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

11 In the Matter of the Accusation Against:  
12 **ARNULFO GABRIEL BARRAGAN**  
13 1385 Orchid Drive  
San Bernardino, CA 92404  
14 Pharmacy Technician Registration  
No. TCH 101481  
15 Respondent.

Case No. 4319  
**A C C U S A T I O N**

16  
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 April 28, 2010, the Board of Pharmacy issued Pharmacy Technician  
22 Registration No. TCH 101481 to Arnulfo Gabriel Barragan (Respondent). The Pharmacy  
23 Technician Registration was in full force and effect at all times relevant to the charges brought  
24 herein and will expire on April 30, 2014, unless renewed.

25 **JURISDICTION**

- 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 4011 of the Code provides:

2 "The board shall administer and enforce this chapter [Pharmacy Law, (Business and  
3 Professions Code, Sec 4000 et esq.)] and the Uniform Controlled Substances Act (Division 10  
4 commencing with Section 11000) of the Health and Safety Code."

5 5. Section 4300 of the Code permits the Board to take disciplinary action to suspend or  
6 revoke a license issued by the Board.

7 6. Section 4300.1 of the Code states, "the expiration, cancellation, forfeiture, or  
8 suspension of a board-issued license by operation of law or by order or decision of the board or a  
9 court of law, the placement of a license on a retired status, or the voluntary surrender of a license  
10 by a licensee shall not deprive the board of jurisdiction to commence or proceed with any  
11 investigation of, or action or disciplinary proceeding against, the licensee or to render a decision  
12 suspending or revoking the license."

13 **STATUTORY PROVISIONS**

14 7. Section 490 of the Code states, in pertinent part:

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

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

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

1           8.    Section 493 of the Code states:

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

12           As used in this section, “license” includes “certificate,” “permit,” “authority,” and  
13 “registration.”

14           9.    Section 4301 of the Code states, in pertinent part:

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

18                    ...

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

22                    ...

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

25                    ...

26                    “(l) The conviction of a crime substantially related to the qualifications, functions, and  
27 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
28 (commencing with Section 801) of Title 21 of the United States Code regulating controlled

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

15 ....

16 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
17 violation of or conspiring to violate any provision or term of this chapter or of the applicable  
18 federal and state laws and regulations governing pharmacy, including regulations established by  
19 the board or by any other state or federal regulatory agency."

20 10. Section 4022 of the Code states:

21 "Dangerous drug" or "dangerous device" means any drug or device unsafe for  
22 self-use in humans or animals, and includes the following:

23 (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing  
24 without prescription," "Rx only," or words of similar import.

25 (b) Any device that bears the statement: "Caution: federal law restricts this  
26 device to sale by or on the order of a \_\_\_\_\_," "Rx only," or words of similar  
27 import, the blank to be filled in with the designation of the practitioner licensed to use  
28 or order use of the device.

1 (c) Any other drug or device that by federal or state law can be lawfully  
2 dispensed only on prescription or furnished pursuant to Section 4006.

3 **REGULATORY PROVISION**

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

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

11 **COST RECOVERY**

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

16 **CONTROLLED SUBSTANCE**

17 13. "Methamphetamine," is a Schedule II controlled substance, as designated by Health  
18 and Safety Code section 11055, subdivision (d)(2), and is categorized as a dangerous drug,  
19 pursuant to section 4022 of the Code.

20 **FIRST CAUSE FOR DISCIPLINE**

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

22 14. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and  
23 490 of the Code, in conjunction with California Code of Regulations, title 16, section 1770 for  
24 unprofessional conduct in that Respondent was convicted of a crime substantially related to the  
25 qualifications, functions or duties of a pharmacy technician.

26 a. On or about October 25, 2011, after pleading guilty, Respondent was convicted of  
27 violating Title 21, United States Code sections 952 and 960, a felony [importation of a controlled  
28 substance] and violating Title 21, United States Code section 843, subdivision (b), a felony [use

1 of communication facility] in the criminal proceeding entitled *United States of America v. Arnulfo*  
2 *Gabriel Barragan* (Dist. Ct. San Diego County, 2011, No. 3:11cr4493). The Court sentenced  
3 Respondent to serve 37 months in prison and 500 hours in a drug treatment program.

4 b. The circumstances surrounding the conviction are that on or about September 8,  
5 2011, Respondent, knowingly and intentionally used a communication facility, namely a  
6 telephone, in committing, and in causing and facilitating the commission of a controlled  
7 substance offense, that is, importation of approximately 2.58 kilograms (5.67 pounds) of  
8 methamphetamine, a Schedule II Controlled Substance, into the United States from Calexico,  
9 California.

10 **SECOND CAUSE FOR DISCIPLINE**

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

12 15. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and  
13 490 of the Code, in conjunction with California Code of Regulations, title 16, section 1770 for  
14 unprofessional conduct in that Respondent was convicted of a crime substantially related to the  
15 qualifications, functions or duties of a pharmacy technician.

16 a. On or about June 16, 2011, after pleading guilty, Respondent was convicted of one  
17 misdemeanor count of violating Penal Code section 484 [petty theft] in the criminal proceeding  
18 entitled *The People of the State of California v. Arnulfo Gabriel Barragan* (Super. Ct. San  
19 Bernardino County, 2011, No. MWV1101963). The Court ordered pronouncement of Judgment  
20 withheld and conditional and a revocable release was granted for a period of 36 months, with  
21 terms and conditions.

22 b. The circumstances surrounding the conviction are that on or about April 18, 2011,  
23 Respondent entered Hennes & Mauritz, a retail store inside the Ontario Mills Mall, in Ontario  
24 CA. Respondent selected several items of merchandise, removed the hangers, concealed the  
25 merchandise in a cart with a child's blanket, and walked out of the store without paying for the  
26 merchandise.

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**THIRD CAUSE FOR DISCIPLINE**

**(Acts Involving Dishonesty, Fraud or Deceit)**

16. Respondent is subject to disciplinary action under section 4301, subdivision (f) for unprofessional conduct in that Respondent committed acts involving dishonesty, fraud, or deceit. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 14 through 15, as though set forth fully.

**FOURTH CAUSE FOR DISCIPLINE**

**(Violation of United States Statutes Regulating Controlled Substances)**

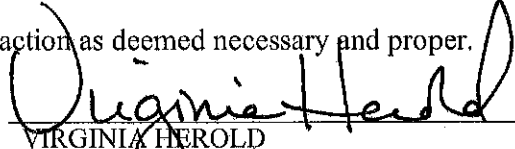
17. Respondent is subject to disciplinary action under section 4301, subdivisions (j) and (o), in that Respondent was convicted of violating Title 21, United States Code sections 952 and 960, a felony [importation of a controlled substance]. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 14, subparagraphs (a) and (b), as though set forth fully.

**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 No. TCH 101481, issued to Arnulfo Gabriel Barragan;
2. Ordering Arnulfo Gabriel Barragan to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3 of the Code;
3. Taking such other and further action as deemed necessary and proper.

DATED: 11/4/13

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

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9/24/13