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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. 5289

13 **JESSICA LORRAINE BARRERA**
10909 Barlett Avenue
Adelanto, CA 92301

A C C U S A T I O N

14 Pharmacy Technician Registration
No. TCH 92126

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

22 2. On or about July 14, 2009, the Board issued Pharmacy Technician Registration No.
23 TCH 92126 to Jessica Lorraine Barrera (Respondent). The Psychiatric Technician License was in
24 full force and effect at all times relevant to the charges brought herein and expired on September
25 30, 2014, and has not been renewed.

26 **JURISDICTION**

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.

1 4. Section 4300 provides in pertinent part, that every license issued by the Board is
2 subject to discipline, including suspension or revocation.

3 5. Section 4300.1 states, in pertinent part:

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

9 **STATUTORY PROVISIONS**

10 6. Section 4060 states, in pertinent part:

11 "No person shall possess any controlled substance, except that furnished to a person upon
12 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
13 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-
14 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician
15 assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a
16 pharmacist pursuant to either Section 4052.1 or 4052.2. This section shall not apply to the
17 possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist,
18 physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-
19 midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled
20 with the name and address of the supplier or producer."

21 7. Section 4301 states, in pertinent part:

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

25

26 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous
27 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
28 oneself, to a person holding a license under this chapter, or to any other person or to the public, or

1 to the extent that the use impairs the ability of the person to conduct with safety to the public the
2 practice authorized by the license.

3

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

6

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

24

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

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 Code, a crime or act shall be
5 considered substantially related to the qualifications, functions or duties of a licensee or registrant
6 if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to
7 perform the functions authorized by his license or registration in a manner consistent with the
8 public health, safety, or welfare."

9 **COST RECOVERY**

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

14 **CONTROLLED SUBSTANCE/DANGEROUS DRUG**

15 10. "Methamphetamine," is a schedule II controlled substance as defined in Health and
16 Safety Code section 11055, subdivision (d)(2), and is categorized 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 section 4300, 4301, subdivision (i)
21 and 490, in conjunction with California Code of Regulations, title 16, section 1770, in that, she
22 was convicted of a crime substantially related to the qualifications, functions or duties of a
23 pharmacy technician as follows:

24 a. On or about June 25, 2014, after pleading nolo contendere, Respondent was convicted
25 of one misdemeanor count of violating Penal Code section 273, subdivision (b) [willful cruelty to
26 a child] in the criminal proceeding entitled *The People of the State of California v. Jessica*
27 *Lorraine Barrera* (Super. Ct. San Bernardino County, 2014, No. MVI1402276). The Court

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1 ordered Respondent serve 10 days in San Bernardino County Jail, to enroll in a child abuse
2 prevention program, and placed her on 4 years probation, with terms and conditions.

3 b. The circumstances surrounding the conviction are that on or about June 16, 2014, a
4 San Bernardino County Sheriff's deputy responded to a report of a violation of a domestic
5 violence restraining order at Respondent's residence. The deputy arrested Respondent's husband,
6 and proceeded to make contact with Respondent who was hiding in the closet with her two
7 children. The deputy noticed that the Respondent was displaying signs of being under the
8 influence of a central nervous system stimulant. Respondent had rapid eyelid tremors, a white
9 coating at the corner of her mouth and tongue, dilated pupils, and displayed bruxism. While
10 being interviewed by the deputy, Respondent admitted to using methamphetamine two or three
11 days earlier. During a search of Respondent's residence, the deputy observed a variety of
12 conditions that endangered Respondent's children, including drug paraphernalia,
13 methamphetamine residue, dog feces and urine on the floor, broken glass on the floor of the
14 garage and an unstable unhinged door. Respondent was subsequently arrested for violating Penal
15 Code section 273, subdivision (a) [willful cruelty to a child] and Health and Safety Code section
16 11550, subdivision (a) [under the influence a controlled substance].

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Possession of a Controlled Substance/Dangerous Drug)**

19 12. Respondent is subject to disciplinary action under section 4300 and 4301,
20 subdivision (j) in conjunction with section 4060, on the grounds of unprofessional conduct, in that
21 Respondent was found to be in possession of methamphetamine, a controlled substance, as
22 follows:

23 a. On or about April 16, 2014, a San Bernardino County Sheriff's deputy conducted a
24 traffic enforcement stop on Respondent's vehicle. The deputy noticed that Respondent was
25 fidgety and extremely nervous. After conducting a series of field sobriety tests, the deputy
26 determined that Respondent displayed symptoms of a central nervous system stimulant. When
27 being interviewed by the deputy, Respondent admitted to using methamphetamine that morning.
28 After Respondent gave consent to search her vehicle, the deputy located a small black case under

1 the passenger seat which contained eight small clear baggies containing methamphetamine, nine
2 small empty clear, plastic baggies, a digital scale, and a glass smoking device. During the booking
3 procedure, Respondent stated that she had the intent to sell methamphetamine to make a lot of
4 money.

5 b. Subsequently, on or about July 31, 2014, criminal charges were filed against the
6 Respondent for one misdemeanor count of violating Health and Safety Code section 11378
7 [possession of a controlled substance for sale], and one misdemeanor count of Health and Safety
8 Code section 11364, subdivision (a) [possession of paraphernalia] in the criminal proceeding
9 entitled *The People of the State of California v. Jessica Lorraine Barrera* (Super. Ct. San
10 Bernardino County, 2014, No. FVI1402824). After Respondent failed to appear at an ex parte
11 hearing on August 6, 2014, an arrest warrant was issued. To date, Respondent remains a fugitive
12 of justice.

13 **THIRD CAUSE FOR DISCIPLINE**

14 **(Dangerous Use of a Dangerous Drug/Controlled Substance)**

15 13. Respondent is subject to disciplinary action under section 4301, subdivisions (h), in
16 that, Respondent used a dangerous drug and/or controlled substance to an extent and/or in a
17 manner dangerous or injurious to herself and others. Complainant refers to, and by this reference
18 incorporates, the allegations set forth above in paragraph 11, subparagraphs a and b, and
19 paragraph 2, subparagraphs a and b, inclusive, as though set forth fully herein.

20 **FOURTH CAUSE FOR DISCIPLINE**

21 **(Violation of Drug Law)**

22 14. Respondent is subject to disciplinary action under section 4301, subdivision (j), in
23 that Respondent violated laws regulating controlled substances and dangerous drugs.
24 Complainant refers to, and by this reference incorporates, the allegations set forth above in
25 paragraph 11, subparagraphs a and b, and paragraph 2, subparagraphs a and b, inclusive, as
26 though set forth fully herein.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Violation of Drug Law)**

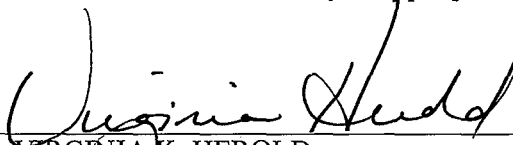
3 15. Respondent is subject to disciplinary action under section 4301, subdivision (o), in
4 conjunction with section 4060 in that Respondent violated a provision of the California Pharmacy
5 Law. Complainant refers to, and by this reference incorporates, the allegations set forth above in
6 paragraph 11, subparagraphs a and b, and paragraph 2, subparagraphs a and b, inclusive, as
7 though set forth fully herein.

8 **PRAYER**

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

- 11 1. Revoking or suspending Pharmacy Technician Registration No. TCH 92126, issued
12 to Jessica Lorraine Barrera;
- 13 2. Ordering Jessica Lorraine Barrera to pay the Board the reasonable costs of the
14 investigation and enforcement of this case, pursuant to section 125.3; and
- 15 3. Taking such other and further action as deemed necessary and proper.

16
17 DATED: 4/23/15


18 VIRGINIA K. HEROLD
19 Executive Officer
20 California State Board of Pharmacy
21 State of California
22 Complainant

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