioxyamphetamine), is a
14 Schedule I controlled substance under California Health and Safety Code section 11054,
15 subdivision (d)(4), and is classified as a dangerous drug pursuant to Business and Professions
16 Code section 4022. MDMA is a synthetic, psychoactive drug with a chemical structure similar to
17 the stimulant methamphetamine and the hallucinogen mescaline.

18 **FACTS**

19 11. On or about the afternoon of December 9, 2010, deputies from the Los Angeles
20 County Sheriff's Department conducted a traffic stop on a vehicle driven by Respondent that did
21 not have a rear license plate. Respondent consented to a personal search; the deputy located
22 \$1,638 in U.S. currency in Respondent's front pants pocket. Respondent admitted that there
23 might be something illegal in his vehicle and allowed the deputies to search it. Under the driver's
24 front seat, the deputies located a box that contained a small ziplock baggie containing six small,
25 light blue pills, which were later identified as Ecstasy. Respondent gave various scenarios as to
26 why he was in possession of \$1,638 in cash and Ecstasy. After he was arrested he admitted to the
27 deputies that he had received a UPS shipment at his residence containing 25-30 Ecstasy pills,
28 which he then sold.

1 **CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct - Violation of California & Federal Statutes Regulating**
3 **Controlled Substances & Dangerous Drugs)**

4 12. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the
5 Code in that on or about on or about December 9, 2010, Respondent knowingly violated Business
6 and Professions Code section 4060 and United States Code, title 21, section 843 when he
7 obtained, possessed, and sold an illegal controlled substance and dangerous drug, as detailed in
8 paragraph 11, above.

9 **PRAYER**

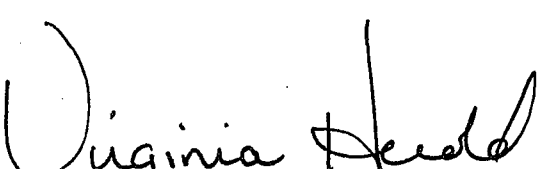
10 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
11 and that following the hearing, the Board of Pharmacy issue a decision:

12 1. Revoking or suspending Pharmacy Technician Registration Number TCH 72666,
13 issued to Russell R. Javier

14 2. Ordering Russell R. Javier to pay the Board of Pharmacy the reasonable costs of the
15 investigation and enforcement of this case, pursuant to Business and Professions Code section
16 125.3;

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

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19
20 DATED: 9/1/11


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

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