

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 State Bar No. 101336  
AMANDA DODDS  
4 Senior Legal Analyst  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2141  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

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. 4479

13 **MELISSA DENISE MANES**  
14 **8628 Big Rock Road**  
**Santee, CA 92071**

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

15 **Pharmacy Technician Registration No.**  
16 **TCH 100206**

17 Respondent.

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 October 19, 2010, the Board of Pharmacy issued Pharmacy Technician  
24 Registration Number TCH 100206 to Melissa Denise Manes (Respondent). The Pharmacy  
25 Technician Registration was in full force and effect at all times relevant to the charges brought  
26 herein and will expire on January 31, 2014, 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 118, subdivision (b), of the Code provides that the suspension, expiration,  
6 surrender, or 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 evaluate  
14 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 492 of the Code states:

24 Notwithstanding any other provision of law, successful completion of any  
25 diversion program under the Penal Code, or successful completion of an alcohol and  
26 drug problem assessment program under Article 5 (commencing with section  
27 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any  
28 agency established under Division 2 ([Healing Arts] commencing with Section 500)  
of this code, or any initiative act referred to in that division, from taking disciplinary  
action against a licensee or from denying a license for professional misconduct,  
notwithstanding that evidence of that misconduct may be recorded in a record  
pertaining to an arrest.

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1 This section shall not be construed to apply to any drug diversion program  
2 operated by any agency established under Division 2 (commencing with Section 500)  
of this code, or any initiative act referred to in that division.

3 9. Section 493 of the Code states:

4 Notwithstanding any other provision of law, in a proceeding conducted by a  
5 board within the department pursuant to law to deny an application for a license or to  
6 suspend or revoke a license or otherwise take disciplinary action against a person who  
7 holds a license, upon the ground that the applicant or the licensee has been convicted  
8 of a crime substantially related to the qualifications, functions, and duties of the  
9 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.

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

11 10. Section 4022 of the Code states

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

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

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

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

19 11. Section 4301 of the Code states:

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

23 . . . .

24 (h) The administering to oneself, of any controlled substance, or the use of any  
25 dangerous drug or of alcoholic beverages to the extent or in a manner as to be  
26 dangerous or injurious to oneself, to a person holding a license under this chapter, or  
to any other person or to the public, or to the extent that the use impairs the ability of  
the person to conduct with safety to the public the practice authorized by the license.

27 . . . .

28 (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. . . .

1 **REGULATORY PROVISIONS**

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

3 For the purpose of denial, suspension, or revocation of a personal or facility  
4 license pursuant to Division 1.5 (commencing with Section 475) of the Business and  
5 Professions Code, a crime or act shall be considered substantially related to the  
6 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.

7 **COST RECOVERY**

8 13. 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 **DRUGS**

13 14. Methamphetamine is a Schedule II controlled substance pursuant to Health and  
14 Safety Code section 11055, subdivision (d)(2), and a dangerous drug pursuant to Business and  
15 Professions Code section 4022.

16 15. Heroin is a Schedule I controlled substance pursuant to Health and Safety Code  
17 section 11054, subdivision (c)(11), and a dangerous drug pursuant to Business and Professions  
18 Code section 4022.

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(Under the Influence of Controlled Substances on December 9, 2011)**

21 16. Respondent has subjected her registration to discipline under section 4301,  
22 subdivision (h) of the Code for unprofessional conduct in that she was under the influence of the  
23 controlled substances methamphetamine and heroin on December 9, 2011. The circumstances are  
24 as follows:

25 a. On or about the evening of December 9, 2011, deputies from the San Diego  
26 County Sheriff's Department were dispatched to assist in a contact with Respondent and her male  
27 companion (QH). During a search of QH's truck, the deputies found heroin, methamphetamine,  
28 syringes, controlled substance smoking devices, and other drug-related paraphernalia.

1 Respondent had the objective symptoms of being under the influence of a controlled substance;  
2 her pupils were pinpoint and her eyes were bloodshot, she spoke in a rapid manner, and her  
3 demeanor was excited. Respondent eventually admitted to the deputy that she had smoked  
4 methamphetamine earlier in the day. Respondent was arrested for being under the influence of a  
5 controlled substance. During booking, a blood sample was drawn from Respondent which  
6 subsequently tested positive for methamphetamine/amphetamines and opiates.

7 b. As a result of the arrest, on or about February 7, 2012, in a criminal proceeding  
8 entitled *People of the State of California vs. Melissa Denise Manes*, in San Diego County  
9 Superior Court, case number M143472, Respondent pled guilty to violating Health and Safety  
10 Code section 11550, subdivision (a), under the influence of a controlled substance, a  
11 misdemeanor.

12 c. As a result of the plea, on or about February 7, 2012, Respondent entered into  
13 an Agreement for Deferred Entry of Judgment for 18 months. Respondent is required to attend  
14 self-help meetings, submit to drug tests, remain law abiding, and to complete the County of San  
15 Diego PC 1000 program. The final review hearing is set for August 2, 2013.

## 16 **SECOND CAUSE FOR DISCIPLINE**

### 17 **(Violation of State Laws Regulating Controlled Substances)**

18 17. Respondent has subjected her registration to disciplinary action under section 4301,  
19 subdivision (j) of the Code for unprofessional conduct in that on or about December 9, 2011, as  
20 detailed in paragraph 16, above, Respondent was under the influence of illegal controlled  
21 substances which violated Health and Safety Code section 11550, subdivision (a).

## 22 **DISCIPLINARY CONSIDERATIONS**

23 18. To determine the degree of discipline, if any, to be imposed on Respondent, pursuant  
24 to California Code of Regulations, title 16, section 1769, Complainant alleges:

25 a. On or about June 30, 2008, Respondent was arrested for drug-related crimes.  
26 On July 7, 2008, in a criminal proceeding entitled *People of the State of California vs. Melissa*  
27 *Denise Manes*, in San Diego County Superior Court, case number CD214556, a complaint was  
28 filed charging Respondent with violating Health and Safety Code section 11378, possession of

1 methamphetamine for sale; and Health and Safety Code section 11366, maintaining a place for  
2 the purpose of unlawfully selling/giving away/using a controlled substance, felonies.

3 b. As a result of the complaint, on or about August 26, 2008, Respondent entered  
4 a plea of guilty to both counts and was referred to Drug Court. On September 16, 2008, the Drug  
5 Court deferred its entry of judgment pursuant to Penal Code section 1000. Respondent was  
6 placed on formal probation for three years, and ordered to complete a drug treatment program.  
7 Respondent was admonished that failure to complete the treatment program could result in a two-  
8 year prison sentence. Respondent was further ordered to submit to drug testing, submit to a  
9 Fourth Amendment waiver, and to comply with probation terms.

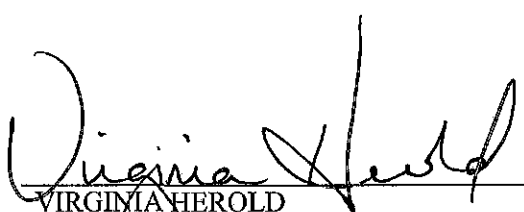
10 c. On or about June 22, 2010, following Respondent's successful completion of  
11 Drug Court, Respondent was permitted to withdraw her plea of guilty, and the case was  
12 dismissed.

13 **PRAYER**

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

- 16 1. Revoking or suspending Pharmacy Technician Registration Number TCH 100206,  
17 issued to Melissa Denise Manes;
- 18 2. Ordering Melissa Denise Manes to pay the Board of Pharmacy the reasonable costs of  
19 the investigation and enforcement of this case, pursuant to Business and Professions Code section  
20 125.3;
- 21 3. Taking such other and further action as deemed necessary and proper.
- 22

23  
24 DATED: 3/1/13

25   
26 VIRGINIA HEROLD  
27 Executive Officer  
28 Board of Pharmacy  
Department of Consumer Affairs  
State of California  
Complainant

SD2012704443