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

11 In the Matter of the Accusation Against:
12 **ANDREW SERRANO**
208 O'Malley St.
13 Azusa, CA 91702
14 Pharmacy Technician Registration No. TCH
135744
15
16 Respondent.

Case No. 5423
ACCUSATION

17
18 Complainant alleges:

19 **PARTIES**

- 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.
22 2. On or about October 16, 2013, the Board of Pharmacy ("Board") issued Pharmacy
23 Technician Registration No. TCH 135744 to Andrew Serrano ("Respondent"). The Pharmacy
24 Technician Registration expired on December 31, 2014, and has been cancelled.

25 **JURISDICTION**

- 26 3. This Accusation is brought before the Board under the authority of the following
27 laws. All section references are to the Business and Professions Code ("Code") unless otherwise
28 indicated.

1 4. Section 4300.1 of the Code states:

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

7 5. Section 4011 of the Code provides that "[t]he board shall administer and enforce this
8 chapter [Pharmacy Law, (Business and Professions Code, Sec 4000 et seq.)] and the Uniform
9 Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and
10 Safety Code)."

11 6. Section 4300, subdivision (a), of the Code states, in pertinent part, that "[e]very
12 license issued may be suspended or revoked."

13 **STATUTORY PROVISIONS**

14 7. Section 492 of the Code states, in pertinent part:

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

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

26 8. Section 4060 of the Code states, in pertinent part:

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

1 doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
2 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
3 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
4 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
5 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
6 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
7 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
8 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
9 labeled with the name and address of the supplier or producer.

10 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a
11 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs
12 and devices."

13 9. Section 4301 of the Code states, in pertinent part:

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

17

18 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous
19 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
20 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
21 to the extent that the use impairs the ability of the person to conduct with safety to the public the
22 practice authorized by the license.

23 . . .

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

26

27 "(l) The conviction of a crime substantially related to the qualifications, functions, and
28 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13

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

16

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

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

22 10. Health and Safety Code section 11377, subdivision (a), states, in pertinent part:

23 "(a) Except as authorized by law and as otherwise provided in subdivision (b) or Section
24 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the
25 Business and Professions Code, every person who possesses any controlled substance which is
26 (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in
27 subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d),
28 (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2)

1 or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section
2 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to
3 practice in this state, shall be punished by imprisonment in a county jail for a period of not more
4 than one year or pursuant to subdivision (h) of Section 1170 of the Penal Code.

5 **REGULATORY PROVISIONS**

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

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

13 **COST RECOVERY**

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

20 **CONTROLLED SUBSTANCE / DANGEROUS DRUG**

21 13. Methamphetamine is a Schedule II controlled substance pursuant to Health and
22 Safety Code section 11055, subdivision (d)(2), and a dangerous drug pursuant section 4022 of the
23 Code.

24 **FIRST CAUSE FOR DISCIPLINE**

25 **(Unlawful Possession of a Controlled Substance / Dangerous Drug)**

26 14. Respondent is subject to disciplinary action under section 4301, subdivision (j), on
27 the grounds of unprofessional conduct, for violating Code section 4060, in conjunction with
28 Health and Safety Code section 11377, subdivision (a), in that Respondent possessed a controlled

1 substance and a dangerous drug, without valid prescriptions, as follows:

2 a. On or about May 7, 2014, a law enforcement officer asked Respondent to stop when
3 the officer observed Respondent carrying a plastic bindle (packaging item containing narcotics).
4 Subsequently, Respondent placed the plastic bindle in his mouth and ran. Upon being detained,
5 Respondent spat out the plastic bindle that contained methamphetamine.

6 b. On or about May 9, 2014, after pleading guilty, Respondent was granted a Deferred
7 Entry of Judgment for one misdemeanor count of violating Health and Safety Code section
8 11377, subdivision (a) [possession of a controlled substance], in the criminal proceeding entitled
9 *The People of the State of California v. Andrew Serrano* (Super. Ct. L.A. County, 2014, No.
10 4JB02840). On or about June 18, 2014, the Court terminated the Deferred Entry of Judgment and
11 placed Respondent on one year Proposition 36 probation, ordered him to attend a substance abuse
12 counseling, ordered him to register as a convicted narcotics offender, and pay fines. On or about
13 September 30, 2015, Respondent completed the Proposition 36 Program.

14 c. On or about June 15, 2014, law enforcement officers were dispatched to
15 Respondent's ex-girlfriend's residence where Respondent attempted to open and enter the front
16 door without ex-girlfriend's permission. Upon contact, a officer observed Respondent had red
17 eyes, rapid and slurred speech, kept rubbing his fingers together and tapping them on his leg,
18 grinded his teeth and licked his lips. During an investigation, Respondent admitted using
19 methamphetamine earlier and informed the officer that he had methamphetamine in his pants
20 pocket. The officer found methamphetamine rolled into a ball in a plastic bag.

21 d. On or about June 17, 2014, after pleading nolo contendere, Respondent was convicted
22 of one misdemeanor count of violating Health and Safety Code section 11377, subdivision (a)
23 [possession of a controlled substance], and one misdemeanor count of violating Health and Safety
24 Code section 11550, subdivision (a) [under the influence of a controlled substance], in the
25 criminal proceeding entitled *The People of the State of California v. Andrew Serrano* (Super. Ct.
26 L.A. County, 2014, No. 4JB03729). The Court placed Respondent on one year Proposition 36
27 probation, ordered him to attend substance abuse counseling, ordered him to register as a
28 convicted narcotic offender, and pay fines. On or about September 30, 2015, Respondent

1 completed the Proposition 36 Program.

2 **SECOND CAUSE FOR DISCIPLINE**

3 **(Dangerous Use of Dangerous Drug)**

4 15. Respondent is subject to disciplinary action under Code section 4301, subdivision (h),
5 on the grounds of unprofessional conduct, in that on or about June 15, 2014, Respondent
6 administered to himself methamphetamine, a dangerous drug, to the extent or in a manner as to be
7 dangerous or injurious to himself or others. Complainant refers to and by this reference
8 incorporates the allegations set for above paragraph 14, as though set forth fully.

9 **PRAYER**

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

- 12 1. Revoking or suspending Pharmacy Technician Registration No. TCH 135744, issued
13 to Andrew Serrano;
- 14 2. Ordering Andrew Serrano to pay the Board the reasonable costs of the investigation
15 and enforcement of this case, pursuant to section 125.3 of the Code; and
- 16 3. Taking such other and further action as deemed necessary and proper.

17
18
19 DATED: _____

1/21/16



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

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