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ľ	BEFORE THE BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS	
10	STATE OF CONSUMER AFFAIRS STATE OF CALIFORNIA	
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12	In the Matter of the Accusation Against:	Case No. 4737
13 14	SHANNON CALIVA 25245 Morning Dove Way Moreno Valley, CA 92551	ACCUSATION
15 16	Pharmacy Technician Registration No. TCH 24468	
17	Respondent.	
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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 November 26, 1997, the Board of Pharmacy issued Pharmacy Technician	
24	Registration Number TCH 24468 to Shannon Caliva (Respondent). Respondent is also known as	
25	Shannon Dawn Caliva, Shannon Dawn Nickers, and Shannon Dawn Nickels (Respondent). The	
26	Pharmacy Technician Registration was in full force and effect at all times relevant to the charges	
27	brought herein. The Pharmacy Technician Registration expired on January 31, 2013, and was	
28	cancelled.	
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#### /JURISDICTION

- 3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.
- 4. Section 4300, subdivision (a) of the Code states "Every license issued may be suspended or revoked."

### 5. Section 4300.1 of the Code states:

The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.

#### STATUTORY PROVISIONS

#### 6. Section 492 of the Code states:

Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any 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.

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

#### 7. Section 4022 of the Code states

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

- (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.
- (b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a \_\_\_\_\_\_," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.
- (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.

- 8. Section 4059 of the Code states, in pertinent part, that a person may not furnish any dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.
- 9. Section 4060 of the Code states, in pertinent part, that no person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor.
  - 10. Section 4301 of the Code states:

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

- (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.
- (h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be 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.
- (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.

## 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.

### COSTS

12. Section 125.3 of the Code provides, 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, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

#### DRUG

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

## FIRST CAUSE FOR DISCIPLINE

## (Possession of Methamphetamine on January 21, 2012)

- 14. Respondent has subjected her registration to discipline under section 4301, subdivision (j) of the Code in that she violated California statutes regulating controlled substances when she possessed methamphetamine on January 21, 2012. The circumstances are as follows:
- a. On or about the afternoon of January 21, 2012, a patrol officer with the Hemet Police Department observed a vehicle engaged in suspicious activity that appeared to be drug-related. After seeing the police officer, the vehicle drove away and made an illegal lane change in front of the officer. After conducting a traffic stop, the officer made contact with Respondent, who was driving. Also in the vehicle were two adult passengers, and Respondent's two seven-year-old children. Respondent denied having anything illegal on her person, in her car, or in her purse, and gave verbal consent to search all three. Inside Respondent's purse, concealed in a bandana, the officer found a glass methamphetamine pipe lined with a useable amount of what subsequently tested positive for methamphetamine. All three adults were arrested on drug charges; the two children were retrieved by Child Protective Services.
- b. As a result of the arrest, on or about March 27, 2012, in a criminal proceeding entitled *People of the State of California v. Shannon Dawn Caliva, aka Shannon Dawn Nickels*, in

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Riverside County Superior Court, case number SWF1200277, Respondent pled guilty to violating Health and Safety Code section 11377, subdivision (a), possession of a controlled substance, to wit, methamphetamine, a felony reduced to a misdemeanor pursuant to Penal Code section 17b. Respondent also pled guilty to violating Health and Safety Code section 11364, possession of a device used for unlawfully injecting and smoking a controlled substance, a misdemeanor.

c. As a result of the plea, on or about March 27, 2012, the court deferred entry of judgment for 18 months and Respondent was ordered to enroll in and complete a drug diversion program pursuant to Penal Code section 1000.

## SECOND CAUSE FOR DISCIPLINE

## (Under the Influence of Methamphetamine on March 27, 2012)

- 15. Respondent has subjected her registration to discipline under section 4301, subdivision (h) of the Code in that she used methamphetamine to the extent or in a manner to be dangerous to herself and others on March 27, 2012. The circumstances are as follows:
- On or about the afternoon of March 27, 2012, the same day Respondent pled a. guilty to drug charges in case number SWF1200277, described in paragraph 14, above, a deputy with the Riverside County Sheriff's Drug Endangered Children Team (DEC), along with a county investigator and social worker, responded to a Hemet residence regarding a CPS referral with allegations that Respondent was caring for her children while under the influence of methamphetamine. Upon arrival, the team met with Respondent's parents who were caring for the children. While speaking to the parents, Respondent arrived home. Respondent exhibited symptoms of being under the influence of a central nervous system stimulant. Respondent told the social worker that she had last used methamphetamine a few days prior (on Sunday, March 25). Respondent provided a urine sample which subsequently tested positive for amphetamines. During questioning, Respondent told the deputy that she had been using methamphetamine from October 2010 until February 2012, but claimed she stopped using two days prior. Respondent told the deputy that she smoked methamphetamine, but she never smoked in the home, or around the children. Respondent admitted that she cared for her children the previous Sunday after smoking methamphetamine. She also admitted that she drove the children to and from school on

Monday while still under the influence of methamphetamine. Believing Respondent was placing her children in danger, the deputy arrested Respondent for child endangerment and being under the influence of methamphetamine.

- b. As a result of the arrest, on or about March 27, 2013, in a criminal proceeding entitled *People of the State of California v. Shannon Dawn Caliva, aka Shannon Sawn Nickers, aka Shannon Dawn Nickels,* in Riverside County Superior Court, case number SWF1200275, a complaint was filed charging Respondent with violating Penal Code section 273a, subdivision (b), child endangerment; and Health and Safety Code section 11550, subdivision (a), under the influence of a controlled substance, misdemeanors.
- c. After failing to appear at her April 11, 2013 arraignment, a bench warrant was issued. Respondent appeared at a hearing on June 14, 2013, and the court granted her motion for a continuance. Respondent was released on her own recognizance, but failed to appear at a hearing on July 22, 2013. A bench warrant was issued for Respondent's arrest.

# THIRD CAUSE FOR DISCIPLINE

# (Violation of California Statutes Regulating Controlled Substances)

16. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the Code for unprofessional conduct in that on or about March 27, 2012, Respondent knowingly violated Business and Professions Code sections 4022 and 4059, and Health and Safety Code section 11550, subdivision (a), as detailed in paragraph 15, above, when Respondent furnished to herself and used the controlled substance methamphetamine.

## FOURTH CAUSE FOR DISCIPLINE

# (Commission of Acts Involving Dishonesty, Fraud, Deceit on January 11, 2012)

- 17. Respondent is subject to disciplinary action under section 4301, subdivision (f) of the Code for unprofessional conduct in that she committed acts involving dishonesty, fraud and deceit on January 11, 2012. The circumstances are as follows:
- a. On the afternoon of January 11, 2012, an officer with the Hemet Police

  Department responded to a WalMart store in reference to two women who had been detained for shoplifting. The store's Loss Prevention Officer stated that he observed Respondent and her

friend behaving suspiciously. Both women were observed selecting various items of clothing and concealing the merchandise in their handbags. The women exited the store without paying for the merchandise concealed in their handbags. Respondent and her friend were intercepted outside of the store and detained. Respondent told the Hemet Police Officer that while in the store, she saw several items that she needed because she was having a hard time financially. She put the merchandise in her purse because she thought she could get away with stealing the items. Respondent denied entering the WalMart with the intent to commit theft, however, when she was searched, she did not have any money or access cards in her possession.

b. As a result of the arrest, on or about March 1, 2012, in a criminal proceeding entitled *People of the State of California v. Shannon Dawn Caliva, aka Shannon Sawn Nickers, aka Shannon Dawn Nickels,* in Riverside County Superior Court, case number SWM1200675, the court amended the charge of violating Penal Code section 490.5, theft of personal property or merchandise of a value not exceeding four hundred dollars, from a misdemeanor to an infraction. Respondent pled guilty to the amended charge, and she was ordered to pay fees and fines.

### FIFTH CAUSE FOR DISCIPLINE

# (Commission of Acts Involving Dishonesty, Fraud, Deceit on October 23, 2012)

- 18. Respondent is subject to disciplinary action under section 4301, subdivision (f) of the Code for unprofessional conduct in that she committed acts involving dishonesty, fraud and deceit on October 23, 2012. The circumstances are as follows:
- a. On the evening of October 23, 2012, an officer with the Hemet Police

  Department responded to a WalMart store in reference to Respondent who had been detained for shoplifting. The store's Loss Prevention Officer stated that he observed Respondent in the store acting suspiciously and trying to avoid store employees. Under surveillance, Respondent was observed placing merchandise on top of her purse which was in a shopping cart. As Respondent walked through various departments, she concealed items in her purse. Respondent left the shopping cart inside the store and exited without paying for the merchandise she had concealed in her purse. Respondent was intercepted outside of the store and detained. Respondent told the Hemet Police Officer that she had been trying on items of clothing when she noticed her wallet

was missing. She sent a friend to her house to retrieve her wallet. While waiting for her friend's return, she decided to conceal merchandise in her purse.

b. As a result of the arrest, on or about December 4, 2012, in a criminal proceeding entitled People of the State of California v. Shannon Dawn Caliva, aka Shannon Sawn Nickers, aka Shannon Dawn Nickels, in Riverside County Superior Court, case number SWM1207797, a complaint was filed charging Respondent with violating Penal Code section 488, theft. Respondent failed to appear at her arraignment on December 12, 2012 and a bench warrant was issued for her arrest. Respondent appeared at a hearing on June 14, 2013, and the court granted her motion for a continuance. Respondent was released on her own recognizance, but failed to appear at a hearing on July 22, 2013. A bench warrant was issued for Respondent's arrest.

### PRAYER

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

- 1. Revoking or suspending Pharmacy Technician Registration Number TCH 24468, issued to Shannon Caliva;
- Ordering Shannon Caliva to pay the Board of Pharmacy the reasonable costs of the 2. 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.

Board of Pharmacy Department of Consumer Affairs State of California Complainant

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