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8	BEFORE THE BOARD OF PHARMACY
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA
10	STATE OF CALIFORNIA
11	In the Matter of the Accusation Against: Case No. 5214
12	NEVINN ENIEDA SAMANIEGO 8725 Belmont St.
13	Bellflower, CA 90706  ACCUSATION
14	Pharmacy Technician License No. TCH 106433
15	Respondent.
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18	Complainant alleges:
19	<u>PARTIES</u>
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 (Board).
22	2. On or about October 13, 2010, the Board issued Pharmacy Technician License
23	No. TCH 106433 to Nevinn Enieda Samaniego (Respondent). The Pharmacy Technician License
24	was in full force and effect at all times relevant to the charges brought herein and will expire on
25	December 31, 2015, unless renewed.
26	<u>JURISDICTION</u>
27	3. This Accusation is brought before the Board, under the authority of the following
28	laws. All section references are to the Business and Professions Code unless otherwise indicated.
	<b>1</b>

### STATUTORY PROVISIONS

- 4. Section 118, subdivision (b), provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.
- 5. Section 480 provides that a board may deny a license if the applicant has been convicted of a crime substantially related to the qualifications, functions or duties of the business or profession for which application is made, has committed any act involving dishonesty, fraud or deceit, has committed any act which if done by a licentiate would be grounds for suspension or revocation of a license, or has knowingly made a false statement of fact required to be revealed in the application.
- 6. Section 490 provides 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.
- 7. Section 4300, subdivision (a), states that "[e]very license issued may be suspended or revoked."
  - 8. Section 4301 states, in pertinent part:

"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.

"(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

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- "(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.
- "(k) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances.
- 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.
- "(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.
  - "(p) Actions or conduct that would have warranted denial of a license. . . . "

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### PHARMACY LAW

### 9. Section 4060 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."

### DRUG STATUTES

- 10. Health and Safety Code section 11007 states:
- ""Controlled substance," unless otherwise specified, means a drug, substance, or immediate precursor which is listed in any schedule in Section 11054, 11055, 11056, 11057, or 11058."
- 11. Health and Safety Code section 11173, subdivision (a), provides that it is illegal to possess a controlled substance without a valid prescription.
  - 12. United Stated States Code Service, title 21, section 844 states, in pertinent part:
- "(a) Unlawful acts; penalties. It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription . . .
- "(c) "Drug, narcotic, or chemical offense" defined. As used in this section, the term " drug, narcotic, or chemical offense" means any offense which proscribes the possession, distribution,

manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell or transfer any substance the possession of which is prohibited under this title."

### REGULATORY PROVISION

13. 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."

### **COST RECOVERY**

14. Section 125.3 states, in pertinent 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.

### CONTROLLED SUBSTANCE / DANGEROUS DRUG

- 15. Clonazepam (Klonopin) is a Schedule IV controlled substance under Health and Safety Code section 11057(d)(7) and a dangerous drug pursuant to section 4022.
- 16. Marijuana is a hallucinogenic Schedule I controlled substance under State and federal law (Health & Saf. Code § 11054 subd. (d)(13); and 21 U.S.C. § 812.), and a dangerous drug pursuant to section 4022.
- 17. Methamphetamine is a Schedule II controlled substance under Health and Safety Code section 11055, subdivision (d)(2), and a dangerous drug pursuant to section 4022.

#### FIRST CAUSE FOR DISCIPLINE

### (Convictions of Substantially Related Crimes)

18. Respondent is subject to disciplinary action under sections 490, 4300, and 4301, subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, on the

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grounds of unprofessional conduct, in that Respondent was convicted of crimes substantially related to the qualifications, functions or duties of a registered pharmacy technician which to a substantial degree evidence her present or potential unfitness to perform the functions authorized by her registration in a manner consistent with the public health, safety, or welfare, as follows:

- a. On or about January 9, 2014, after pleading guilty, Respondent was convicted of three (3) counts, felony Count 1, violating Health and Safety Code section 11360(a) [sale or transportation of marijuana], felony Count 2, violating Health and Safety Code section 11359 [possession of marijuana for sale], and misdemeanor Count 3, violating Vehicle Code section 12500(a) [drive motor vehicle without a valid license] in the criminal proceeding entitled *The People of the State of California v. Nevinn Eneida Samaniego* (Super. Ct. Orange County, 2014, No. 13NF3719.) The Court sentenced Respondent to 120 days jail, placed her on three (3) years formal probation, and ordered her to register as a controlled substance offender, pursuant to Health and Safety Code section 11590.
- b. The circumstances underlying the conviction are that on or about November 9, 2013, while driving a vehicle with a false 2014 registration tab and herself having a suspended/revoked drivers license, Respondent was in possession of approximately 49 grams of marijuana, admitted to occasionally smoking marijuana and as a source of income, growing approximately 30 plants for sale and self-consumption.
- c. On or about January 9, 2014, after pleading guilty, Respondent was convicted of two (2) misdemeanor counts, reduced Count 1, violating Health and Safety Code section 11377(a) [possession of a controlled substance, to wit, methamphetamine] and Count 2, violating Health and Safety Code section 11375(b) [possession of designated substance, to wit, Clonazepam] in the criminal proceeding entitled *The People of the State of California v. Nevinn Eneida Samaniego* (Super. Ct. Orange County, 2014, No. 13NF4307). The Court sentenced Respondent to 120 days jail, and ordered to register pursuant to Health and Safety Code section 11590.
- d. The circumstances underlying the conviction are that on or about December 8, 2013, Respondent was in possession of methamphetamine and 10 tablets of Clonazepam.

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### SECOND CAUSE FOR DISCIPLINE

### (Convictions Involving Dangerous Drugs)

19. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (k), on the grounds of unprofessional conduct, in that on or about January 9, 2014, Respondent sustained two (2) felony and three (3) misdemeanor convictions involving dangerous drugs. Complainant refers to and by this reference incorporates the allegations set forth above in paragraph 18, subparagraphs a-d, inclusive, as though set forth fully.

### THIRD CAUSE FOR DISCIPLINE

### (Violating Drug Statutes)

20. Respondent is subject to disciplinary action under sections 4300, 4301, subdivision (j), on the grounds of unprofessional conduct, in that on or about November 9, 2013 or December 8, 2013, Respondent violated Health and Safety Code section 11173, subdivision (a), when she was in possession of Clonazepam, Marijuana and Methamphetamine, controlled substances and dangerous drugs, without valid prescriptions. Complainant refers to and by this reference incorporates the allegations set forth above in paragraph 18, subparagraphs a - d, inclusive, as though set forth fully.

### **FOURTH CAUSE FOR DISCIPLINE**

### (Violating or Attempting to Violate the Pharmacy Law)

21. Respondent is subject to disciplinary action under sections 4300, and 4301, subdivision (o), on the grounds of unprofessional conduct, for violating section 4060, in that on or about November 9, 2013, and on or about December 8, 2013, Respondent violated or attempted to violate the Pharmacy law when she was in possession of Clonazepam, Marijuana and Methamphetamine, controlled substances and dangerous drugs, without valid prescriptions. The crime or act is substantially related to the qualifications, functions, or duties of registered pharmacy technician. Complainant refers to and by this reference incorporates the allegations set forth above in paragraph 18, subparagraphs a - d, inclusive, as though set forth fully.

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### FIFTH CAUSE FOR DISCIPLINE

### (Misstatement on License Delinquent Renewal Application)

22. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (g), on the grounds of unprofessional conduct, in that on or about February 8, 2014, Respondent, under penalty of perjury to the truth and accuracy of all statements, answers and representations made in her Delinquent Renewal Application (registration expired 12/31/13), knowingly made a false statement of fact required to be revealed in her application for licensure and procured her license by fraud or misrepresentation. Respondent answered "No" to the question:

Since you last renewed your license, have you had any license disciplined by a government agency or other disciplinary body; or, have you been convicted of any crime in any state, the U.S.A. and its territories, military court or a foreign country? PLEASE READ INSTRUCTIONS BEFORE ANSWERING.

### SIXTH CAUSE FOR DISCIPLINE

### (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)

23. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (f), on the grounds of unprofessional conduct, in that Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption. Complainant refers to and by this reference incorporates the allegations set forth above in paragraphs 18 through 22, inclusive, as though set forth fully.

### **SEVENTH CAUSE FOR DISCIPLINE**

### (Conduct Warranting Denial of License)

24. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (p), on the grounds of unprofessional conduct, for violating section 480, in that Respondent committed conduct that would have warranted denial of a license. Complainant refers to and by this reference incorporates the allegations set forth above in paragraphs 18 through 23, 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 License No. TCH 106433, issued to Nevinn Enieda Samaniego;
- 2. Ordering Nevinn Eneida Samaniego 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: 2/23/15

VIRGINIA HEROLD Executive Officer Board of Pharmacy

Department of Consumer Affairs

State of California Complainant

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