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8  
9 **BEFORE THE**  
**BOARD OF PHARMACY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:  
12  
13 **CHRISTOFER MICHAEL NICODEMUS**  
**6160 Arlington Ave., #D3/110**  
**Riverside, CA 92504**  
14  
15 **Pharmacy Technician Registration**  
**No. TCH 125709**  
16  
17 Respondent.

Case No. 5270

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

18  
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about August 30, 2012, the Board of Pharmacy issued Pharmacy Technician  
24 Registration Number TCH 125709 to Christofer Michael Nicodemus (Respondent). The  
25 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges  
26 brought herein and will expire on March 31, 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 unless otherwise indicated.

5 4. Section 4300(a) of the Code states that “[e]very license issued may be suspended or  
6 revoked.”

7 5. Section 4300.1 states:

8 The expiration, cancellation, forfeiture, or suspension of a board-issued  
9 license by operation of law or by order or decision of the board or a court of law, the  
10 placement of a license on a retired status, or the voluntary surrender of a license by a  
11 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.

12 **STATUTORY PROVISIONS**

13 6. Section 482 of the Code states:

14 Each board under the provisions of this code shall develop criteria to  
15 evaluate the rehabilitation of a person when:

16 (a) Considering the denial of a license by the board under Section 480; or

17 (b) Considering suspension or revocation of a license under Section 490.  
18 Each board shall take into account all competent evidence of rehabilitation  
19 furnished by the applicant or licensee.

20 Each board shall take into account all competent evidence of rehabilitation  
21 furnished by the applicant or licensee.

22 7. Section 490 of the Code states:

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

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

(c) A conviction within the meaning of this section means a plea or verdict of  
guilty or a conviction following a plea of nolo contendere. Any action that a board is  
permitted to take following the establishment of a conviction may be taken when the

1 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal,  
2 or when an order granting probation is made suspending the imposition of sentence,  
irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal  
Code.

3 (d) The Legislature hereby finds and declares that the application of this  
4 section has been made unclear by the holding in *Petropoulos v. Department of*  
Real Estate (2006) 142 Cal.App.4th 554, and that the holding in that case has placed  
5 a significant number of statutes and regulations in question, resulting in potential  
harm to the consumers of California from licensees who have been convicted of  
6 crimes. Therefore, the Legislature finds and declares that this section establishes an  
independent basis for a board to impose discipline upon a licensee, and that the amendments  
7 to this section made by Senate Bill 797 of the 2007-2008 Regular  
Session.

8  
9 8. Section 492 of the Code states:

10 Notwithstanding any other provision of law, successful completion of any  
diversion program under the Penal Code, or successful completion of an alcohol and  
11 drug problem assessment program under Article 5 (commencing with section  
23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any  
12 agency established under Division 2 ([Healing Arts] commencing with Section 500) of  
this code, or any initiative act referred to in that division, from taking disciplinary  
13 action against a licensee or from denying a license for professional misconduct,  
notwithstanding that evidence of that misconduct may be recorded in a record  
14 pertaining to an arrest.

15 This section shall not be construed to apply to any drug diversion program  
operated by any agency established under Division 2 (commencing with Section 500)  
16 of this code, or any initiative act referred to in that division.

17 9. Section 493 of the Code states:

18 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  
19 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  
20 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  
21 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  
22 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.

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1           10. Section 4301 of the Code states:

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

6           .....

7           (f) The commission of any act involving moral turpitude, dishonesty, fraud,  
8 deceit, or corruption, whether the act is committed in the course of relations as a  
9 licensee or otherwise, and whether the act is a felony or misdemeanor or not.

10          .....

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

13          .....

14          (l) The conviction of a crime substantially related to the qualifications,  
15 functions, and duties of a licensee under this chapter. The record of conviction  
16 of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the  
17 United States Code regulating controlled substances or of a violation of the statutes  
18 of this state regulating controlled substances or dangerous drugs shall be conclusive  
19 evidence of unprofessional conduct. In all other cases, the record of conviction  
20 shall be conclusive evidence only of the fact that the conviction occurred. The  
21 board may inquire into the circumstances surrounding the commission of the crime,  
22 in order to fix the degree of discipline or, in the case of a conviction not involving controlled  
23 substances or dangerous drugs, to determine if the conviction is of an  
24 offense substantially related to the qualifications, functions, and duties of a licensee  
25 under this chapter. A plea or verdict of guilty or a conviction following a plea of  
26 nolo contendere is deemed to be a conviction within the meaning of this provision  
27 The board may take action when the time for appeal has elapsed, or the judgment  
28 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.

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11. Section 4022 of the Code states:

“Dangerous drug” or “dangerous device” means any drug or device unsafe for self-use, except veterinary drugs that are labeled as such, 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 deice to sale by or on the order of a \_\_\_\_\_,” “Rx only,” or words of 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.

12. 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, or veterinarian, 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. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, physician, podiatrist, dentist, veterinarian, 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.

**REGULATORY PROVISIONS**

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

....

(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).
- (4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) Evidence, if any, of rehabilitation submitted by the licensee.

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

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

### 8 **COST RECOVERY**

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

### 15 **DRUGS**

16 16. Methamphetamine is a Schedule II controlled substance pursuant to Health and Safety  
17 Code section 11055, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section  
18 4022.

### 19 **FIRST CAUSE FOR DISCIPLINE**

#### 20 **(June 3, 2014 Criminal Conviction for Shoplifting and for Possession of a Controlled 21 Substance – Methamphetamine – on February 18, 2014)**

22 17. Respondent subjected her license to discipline under sections 490 and  
23 4301, subdivision (l), of the Code in that he was convicted of a crime that is substantially related to  
24 the qualifications, duties, and functions of a pharmacy technician. The circumstances are as  
25 follows:

26 18. On June 3, 2014, in a criminal proceeding entitled *People of the State*  
27 *of California v. Christofer Michael Nicodemus, aka Christopher Michael Nicodemus*, in the  
28 Superior Court of California, County of Riverside, Case No. RIM1403083, Respondent was  
convicted on his plea of guilty for violating Penal Code section 290.5 (shoplifting) and Health and

1 Safety Code section 11377(a) (possession of a controlled substance – methamphetamine),  
2 misdemeanors.

3 19. As a result of the conviction, the Court placed Respondent on three years summary  
4 probation and committed him to the custody of the Sheriff for 30 days, with 25 of the 30 days to  
5 be served in the Work Release Program. The Court also ordered Respondent to obey all laws, not  
6 knowingly use nor possess any controlled substances unless lawfully prescribed, submit to  
7 chemical tests of blood, saliva, breath, or urine, or any reasonable physical test upon request of  
8 probation or law enforcement officer, submit to search and seizure, pay various fines and fees, and  
9 not have any direct or indirect contact with Stater Brothers.

10 20. The circumstances that led to the conviction are that on February 18, 2014, at  
11 approximately 11:45 a.m., Riverside Police Department Officers responded to Stater Brothers  
12 Market in the City of Riverside, California, regarding a shoplifter in custody. When Officers  
13 arrived, Loss Prevention Staff (LPS) directed them to an individual that was observed selecting a  
14 package of Blistex and go to a second isle to conceal the item, then exit the store without paying  
15 for the item. The LPS told Officers that the individual (Respondent) was contacted outside of the  
16 store and asked to re-enter the store, which he did, and that he admitted to stealing the Blistex  
17 from the store. Officers placed Respondent under arrest and asked him if he had anything illegal in  
18 his possession, to which Respondent told Officers that he had Methamphetamine in his back pack.  
19 With Respondent's consent, and incident to the arrest, Officers searched the back pack and found  
20 Methamphetamine in a plastic baggie inside a small plastic sealed container. The substance field  
21 tested positive for Methamphetamine. Respondent was booked in the county jail.

22 21. On April 16, 2014, Respondent failed to appear at the arraignment and a bench  
23 warrant was issued for his arrest. On May 7, 2014, Respondent failed to appear at a  
24 warrant/arraignment and the bench warrant remained outstanding. On June 6, 2014, Respondent  
25 appeared in Court and the bench warrant was recalled.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct – Illegal Possession of a Controlled Substance –**  
3 **Methamphetamine – on February 18, 2014 )**

4 22. Respondent is subject to disciplinary action under section 4301, subdivisions (j) and  
5 (o) of the Code in that on February 18 2014, Respondent was in possession of the controlled  
6 substance and dangerous drug, Methamphetamine, without a prescription in violation of section  
7 4060 of the Code, as is more fully detailed at paragraphs 17-21, above, which are incorporated  
8 here by reference.

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct – Commission of an Act Involving Dishonesty)**

11 23. Respondent is subject to disciplinary action under section 4301(f) of the Code in that  
12 on February 18, 2014, he committed an act of dishonesty when he stole merchandise from Stater  
13 Brothers, as is more fully detailed at paragraphs 17-21, above, which are incorporated here by  
14 reference.  
15

16 **PRAYER**

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

19 1. Revoking or suspending Pharmacy Technician Registration Number TCH 125709  
20 issued to Christofer Michael Nicodemus;

21 2. Ordering Christofer Michael Nicodemus to pay the Board of Pharmacy the reasonable  
22 costs of the investigation and enforcement of this case, pursuant to Business and Professions Code  
23 section 125.3;

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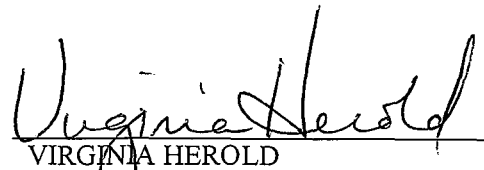
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3. Taking such other and further action as deemed necessary and proper.

DATED: 11/15/14



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

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