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

12 In the Matter of the Accusation Against:

Case No. 4128

13 **ARMANDO LOPEZ**

A C C U S A T I O N

14 4828 Hollow Corner Rd., #190
15 Culver City, CA 90230

16 Pharmacy Technician License No. TCH
104485

Respondent.

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 June 29, 2010, the Board of Pharmacy ("Board") issued Pharmacy
22 Technician License No. TCH 104485 to Armando Lopez ("Respondent"). Respondent's
23 Pharmacy Technician License was in full force and effect at all times relevant to the charges
24 brought herein and will expire on November 30, 2011, unless renewed.

25 **JURISDICTION AND STATUTORY PROVISIONS**

26 3. This Accusation is brought before the Board, under the authority of the following
27 laws. All section references are to the Business and Professions Code ("Code") unless otherwise
28 indicated.

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

5 5. Section 480 of the Code states:

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

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

15 6. Section 490 of the Code states:

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

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

26 (c) A conviction within the meaning of this section means a plea or
27 verdict of guilty or a conviction following a plea of nolo contendere. Any action that
28 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.”

 7. Section 4300 of the Code states:

 “(a) Every license issued may be suspended or revoked.

 (b) The board shall discipline the holder of any license issued by the
board, whose default has been entered or whose case has been heard by the board and
found guilty, by any of the following methods:

 (1) Suspending judgment.

 (2) Placing him or her upon probation.

1 (3) Suspending his or her right to practice for a period not exceeding one
year.

2 (4) Revoking his or her license.

3 (5) Taking any other action in relation to disciplining him or her as the
4 board in its discretion may deem proper.

5 ...

6 (e) The proceedings under this article shall be conducted in accordance
7 with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the
8 Government Code, and the board shall have all the powers granted therein. The
action shall be final, except that the propriety of the action is subject to review by the
superior court pursuant to Section 1094.5 of the Code of Civil Procedure.”

9 8. Section 4301 of the Code states:

10 “The board shall take action against any holder of a license who is guilty
11 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:

12 ...

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

15 ...

16 (l) The conviction of a crime substantially related to the qualifications,
17 functions, and duties of a licensee under this chapter. The record of conviction of a
18 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
19 States Code regulating controlled substances or of a violation of the statutes of this
20 state regulating controlled substances or dangerous drugs shall be conclusive
21 evidence of unprofessional conduct. In all other cases, the record of conviction shall
22 be conclusive evidence only of the fact that the conviction occurred. The board may
23 inquire into the circumstances surrounding the commission of the crime, in order to
24 fix the degree of discipline or, in the case of a conviction not involving controlled
25 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.

26 ...

27 (o) Violating or attempting to violate, directly or indirectly, or assisting in
28 or abetting the violation of or conspiring to violate any provision or term of this
chapter or of the applicable federal and state laws and regulations governing
pharmacy, including regulations established by the board or by any other state or

federal regulatory agency.

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

9. Section 4311, subdivision (c) of the Code states:

“In addition to any suspension under subdivision (a), the board shall also suspend any license issued by the board, or the holder hereof, if the board determines that the felony conviction of the holder of the license is substantially related to the qualifications, functions, or duties of the licensee.”

10. Section 493 of the Code states:

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

As used in this section, ‘license’ includes ‘certificate,’ ‘permit,’ ‘authority,’ and ‘registration.’

REGULATORY PROVISIONS

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

"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

12. Section 125.3 of the Code states, 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.

CONTROLLED SUBSTANCES

13. Methylenedioxymethamphetamine – [MDMA or Ecstasy] is a Schedule I controlled substance as designated by Health and Safety Code section 11054, subdivision (d)(6).

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Conviction of a Substantially Related Crime)**

3 14. Respondent is subject to disciplinary action under sections 490, 4300, 4301(l),
4 4311(c), and 490 of the Code, in conjunction with California Code of Regulations, title 16,
5 section 1770, on the grounds of unprofessional conduct, in that Respondent was convicted of a
6 crime substantially related to the qualifications, functions or duties of a pharmacy technician, as
7 follows:

- 8 a. On or about June 1, 2011, Respondent was convicted on a plea of nolo contendere of
9 violating Health and Safety Code section 11366 [keeping a place to sell controlled
10 substance], a felony, in the criminal proceeding entitled *The People of the State of*
11 *California v. Armando Lopez* (Super. Ct. San Bernardino County, 2011, No.
12 FSB1101268). The court sentenced Respondent to 120 days in a San Bernardino
13 County Jail facility and placed Respondent on thirty-six (36) months probation, with
14 terms and conditions. Additionally, Respondent was ordered to report to Glen Helen
15 Rehabilitation Center on August 12, 2011.
- 16 b. The circumstances surrounding the conviction are that on or about March 19, 2011,
17 officers of the San Bernardino Police Department arrested Respondent for selling
18 MDMA, or Ecstasy to an undercover police officer at the National Orange Show
19 located in San Bernardino, California.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Violation of a Statute Regulating Controlled Substances/Dangerous Drugs)**

22 15. Respondent is subject to disciplinary action under sections 4300 and 4301(j) of the
23 Code, on the grounds of unprofessional conduct, in that Respondent violated Health and Safety
24 Code section 11366, a statute regulating controlled substances and dangerous drugs. Complainant
25 refers to, and by this reference incorporates the allegations set forth in paragraph 14,
26 subparagraphs (a) and (b), inclusive, and herein incorporated by reference.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Actions Warranting Denial of License)**

3 16. Respondent is subject to disciplinary action under section 4300 and section 4301(p)
4 of the Code in conjunction with section 480 of the Code in that Respondent committed acts which
5 would warrant denial of a license. Complainant refers to, and by this reference incorporates the
6 allegations set forth in paragraph 14, subparagraphs (a) and (b), inclusive, and herein incorporated
7 by reference.

8 **FOURTH CAUSE FOR DISCIPLINE**

9 **(Violation of the Pharmacy Law)**

10 17. Respondent is subject to disciplinary action under sections 4300 and 4301(o) of the
11 Code in the Respondent violated pharmacy laws when he sold MDMA, or Ecstasy to an
12 undercover police officer. Complainant refers to, and by this reference incorporates the
13 allegations set forth in paragraph 14, subparagraphs (a) and (b), inclusive, and herein incorporated
14 by reference.

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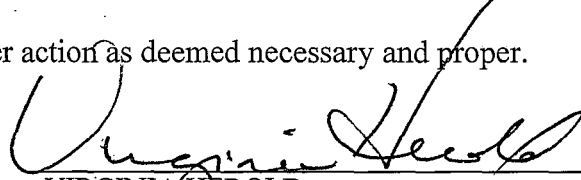
PRAYER

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 License No. TCH 104485, issued to Armando Lopez;
2. Ordering Armando Lopez to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code 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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