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| 4 | Deputy Attorney General State Bar No. 231237 | |
| 5 | 300 So. Spring Street, Suite 1702 Los Angeles, CA 90013 | |
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| 7 | Attorneys for Complainant | |
| 8 | BEFORE THE BOARD OF PHARMACY | |
| 9 | DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA | |
| 10 | | |
| 11 | In the Matter of the Accusation Against: Case No. 5036 | |
| 12 | MANAL M. SALEH 756 Center Pl., #B | |
| 13 | Manhattan Beach, CA 90266 A C C U S A T I O N | |
| 14 | Pharmacy Technician Registration No. TCH 99773 | |
| 15 | Respondent. | |
| 16 | | |
| 17 | Complainant alleges: | |
| 18 | PARTIES | |
| 19 | 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity | |
| 20 | as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs. | |
| 21 | 2. On or about May 19, 2010, the Board of Pharmacy issued Pharmacy Technician | |
| 22 | Registration Number TCH 99773 to Manal M. Saleh (Respondent). The Pharmacy Technician | |
| 23 | Registration was in full force and effect at all times relevant to the charges brought herein and | |
| 24 | will expire on April 30, 2014, unless renewed. | |
| 25 | JURISDICTION | |
| 26 | 3. This Accusation is brought before the Board of Pharmacy (Board), Department of | |
| 27 | Consumer Affairs, under the authority of the following laws. All section references are to the | |
| 28 | Business and Professions Code unless otherwise indicated. | |
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| 1 | 4. Section 118, subdivision (b), of the Code provides that the |
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| 2 | suspension/expiration/surrender/cancellation of a license shall not deprive the |
| 3 | Board/Registrar/Director 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 4300 of the Code permits the Board to take disciplinary action to suspend or |
| 6 | revoke a license issued by the Board. |
| 7 | 6. Section 4300.1 of the Code states: |
| 8 | "The expiration, cancellation, forfeiture, or suspension of a board-issued license by |
| 9 | operation of law or by order or decision of the board or a court of law, the placement of a license |
| 10 | on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board |
| 11 | of jurisdiction to commence or proceed with any investigation of, or action or disciplinary |
| 12 | proceeding against, the licensee or to render a decision suspending or revoking the license." |
| 13 | STATUTORY PROVISIONS |
| 14 | 7. Section 4301 of the Code states: |
| 15 | "The board shall take action against any holder of a license who is guilty of unprofessional |
| 16 | conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. |
| 17 | Unprofessional conduct shall include, but is not limited to, any of the following: |
| 18 | • • • • |
| 19 | "(j) The violation of any of the statutes of this state, or any other state, or of the United |
| 20 | States regulating controlled substances and dangerous drugs. |
| 21 | |
| 22 | "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the |
| 23 | violation of or conspiring to violate any provision or term of this chapter or of the applicable |
| 24 | federal and state laws and regulations governing pharmacy, including regulations established by |
| 25 | the board or by any other state or federal regulatory agency." |
| 26 | 8. Section 4060 of the Code states: |
| 27 | "No person shall possess any controlled substance, except that furnished to a person upon |
| 28 | the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor |
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pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified 1 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a 2 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, 3 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of 4 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not 5 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, 6 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified 7 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly 8 9 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."

HEALTH AND SAFETY CODE SECTION

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9. Health and Safety Code section 11377, subsection (a) states in pertinent
"Every person who possesses any controlled substance which is (1) classified in Schedule
III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054,
except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph (11) of
subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section
11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the
prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state,
shall be punished by imprisonment in a county jail for a period of not more than one year or
pursuant to subdivision (h) of Section 1170 of the Penal Code."

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REGULATORY PROVISION

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

25 "For the purpose of denial, suspension, or revocation of a personal or facility license
26 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
27 crime or act shall be considered substantially related to the qualifications, functions or duties of a
28 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a

| 1 | licensee or registrant to perform the functions authorized by his license or registration in a manner |
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| 2 | consistent with the public health, safety, or welfare." |
| 3 | COST RECOVERY |
| 4 | 11. Section 125.3 of the Code states, in pertinent part, that the Board may request the |
| 5 | administrative law judge to direct a licentiate found to have committed a violation or violations of |
| 6 | the licensing act to pay a sum not to exceed the reasonable costs of the investigation and |
| 7 | enforcement of the case. |
| 8 | CONTROLLED SUBSTANCE |
| 9 | 12. Section 4022 of the Code states: |
| 10 | "Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in |
| 11 | humans or animals, and includes the following: |
| 12 | "(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without |
| 13 | prescription," "Rx only," or words of similar import. |
| 14 | "(b) Any device that bears the statement: "Caution: federal law restricts this device to sale |
| 15 | by or on the order of a," "Rx only," or words of similar import, the blank to be filled |
| 16 | in with the designation of the practitioner licensed to use or order use of the device. |
| 17 | "(c) Any other drug or device that by federal or state law can be lawfully dispensed only on |
| 18 | prescription or furnished pursuant to Section 4006." |
| 19 | 13. Methamphetamine is a Schedule II controlled substance as designated by Health and |
| 20 | Safety Code section 11055, subdivision (d)(2), and is categorized as a dangerous drug pursuant to |
| 21 | Business and Professions Code section 4022. |
| 22 | FIRST CAUSE FOR DISCIPLINE |
| 23 | (Unprofessional Conduct) |
| 24 | 14. Respondent 's license is subject to disciplinary action for unprofessional conduct |
| 25 | under section 4301, subdivisions (j) and (o) of the Code, in that Respondent was in possession of |
| 26 | a controlled substance, Methamphetamine, in violation of section 4060 of the Code and Health |
| 27 | and Safety Code section 11377, subdivision (a). The circumstances are as follows: |
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| 1 | 15. On or about July 31, 2013, Culver City Police Officers were dispatched to a Circle K |
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| 2 | Motel. Officers contacted Victim B.M. and he stated that he had been assaulted by Respondent. |
| 3 | Officers conducted a search of Respondent's motel room and found 2 small bags containing |
| 4 | suspected Methamphetamine and a glass pipe. Officer Raetz searched Respondent's vehicle and |
| 5 | found a second glass pipe. |
| 6 | SECOND CAUSE FOR DISCIPLINE |
| 7 | (Substantially Related Act) |
| 8 | 16. Respondent is subject to disciplinary action under California Code of Regulations, |
| 9 | title 16, section 1770, on the grounds of unprofessional conduct, in that Respondent committed an |
| 10 | act substantially related to the qualifications, functions, or duties of a pharmacy technician. |
| 11 | Complainant refers to, and by this reference incorporates, the allegations set forth above in |
| 12 | paragraph 15, as though set forth fully. |
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| 1 | PRAYER |
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| 2 | WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, |
| 3 | and that following the hearing, the Board of Pharmacy issue a decision: |
| 4 | 1. Revoking or suspending Pharmacy Technician Registration Number TCH 99773, |
| 5 | issued to Manal M. Saleh; |
| 6 | 2. Ordering Manal M. Saleh to pay the Board of Pharmacy the reasonable costs of the |
| 7 | investigation and enforcement of this case, pursuant to Business and Professions Code section |
| 8 | 125.3; and |
| 9 | 3. Taking such other and further action as deemed necessary and proper. |
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| 11 | DATED: 5/3/14 ligina Leold |
| 12 | VIRGINIA MEROLD Executive Officer |
| 13 | Board of Pharmacy Department of Consumer Affairs |
| 14 | State of California Complainant |
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