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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. 5025

13 **GINGER ELLEN MUELLER**
118 E. Shoreline Dr.
Long Beach, CA 90802

A C C U S A T I O N

14 Pharmacy Technician Registration
15 No. TCH 95304

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Virginia K. Herold (Complainant) brings this Accusation solely in her official
21 capacity as the Executive Officer of the California State Board of Pharmacy (Board).

22 2. On or about October 27, 2009, the Board issued Pharmacy Technician Registration
23 No. TCH 95304 to Ginger Ellen Mueller (Respondent). The Pharmacy Technician Registration
24 expired on September 30, 2013, 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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1 **STATUTORY PROVISIONS**

2 4. Section 490 states, in pertinent part:

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

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

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

17 5. Section 4300 provides in pertinent part, that every license issued by the Boards is
18 subject to discipline, including suspension or revocation.

19 6. Section 4300.1 states:

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

25 7. Section 4301 states, in pertinent part:

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

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

4

5 "(l) The conviction of a crime substantially related to the qualifications, functions, and
6 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
7 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
8 substances or of a violation of the statutes of this state regulating controlled substances or
9 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
10 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
11 The board may inquire into the circumstances surrounding the commission of the crime, in order
12 to fix the degree of discipline or, in the case of a conviction not involving controlled substances or
13 dangerous drugs, to determine if the conviction is of an offense substantially related to the
14 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
15 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
16 of this provision. The board may take action when the time for appeal has elapsed, or the
17 judgment of conviction has been affirmed on appeal or when an order granting probation is made
18 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
19 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
20 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
21 indictment.

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

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1 **REGULATORY PROVISIONS**

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

3 "For the purpose of denial, suspension, or revocation of a personal or facility license
4 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
5 crime or act shall be considered substantially related to the qualifications, functions or duties of a
6 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
7 licensee or registrant to perform the functions authorized by his license or registration in a manner
8 consistent with the public health, safety, or welfare."

9 **COST RECOVERY**

10 9. Section 125.3 provides, in pertinent part, that the Board may request the
11 administrative law judge to direct a licentiate found to have committed a violation or violations of
12 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
13 enforcement of the case.

14 10. **CONTROLLED SUBSTANCES/DANGEROUS DRUGS**

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

18 **FIRST CAUSE FOR DISCIPLINE**

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

20 11. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and
21 490, in conjunction with California Code of Regulations, title 16, section 1770, in that,
22 Respondent was convicted of a crime substantially related to the qualifications, functions or
23 duties of a pharmacy technician, as follows:

24 a. On or about September 13, 2013, after pleading nolo contendere, Respondent was
25 convicted of one felony count of violating Health and Safety Code section 11379, subdivision (a)
26 [sale/offer to sell/transportation of a controlled substance] in the criminal proceeding entitled *The*
27 *People of the State of California v. Ginger Ellen Mueller* (Super. Ct. Los Angeles County, 2013,

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1 No. NA081304). The Court sentenced Respondent to serve 20 days in Los Angeles County Jail
2 and placed her on 3 years probation, with terms and conditions.

3 b. The circumstances surrounding the conviction are that the Long Beach Police
4 Department had been conducting a narcotics investigation of a female with the nickname "G"
5 who was selling Methamphetamine. On or about August 15, 2013, August 22, 2013, and August
6 27, 2013, a Police Assistant, working in an undercover capacity, purchased Methamphetamine
7 from Respondent. On or about September 4, 2013, Respondent was detained by the Long Beach
8 Police Department. When asked if she had anything illegal on her, she sated she had some
9 "tweek" in her bra. Respondent removed the item and handed the officer a red plastic zip-to-go
10 bag containing and off-white, crystalline substance, believed to be Methamphetamine.
11 Respondent was subsequently arrested. During the booking procedure, Respondent admitted to
12 selling Methamphetamine on three occasions.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Illegal Possession of a Controlled Substance)**

15 12. Respondent is subject to disciplinary action under section 4301, subdivision (j), on
16 the grounds of unprofessional conduct, in that Respondent was found to be in illegal possession of
17 Methamphetamine, a controlled substance. Complainant refers to, and by reference incorporates,
18 the allegations set forth above in paragraph 11, subparagraph (b), as though set forth fully.

19 **THIRD CAUSE FOR DISCIPLINE**

20 **(Unprofessional Conduct/ Violation of Licensing Chapter)**

21 13. Respondent is subject to disciplinary action under section 4301, (o), in that
22 Respondent committed acts of unprofessional conduct and/ or violated provisions of the licensing
23 chapter. Complainant refers to, and by this reference incorporates, the allegations set forth above
24 in paragraphs 11-12, subparagraphs (a) and (b), inclusive, as though set forth fully.

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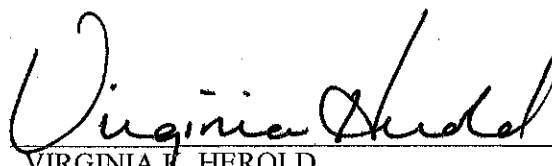
PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration No. TCH 95304, issued to Ginger Ellen Mueller;
2. Ordering Ginger Ellen Mueller to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: _____

7/11/14



VIRGINIA K. HEROLD
Executive Officer
California State Board of Pharmacy
State of California
Complainant

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