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1	KAMALA D. HARRIS
2	Attorney General of California DIANN SOKOLOFF
3	Supervising Deputy Attorney General SUSANA A. GONZALES
4	Deputy Attorney General State Bar No. 253027
5	1515 Clay Street, 20th Floor P.O. Box 70550
6	Oakland, CA 94612-0550 Telephone: (510) 622-2221
7	Facsimile: (510) 622-2270 Attorneys for Complainant
8	BEFORE THE
9	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS
10	STATE OF CALIFORNIA
11	In the Matter of the Accusation Against: Case No. 5442
12	DOMINIC ANTHONY DE LA CRUZ 339 Frankfort Street
13	Daly City, CA 94014 A C C U S A T I O N
14	Pharmacy Technician Registration No. TCH
15	Respondent.
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17	Complainant alleges:
18	<u>PARTIES</u>
19	1. Virginia Herold ("Complainant") brings this Accusation solely in her official capacity
20	as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
21	2. On or about October 14, 2013, the Board of Pharmacy issued Pharmacy Technician
22	Registration Number TCH 134481 to Dominic Anthony De La Cruz ("Respondent"). The
23	Pharmacy Technician Registration was in full force and effect at all times relevant to the charges
24	brought in this Accusation and will expire on March 31, 2017, unless renewed.
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JURISDICTION

- 3. This Accusation is brought before the Board of Pharmacy ("Board"), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.
 - 4. Section 4300 of the Code states:
 - "(a) Every license issued may be suspended or revoked.
- "(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:
 - "(1) Suspending judgment.
 - "(2) Placing him or her upon probation.
 - "(3) Suspending his or her right to practice for a period not exceeding one year.
 - "(4) Revoking his or her license.
- "(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

"(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure."

5. Section 4300.1 of the Code states:

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

STATUTORY AND REGULATORY PROVISIONS

6. 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:

. . .

"(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."

7. Code 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."

8.

"Except as authorized by law and as otherwise provided in subdivisi

Health and Safety Code section 11377, subdivision (a), states:

"Except as authorized by law and as otherwise provided in subdivision (b) or Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses any controlled substance which is (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in a county jail for a period of not more than one year, except that such person may instead be punished pursuant to subdivision (h) of Section 1170 of the Penal Code if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code."

CONTROLLED SUBSTANCES

9. Code section 4021 states:

"Controlled substance' means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code."

10. MDMA, also known as "Ecstasy" or "Molly," is a Schedule I controlled substance as designated by Health and Safety Code section 11054, subdivision (d). It is a synthetic, psychoactive drug that has similarities to both the stimulant amphetamine and the hallucinogen mescaline. It produces feelings of increased energy, euphoria, emotional warmth and empathy toward others, and distortions in sensory and time perception.

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COST RECOVERY

11. Section 125.3 of the Code 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.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct)
(Bus. & Prof. Code, §§ 4301, subd. (o), 4060)

- 12. Respondent has subjected his Pharmacy Technician Registration to disciplinary action in that he violated a provision or term of the Code or of the applicable federal and state laws and regulations governing pharmacy when he unlawfully possessed MDMA or "Ecstasy," a controlled substance. (Bus. & Prof. Code, §§ 4301, subd. (o), 4060.) The circumstances are as follows:
- 13. On or about September 20, 2014, a Mountain View Police Department ("MVPD") officer ("Officer 1") was patrolling the parking lot at Shoreline Amphitheater prior to a concert. While Officer 1 was riding around the parking lot on his fully marked police motorcycle, he observed Respondent and his friend sitting in Respondent's vehicle. Respondent was in the driver's seat and his friend was in the passenger seat. Upon making eye contact with Respondent, Office 1 noticed that Respondent appeared nervous. Officer 1 saw that Respondent was holding a small, teal-colored package on his lap. Officer 1 stopped, dismounted from his motorcycle, and approached the driver's side of Respondent's vehicle. Respondent rolled down the window and Officer 1 asked whether Respondent and his friend were heading into the venue. Another MVPD officer ("Officer 2") approached the vehicle and asked Respondent and his friend where their cigarettes were. Respondent reached into the center console of the vehicle and removed a cigarette package. Officer 1 observed that the cigarette package was teal green, and noticed that the package was open. Officer 1 could also see a clear plastic coin baggie from the opening of the cigarette container, which he recognized as the type of packaging used for narcotics. Officer 1 moved the package up and observed numerous white tablets inside.
- 14. Officer 1 asked Respondent to exit the vehicle and asked him what was in the package. Respondent admitted that the package contained Ecstasy and that the Ecstasy belonged

to him. Officer 1 arrested Respondent without incident for violation of Health and Safety Code section 11377, subdivision (a). Officer 1 conducted a further search of Respondent's vehicle and discovered a similar small plastic coin baggie in the center console. Inside the baggie were two green tablets. Based on Officer 1's training and experience, he concluded that the two green tablets appeared similar to Ecstasy.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct) (Bus. & Prof. Code, § 4301, subd. (j))

15. Respondent has subjected his Pharmacy Technician Registration to disciplinary action in that he violated the statutes of this state regulating controlled substances, specifically Health and Safety Code section 11377, subdivision (a). (Bus. & Prof. Code, § 4301, subd. (j).) The circumstances of Respondent's contact are set forth above in paragraphs 13 and 14.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this Accusation, and that following the hearing, the Board of Pharmacy issue a decision:

- 1. Revoking or suspending Pharmacy Technician Registration Number TCH 134481, issued to Dominic Anthony De La Cruz;
- 2. Ordering Dominic Anthony De La Cruz 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: 8/10/15

VIRGINIA NEROLD
Executive Officer

Board of Pharmacy

Department of Consumer Affairs

State of California Complainant

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