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

12 In the Matter of the Accusation Against:

Case No. 4769

13 **ORLANDO HERNANDEZ**

A C C U S A T I O N

14 10712 Crockett Street
Sun Valley, CA 91352

15 Pharmacy Technician Registration
No. TCH 97566

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 March 3, 2010, the Board of Pharmacy (Board) issued Pharmacy
23 Technician Registration No. TCH 97566 to Orlando Hernandez (Respondent). The Pharmacy
24 Technician Registration expired on July 31, 2011, and has not been 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 unless otherwise indicated.

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STATUTORY PROVISIONS

4. Section 490 states, in pertinent part:

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

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

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

5. Section 492 states, in pertinent part:

"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."

6. Section 4060 of the Code provides 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 other authorized prescriber.

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

3 8. Section 4300.1 states:

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

9 9. Section 4301 states, in pertinent part:

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

13

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

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

22

23 "(l) The conviction of a crime substantially related to the qualifications, functions, and
24 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
25 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
26 substances or of a violation of the statutes of this state regulating controlled substances or
27 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
28 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

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

12 REGULATORY PROVISIONS

13 10. California Code of Regulations, title 16, section 1770 states, in pertinent part:
14 "For the purpose of denial, suspension, or revocation of a personal or facility license
15 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
16 crime or act shall be considered substantially related to the qualifications, functions or duties of a
17 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
18 licensee or registrant to perform the functions authorized by his license or registration in a manner
19 consistent with the public health, safety, or welfare."

20 COST RECOVERY

21 11. Section 125.3 states, in pertinent part, that the Board may request the administrative
22 law judge to direct a licentiate found to have committed a violation or violations of the licensing
23 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
24 case.

25 CONTROLLED SUBSTANCE

26 12. "Methamphetamine," is a Schedule II controlled substance as designated by the
27 Health and Safety Code section 11055, subdivision (d)(2) and is a stimulant having effect on the
28 central nervous system.

1 **FIRST CAUSE FOR DISCIPLINE**

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

3 13. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and
4 490, in conjunction with California Code of Regulations, title 16, section 1770, in that
5 Respondent has been convicted of a crime substantially related to the qualifications, functions or
6 duties of a pharmacy technician, as follows:

7 a. On or about May 23, 2011, pursuant to a plea agreement, Respondent was convicted
8 of one misdemeanor count of violating Health and Safety Code section 11377, subdivision (a)
9 [possession of a controlled substance- Methamphetamine] in the criminal case entitled *The*
10 *People of the State of California v. Orlando Hernandez* (Super. Ct. L.A. County, 2010, No.
11 1GN01493). The Court deferred pronouncement of sentence for 18 months pending
12 Respondent's completion of a drug diversion program. On November 26, 2012, Respondent
13 failed to appear, and the Court terminated the Respondent's Deferred Entry Judgment and
14 reinstated the criminal proceedings.

15 b. The circumstances surrounding the conviction are that on or about April 16, 2011,
16 while on routine patrol, Fontana Police Department officer(s) observed Respondent sitting in a
17 parked car, and contacted him. While speaking to Respondent, the officer observed him to be
18 lethargic, slow in answering the officer's questions, and had red eyes. Respondent admitted that
19 he used Methamphetamine about a month ago. Respondent's hands were shaking and he
20 appeared to be nervous. When asked if he had anything illegal on his person, Respondent pointed
21 to his front left pants pocket and stated, "Yes. I have a meth pipe." When asked if he had
22 anything else on his person or in his vehicle, Respondent stated, "Yes. I have two baggies with
23 meth right here." He pointed to his front right pants pocket. Respondent admitted that the
24 Methamphetamine pipe and the two baggies containing Methamphetamine were for his own
25 personal use.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Obtained or Possessed a Controlled Substance)**

3 14. Respondent is subject to disciplinary action under section 4301, subdivision (j) as
4 defined in section 4060, in that on or about April 16, 2011, Respondent obtained or possessed a
5 controlled substance. Complainant refers to, and by this reference incorporates, the allegations
6 set forth above in paragraph 13 and all subparagraphs, as though set forth fully.

7 **THIRD CAUSE FOR DISCIPLINE**

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

9 15. Respondent is subject to disciplinary action under section 4301, subdivision (h), in
10 that on or about April 16, 2011, Respondent, by his own admission, admitted that he used
11 Methamphetamine about a month ago and that the Methamphetamine pipe and two baggies were
12 for his own personal use. Complainant refers to, and by this reference incorporates, the
13 allegations set forth above in paragraph 13 and all subparagraphs, as though set forth fully.

14 **PRAYER**

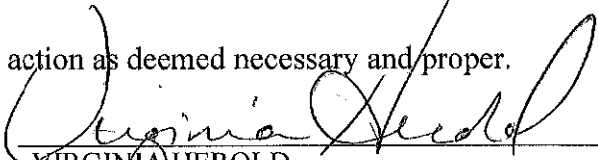
15 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
16 and that following the hearing, the Board of Pharmacy issue a decision:

17 1. Revoking or suspending Pharmacy Technician Registration No. TCH 97566, issued
18 to Orlando Hernandez;

19 2. Ordering Orlando Hernandez to pay the Board of Pharmacy the reasonable costs of
20 the investigation and enforcement of this case, pursuant to Business and Professions Code section
21 125.3; and

22 3. Taking such other and further action as deemed necessary and proper.

23 DATED: 7/14/14



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

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