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

11 In the Matter of the Accusation Against:

Case No. 4521

12 **JESSICA GUERRERO**
3132 Marigum Street
13 Baldwin Park, CA 91706

A C C U S A T I O N

14 Pharmacy Technician Registration
15 No. TCH 95640

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

22 2. On or about November 9, 2009, the Board of Pharmacy (Board) issued Pharmacy
23 Technician Registration No. TCH 95640 to Jessica Guerrero (Respondent). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought
25 herein and will expire on July 31, 2015, unless renewed.

26 **JURISDICTION**

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

1 **STATUTORY PROVISIONS**

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

5 5. Section 490 states, in pertinent part:

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

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

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

20 6. Section 4060 of the Code states:

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

1 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
2 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
3 labeled with the name and address of the supplier or producer."

4 7. Section 4300 provides, in pertinent part, that every license issued by the Board is
5 subject to discipline, including suspension or revocation.

6 8. Section 4301 states, in pertinent part:

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

10

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

16

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

19

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

24 **REGULATORY PROVISIONS**

25 9. California Code of Regulations, title 16, section 1770, states, in pertinent part:

26 "For the purpose of denial, suspension, or revocation of a personal or facility license
27 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
28 crime or act shall be considered substantially related to the qualifications, functions or duties of a

1 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
2 licensee or registrant to perform the functions authorized by his license or registration in a manner
3 consistent with the public health, safety, or welfare."

4 **COST RECOVERY**

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

9 11. **CONTROLLED SUBSTANCES**

10 a. "Diazepam," is a Schedule IV controlled substance as designated by Health and
11 Safety Code section 11057, subdivisions (d)(9) and is categorized as a dangerous drug pursuant to
12 section 4022.

13 b. "Methamphetamine," is a Schedule II controlled substance as designated by Health
14 and Safety Code section 11055, subdivision (d)(2) and is categorized as a dangerous drug
15 pursuant to section 4022.

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(Possession of a Controlled Substance)**

18 12. Respondent is subject to disciplinary action under section 4301, subdivision (j) and
19 (o), for violating section 4060, on the grounds of unprofessional conduct, in that Respondent was
20 found to be in possession of a controlled substance. On or about June 24, 2012, during an
21 investigation of a possible drunk driving vehicle, by the Los Angeles County Sheriff's
22 Department, Respondent was contacted. When asked if she had been drinking, using narcotics,
23 and/or if she used prescription medication, Respondent stated, "No." During a search of
24 Respondent's vehicle, the officer found a glass pipe, commonly used to smoke Methamphetamine
25 and a glass vial containing Methamphetamine in a wallet on the passenger seat. The officer also
26 found a prescription pill bottle containing Diazepam on the floorboard of the vehicle. When
27 asked if she used Methamphetamine, Respondent stated, "Yeah, I do, but not much cause it's too
28 expensive." Respondent was subsequently arrested for violating Health and Safety Code section

1 11377, subdivision (a) [possession of a controlled substance] and Health and Safety Code section
2 11364.1, subdivision (a) [possession of controlled substance paraphernalia].

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Use/Under the Influence of a Controlled Substance)**

5 13. Respondent is subject to disciplinary action under section 4301, subdivision (h) and
6 (j) on the grounds of unprofessional conduct, in that on or about June 24, 2012, Respondent, by
7 her own admission, used and/or was under the influence of a controlled substance. Complainant
8 refers to, and by this reference incorporates, the allegations set forth above in paragraph 12, as
9 though set forth fully.

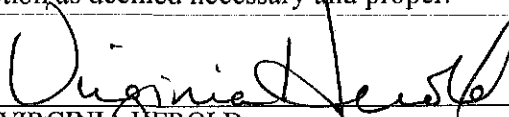
10 **PRAYER**

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

- 13 1. Revoking or suspending Pharmacy Technician Registration No. TCH 95640, issued
14 to Jessica Guerrero;
- 15 2. Ordering Jessica Guerrero to pay the Board the reasonable costs of the investigation
16 and enforcement of this case, pursuant to section 125.3; and
- 17 3. Taking such other and further action as deemed necessary and proper.

18 DATED: _____

19 5/3/14

20 

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

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