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

12 In the Matter of the Accusation Against:

Case No. 5190

13 **ANDREW LUIS GODINEZ**  
14 **10331 Western Avenue, #48**  
**Downey, CA 90241**

**A C C U S A T I O N**

15 **Pharmacy Technician Registration No. TCH 97718**

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

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

22 2. On June 14, 2010, the Board of Pharmacy issued Pharmacy Technician  
23 Registration Number TCH 97718 to Andrew Luis Godinez (Respondent). The Pharmacy  
24 Technician Registration was in full force and effect at all times relevant to the charges brought  
25 herein and will expire on April 30, 2016, unless renewed.

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1 **JURISDICTION**

2 3. This Accusation is brought before the Board of Pharmacy (Board), Department of  
3 Consumer Affairs, under the authority of the following laws. All section references are to the  
4 Business and Professions Code (Code) unless otherwise indicated.

5 4. Section 118, subdivision (b), of the Code provides that the suspension, expiration,  
6 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with  
7 a disciplinary action during the period within which the license may be renewed, restored,  
8 reissued, or reinstated.

9 5. Section 4300, subdivision (a), of the Code provides that every license issued by  
10 the Board may be suspended or revoked.

11 6. Section 4300.1 of the Code states:

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

16 **STATUTORY PROVISIONS**

17 7. Section 480 of the Code states:

18 (a) A board may deny a license regulated by this code on the grounds  
19 that the applicant has one of the following:

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

24 (2) Done any act involving dishonesty, fraud, or deceit with the  
25 intent to substantially benefit himself or herself or another, or substantially injure  
26 another.

26 (3) (A) Done any act that if done by a licentiate of the business or  
27 profession in question, would be grounds for suspension or revocation of license.

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(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, no person shall be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

(c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for the license.

8. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

9. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'

10. 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

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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.

11. 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.

12. 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.

....

(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.

....

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

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(p) Actions or conduct that would have warranted denial of a license.

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13. Section 4315 of the Code states:

(a) The executive officer, or his or her designee, may issue a letter of admonishment to a licensee for failure to comply with Section 733, for failure to comply with this chapter or regulations adopted pursuant to this chapter, or for failure to comply with Division 116 (commencing with Section 150200) of the Health and Safety Code, directing the licensee to come into compliance.

(b) The letter of admonishment shall be in writing and shall describe in detail the nature and facts of the violation, including a reference to the statutes or regulations violated.

(c) The letter of admonishment shall inform the licensee that within 30 days of service of the order of admonishment the licensee may do either of the following:

(1) Submit a written request for an office conference to the executive officer of the board to contest the letter of admonishment.

(A) Upon a timely request, the executive officer, or his or her designee, shall hold an office conference with the licensee or the licensee's legal counsel or authorized representative. Unless so authorized by the executive officer, or his or her designee, no individual other than the legal counsel or authorized representative of the licensee may accompany the licensee to the office conference.

(B) Prior to or at the office conference, the licensee may submit to the executive officer declarations and documents pertinent to the subject matter of the letter of admonishment.

(C) The office conference is intended to be an informal proceeding and shall not be subject to the provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code).

(D) The executive officer, or his or her designee, may affirm, modify, or withdraw the letter of admonishment. Within 14 calendar days from the date of the office conference, the executive officer, or his or her designee, shall personally serve or send by certified mail to the licensee's address of record with the board a written decision. This decision shall be deemed the final administrative decision concerning the letter of admonishment.

(E) Judicial review of the decision may be had by filing a petition for a writ of mandate in accordance with the provisions of Section 1094.5 of the Code of Civil Procedure within 30 days of the date the decision was personally served or sent by certified mail.

The judicial review shall extend to the question of whether or not there was a prejudicial abuse of discretion in the issuance of the letter of admonishment.

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1 (2) Comply with the letter of admonishment and submit a written  
2 corrective action plan to the executive officer documenting compliance. If an  
3 office conference is not requested pursuant to this section, compliance with the  
4 letter of admonishment shall not constitute an admission of the violation noted in  
5 the letter of admonishment.

6 (d) The letter of admonishment shall be served upon the licensee  
7 personally or by certified mail at the licensee's address of record with the board.

8 If the licensee is served by certified mail, service shall be effective upon  
9 deposit in the United States mail.

10 (e) The licensee shall maintain and have readily available a copy of the  
11 letter of admonishment and corrective action plan, if any, for at least three years  
12 from the date of issuance of the letter of admonishment.

13 (f) Nothing in this section shall in any way limit the board's authority or  
14 ability to do either of the following:

15 (1) Issue a citation pursuant to Section 125.9, 148, or 4067 or pursuant to  
16 Section 1775 of Title 16 of the California Code of Regulations.

17 (2) Institute disciplinary proceedings pursuant to Article 19 (commencing  
18 with Section 4300).

19 14. Health and Safety Code section 11357, subdivision (a) states:

20 Except as authorized by law, every person who possesses any  
21 concentrated cannabis shall be punished by imprisonment in the county jail for a  
22 period of not more than one year or by a fine of not more than five hundred  
23 dollars (\$500), or by both such fine and imprisonment, or shall be punished by  
24 imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code.

### 25 REGULATORY PROVISIONS

26 15. California Code of Regulations, title 16, section 1769, states:

27 . . . .

28 (b) When considering the suspension or revocation of a facility or a  
personal license on the ground that the licensee or the registrant has been  
convicted of a crime, the board, in evaluating the rehabilitation of such person and  
his present eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or  
offense(s).

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1 (4) Whether the licensee has complied with all terms of parole,  
2 probation, restitution or any other sanctions lawfully imposed against the licensee.

3 (5) Evidence, if any, of rehabilitation submitted by the licensee.

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

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

#### 10 **COST RECOVERY**

11 17. Section 125.3 of the Code provides, in pertinent part, that the Board may request  
12 the administrative law judge to direct a licentiate found to have committed a violation or  
13 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
14 and enforcement of the case, with failure of the licentiate to comply subjecting the license to not  
15 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs  
16 may be included in a stipulated settlement.

#### 17 **DRUG**

18 18. Cannabinoids (Marijuana) are dangerous drugs pursuant to section 4022 and are  
19 Schedule I controlled substances as designated by Health and Safety Code section 11054,  
20 subdivision (d)(13).

#### 21 **FIRST CAUSE FOR DISCIPLINE**

##### 22 **(Commission of Acts Involving Moral Turpitude, Dishonesty, Fraud, or Deceit)**

23 19. Respondent is subject to disciplinary action under Code section 4301, subdivision  
24 (f), in that on January 31, 2014, Respondent unlawfully possessed, without a doctor's  
25 recommendation/order, approximately 0.2 grams of concentrated cannabis (Marijuana), an act  
26 involving moral turpitude, dishonesty, fraud, or deceit. The circumstances are as follows:

27 a. On January 31, 2014, Respondent was stopped for an inoperative brake  
28 light while driving in the vicinity of Harvard Avenue and Stanford Court in Irvine, California.





1 prescription in violation of Code section 4060, as detailed in paragraph 19, above, and  
2 incorporated herein by this reference, in violation of pharmacy law.

3 **DISCIPLINARY CONSIDERATIONS**

4 22. To determine the degree of discipline, if any, to be imposed on Respondent,  
5 Complainant alleges:

6 23. On July 11, 2013, Respondent drove through a sobriety and driver's license  
7 checkpoint on Alondra Boulevard in Bellflower, California. While stopped at the checkpoint, a  
8 deputy from the Los Angeles County Sheriff's Department smelled marijuana coming from  
9 inside respondent's vehicle. Respondent admitted to smoking marijuana and was asked to exit  
10 his vehicle. During a search for the source of the marijuana smell, the deputy found a clear glass  
11 containing a green leafy substance resembling marijuana. Respondent failed the series of field  
12 sobriety tests and was arrested for driving while under the influence of marijuana and driving  
13 while in possession of marijuana, misdemeanors.

14 24. On November 19, 2013, under Code section 4315, the Board issued Respondent a  
15 Letter of Admonishment. The letter admonished Respondent for the following:

16 a. Respondent violated Code section 4301, subdivision (h), for  
17 unprofessional conduct, administering to himself, of any controlled substance, or the use of any  
18 dangerous drug.

19 b. Respondent violated Code section 4301, subdivision (j), for violation of  
20 any statute of California or of the United states regulating controlled substances or dangerous  
21 drugs.

22 **PRAYER**

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

25 1. Revoking or suspending Pharmacy Technician Registration Number TCH 97718,  
26 issued to Andrew Luis Godinez;

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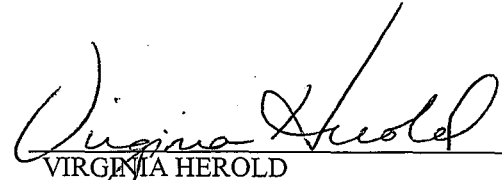
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2. Ordering Andrew Luis Godinez to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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

DATED: \_\_\_\_\_

*11/15/14*



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

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