KAMALA D. HARRIS
Attorney General of California
DIANN SOKOLOFF
Supervising Deputy Attorney General
TIMOTHY J. MCDONOUGH
Deputy Attorney General
State Bar No. 235850
1515 Clay Street, 20th Floor
P.O. Box 70550
Oakland, CA 94612-0550
Telephone: (510) 622-2134
Facsimile: (510) 622-2270
E-mail: Tim.McDonough@doj.ca.gov
Attorneys for Complainant

BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **FRANCISCO ANDRES BERLANGA** **8 Porter Drive, #1** **Royal Oaks, CA 95076** **Pharmacy Technician Registration No. TCH 112451** Respondent.	Case No. 4990 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about April 19, 2011, the Board of Pharmacy issued Pharmacy Technician Registration Number TCH 112451 to Francisco Andres Berlanga (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in this Accusation and will expire on January 31, 2015, unless renewed.

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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 unless otherwise indicated.

4. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].

5. Section 4300 of the Code states, in relevant part:

"(a) Every license issued may be suspended or revoked.

"(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

"(1) Suspending judgment.

"(2) Placing him or her upon probation.

"(3) Suspending his or her right to practice for a period not exceeding one year.

"(4) Revoking his or her license.

"(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

. . .

"(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure."

6. 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."

STATUTES

7. 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:

"(a) Gross immorality.

. . .

"(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.

. . .

"(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.

. . .

"(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action 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 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment."

8. Section 4060 of the Code states:

"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 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

"Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices."

9. 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."

10. Marijuana is designated as a schedule I controlled substance by Health and Safety Code section 11054, subdivision (d)(13).

COST RECOVERY

11. Section 125.3 of the Code provides, in relevant 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.

BACKGROUND

12. On or October 12, 2013, defendant engaged in a series of email messages with a Monterey County Sheriff's deputy posing as a 15-year-old girl. Defendant thought he was meeting a girl for vaginal and oral sex, and was bringing marijuana for the girl. He was arrested when he appeared at the pre-arranged meeting location. The police recovered about one-half ounce of marijuana from defendant's vehicle.

13. The Monterrey County District Attorney's Office charged Respondent with going to meet a minor for lewd purposes (Pen. Code, § 288.4, subdivision (b)); making contact with a minor with intent to commit sexual offense (Pen. Code, § 288.3, subdivision (a)); attempted oral copulation of a person under 16 (Pen. Code, §§ 664/288a, subd. (b)(2)); and attempting to furnish marijuana to a minor (Pen. Code, § 664/Health & Safety Code, § 11361, subdivision (b)).

14. On or about June 13, 2014, in a criminal proceeding entitled *The People of the State of California v. Francisco Berlanga*, in the Monterey County Superior Court, Case Number SS132076A, Respondent was convicted, upon his plea of no lo contendre, to one count of contacting a minor with the intent to commit a sexual offense (Pen. Code, § 288.3, subd. (a)), a felony.[1] The court sentenced Respondent to 3 years felony probation with numerous conditions including not possessing or using alcohol or controlled substances without a prescription from a

[1] The District Attorney dismissed the other charges in the criminal complaint under Penal Code section 1385 (dismissal in furtherance of justice) and as part of the plea agreement.

physician, paying a $300 restitution fine, and successfully completing a sex offender management program lasting at least one year. Further, as part of the sentence, the court ordered Respondent to serve 210 days in county jail.

FIRST CAUSE FOR DISCIPLINE
(Conviction of a Crime)
(Business and Professions Code § 4301, subd. (l))

15. Respondent has subjected his Pharmacy Technician Registration to disciplinary action under Code section 4301, subdivision (l), in that he was convicted of a crime substantially related to the qualifications, functions, and duties of a pharmacy technician. The conviction and the facts underlying the conviction are explained in paragraphs 12 through 14, above.

SECOND CAUSE FOR DISCIPLINE
(Possession of a Controlled Substance)
(Business and Professions Code §§ 4301, subd. (j) & 4060)

16. Respondent has subjected his Pharmacy Technician Registration to disciplinary action under Code section 4301, subdivision (j), in that on or about October 12, 2013, he violated Code section 4060, when he was illegally in possession of marijuana, a controlled substance. The circumstances are explained more fully in paragraph 12, above.

PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 112451, issued to Francisco Andres Berlanga;

2. Ordering Francisco Andres Berlanga to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 9/13/14

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

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