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

11  
12 In the Matter of the Accusation Against:

Case No. 4229

13 **MIGUEL PRADO ECKERT**  
14 **4150 41st Street #11**  
**San Diego, CA 92105**  
15 **Pharmacy Technician Registration No.**  
**99796**

**A C C U S A T I O N**

16 Respondent.  
17

18  
19 Complainant alleges:

20 **PARTIES**

21 1. 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. On or about May 19, 2010, the Board of Pharmacy issued Pharmacy Technician  
24 Registration Number 99796 to Miguel Prado Eckert (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 unless otherwise indicated.

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

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

11 **STATUTORY PROVISIONS**

12 6. Section 482 of the Code states:

13 Each board under the provisions of this code shall develop criteria to  
14 evaluate the rehabilitation of a person when:

- 15 (a) Considering the denial of a license by the board under Section 480; or  
16 (b) Considering suspension or revocation of a license under Section 490.

17 Each board shall take into account all competent evidence of rehabilitation  
18 furnished by the applicant or licensee.

19 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or  
20 revoke a license on the ground that the licensee has been convicted of a crime substantially  
21 related to the qualifications, functions, or duties of the business or profession for which the  
22 license was issued.

23 8. Section 493 of the Code states:

24 Notwithstanding any other provision of law, in a proceeding conducted by a  
25 board within the department pursuant to law to deny an application for a license or  
26 to suspend or revoke a license or otherwise take disciplinary action against a  
27 person who holds a license, upon the ground that the applicant or the licensee has  
28 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,

1 and the board may inquire into the circumstances surrounding the commission of  
2 the crime in order to fix the degree of discipline or to determine if the conviction is  
3 substantially related to the qualifications, functions, and duties of the licensee in  
4 question.

5 As used in this section, "license" includes "certificate," "permit,"  
6 "authority," and "registration."

7 9. Section 4060 of the Code states:

8 No person shall possess any controlled substance, except that furnished to a  
9 person upon the prescription of a physician, dentist, podiatrist, optometrist,  
10 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished  
11 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section  
12 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant  
13 pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a  
14 pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv)  
15 of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This  
16 section shall not apply to the possession of any controlled substance by a  
17 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,  
18 optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse  
19 practitioner, or physician assistant, when in stock in containers correctly labeled  
20 with the name and address of the supplier or producer.

21 Nothing in this section authorizes a certified nurse-midwife, a nurse  
22 practitioner, a physician assistant, or a naturopathic doctor, to order his or her own  
23 stock of dangerous drugs and devices.

24 10. Section 4301 of the Code states:

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

.....

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

.....

(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

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

13 .....

### 14 REGULATORY PROVISIONS

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

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

23 12. California Code of Regulations, title 16, section 1769, states:

24 .....

25 (b) When considering the suspension or revocation of a facility or a  
26 personal license on the ground that the licensee or the registrant has been  
27 convicted of a crime, the board, in evaluating the rehabilitation of such person and  
28 his present eligibility for a license will consider the following criteria:

- 29 (1) Nature and severity of the act(s) or offense(s).
- 30 (2) Total criminal record.
- 31 (3) The time that has elapsed since commission of the act(s) or offense(s).
- 32 (4) Whether the licensee has complied with all terms of parole, probation,  
33 restitution or any other sanctions lawfully imposed against the licensee.
- 34 (5) Evidence, if any, of rehabilitation submitted by the licensee.

1 **COST RECOVERY**

2 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request  
3 the administrative law judge to direct a licensee found to have committed a violation or  
4 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
5 and enforcement of the case.

6 **DRUG**

7 14. Cocaine is a Schedule II controlled substance as designated by Health and Safety  
8 Code section 11055(b)(6), and is a dangerous drug pursuant to Business & Professions Code  
9 section 4022.

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

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(July 21, 2011 Conviction for Importation of a Controlled Substance on June 8, 2011)**

15 16. Respondent is subject to disciplinary action under sections 490 and 4301(1) of the  
16 Code in that he was convicted of crimes that are substantially related to the qualifications, duties,  
17 and functions of a pharmacy technician. The circumstances are as follows:

18 a. On or about July 21, 2011, in a criminal proceeding entitled *United States of*  
19 *America v. Miguel Prado Eckert*, in the United States District Court, Southern District of  
20 California, case number 11CR2856-IEG, Respondent was convicted on his plea of guilty for  
21 violation of Title 21, United States Code, Sections 952 and 960, knowingly and intentionally  
22 importing 2.26 kilograms of cocaine, a Schedule II Controlled Substance, into the United States  
23 from a place outside thereof.

24 b. The facts that led to the convictions are that on or about June 8, 2011, at  
25 approximately 2054 hours, Respondent and his male passenger sought admission from the  
26 Republic of Mexico into the United States at the San Ysidro Port of Entry. Respondent was the  
27 driver of the vehicle. Respondent provided the Customs & Border Protection Officer (CBPO)  
28 with a valid I-551 card bearing his name and photo. During the inspection, the CBPO noticed

1 that Respondent was avoiding eye contact. The vehicle was then referred to the secondary lot for  
2 further inspection. A CBPO conducted a pat down of Respondent and felt hard items on each of  
3 the sides of his stomach. The hard items were packages taped on each side of Respondent's  
4 stomach. A presumptive test of the contents of both packages revealed a positive reaction to the  
5 presence of cocaine. A total of two packages weighing 2.26 kilograms were removed from  
6 Respondent. A pat down of Respondent's passenger also revealed packages taped on each side of  
7 the passenger's stomach. A presumptive test of the contents of both packages that were taped to  
8 the passenger's stomach revealed a positive reaction to the presence of methamphetamine and  
9 weighed a total of 1.22 kilograms. Both Respondent and his passenger admitted knowledge of  
10 transporting the narcotics that were taped to their stomachs.

11 c. As a result of his conviction, on or about November 1, 2011, Respondent was  
12 sentenced to four years of supervised release, required to submit to random drug testing as  
13 determined by the court, and ordered not to enter or reside in the Republic of Mexico without  
14 written permission from the court or probation officer.

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Unprofessional Conduct- Violating State Laws Regulating Controlled Substances)**

17 17. Respondent is subject to disciplinary action for unprofessional conduct under section  
18 4301(j) of the Code in that on or about June 8, 2011, Respondent illegally possessed and imported  
19 a controlled substance into California in violation of Code section 4060 and Title 21, United  
20 States Code, Sections 952 and 960, as set forth above in paragraph 16, incorporated herein by  
21 reference.

22 **PRAYER**

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

25 1. Revoking or suspending Pharmacy Technician Registration Number 99796, issued to  
26 Miguel Prado Eckert;

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2. Ordering Miguel Prado Eckert 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: 6/11/12



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

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