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

12 In the Matter of the Accusation Against:

Case No. 5705

13 **ALVARO SAUL CANO CHAVEZ**
14 **796 Cedar Ave**
Chula Vista, CA 91910

A C C U S A T I O N

15 **Pharmacy Technician Registration No.**
16 **TCH 135702**

17 Respondent.

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 (Board), Department of Consumer Affairs.

23 2. On or about November 12, 2013, the Board issued Pharmacy Technician Registration
24 Number TCH 135702 to Alvaro Saul Cano Chavez (Respondent). The Pharmacy Technician
25 Registration was in full force and effect at all times relevant to the charges brought herein and will
26 expire on January 31, 2017, unless renewed.

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JURISDICTION

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2 3. This Accusation is brought before the Board, under the authority of the following
3 laws. All section references are to the Business and Professions Code (Code) unless otherwise
4 indicated.

5 4. Section 4011 of the Code provides that the Board shall administer and enforce both
6 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
7 Act [Health & Safety Code, § 11000 et seq.].

8 5. Section 4300 of the Code states, (a) Every license issued may be suspended or
9 revoked.

10 6. Section 4300.1 of the Code states:

11 The expiration, cancellation, forfeiture, or suspension of a board-issued
12 license by operation of law or by order or decision of the board or a court of law, the
13 placement of a license on a retired status, or the voluntary surrender of a license by a
14 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 PROVISIONS

15 7. Section 4022 of the Code states

16 "Dangerous drug" or "dangerous device" means any drug or device unsafe for
17 self-use in humans or animals, and includes the following:

18 (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing
19 without prescription," "Rx only," or words of similar import.

20 (b) Any device that bears the statement: "Caution: federal law restricts this
21 device 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.

22 (c) Any other drug or device that by federal or state law can be lawfully
23 dispensed only on prescription or furnished pursuant to Section 4006."

24 8. Section 4059 of the Code states:

25 (a) A person may not furnish any dangerous drug, except upon the prescription
26 of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
pursuant to Section 3640.7. A person may not furnish any dangerous device, except
27 upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or
naturopathic doctor pursuant to Section 3640.7.

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9. 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, 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, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either Section 4052.1 or 4052.2. 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.

10. 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.

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11. Health & Safety Code section 11170 states:

No person shall prescribe, administer, or furnish a controlled substance for himself.

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1 12. Health & Safety Code section 11350 states:

2 Except as otherwise provided in this division, every person who possesses
3 (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of
4 subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of
5 subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section
6 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled
7 substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon
8 the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to
9 practice in this state, shall be punished by imprisonment pursuant to subdivision (h)
10 of Section 1170 of the Penal Code.

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

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

19 14. United States Code, title 21, section 843 states, in pertinent part:

20 (a) It shall be unlawful for any person knowingly or intentionally –

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22 (3) to acquire or obtain possession of a controlled substance by
23 misrepresentation, fraud, forgery, deception, or subterfuge;

24 **COSTS**

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

FACTUAL ALLEGATIONS

16. At all times mentioned herein, Respondent was employed as a pharmacy technician
in Chula Vista, California.

1 17. Between November 12, 2013 and September 9, 2015, Respondent admitted to
2 Board staff that he had been smoking marijuana for his personal use to deal with personal issues.
3 Respondent does not have a prescription for possessing marijuana.

4 **DRUG**

5 18. Marijuana is a Schedule I controlled substance as designated by Health and Safety
6 Code section 11054(d)(13), and is a dangerous drug pursuant to Business & Professions Code
7 section 4022.

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(Violations of Drug Laws)**

10 19. Respondent has subjected his Pharmacy Technician Registration to discipline under
11 Code section 4301, subdivision (j), for violating statutes regulating controlled substances and
12 dangerous drugs, including Health and Safety Code sections 11170 and 11350, subdivision (a), in
13 that he possessed a controlled substance without a prescription, as set forth in paragraphs 16
14 through 18, above, which are incorporated herein by reference.

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Possession of Controlled Substance without a Prescription)**

17 20. Respondent has subjected his Pharmacy Technician Registration to discipline under
18 Code section 4301, subdivision (o) for violating Pharmacy Law, in that Respondent possessed a
19 controlled substance without a prescription in violation of Code section 4060, as set forth in
20 paragraphs 16 through 18, above, which are incorporated herein by reference.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Possession of a Dangerous Controlled Substance without a Prescription)**

23 21. Respondent has subjected his Pharmacy Technician Registration to discipline under
24 Code section 4022 and 4059, subdivision (a), in that Respondent possessed a dangerous drug
25 and/or controlled substance without a prescription, as set forth in paragraphs 16 through 18,
26 above, which are incorporated herein by reference.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct)**

3 22. Respondent is subject to disciplinary action under Code section 4301 for
4 unprofessional conduct in that he engaged in the activities described in paragraphs 16 through
5 18, above, which are incorporated herein by reference.

6 **PRAYER**

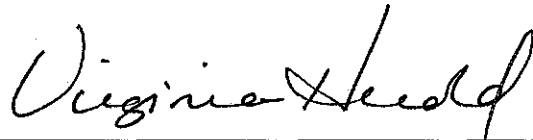
7 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
8 and that following the hearing, the Board of Pharmacy issue a decision:

9 1. Revoking or suspending Pharmacy Technician Registration Number TCH 135702,
10 issued to Alvaro Saul Cano Chavez;

11 2. Ordering Alvaro Saul Cano Chavez to pay the Board of Pharmacy the reasonable
12 costs of the investigation and enforcement of this case, pursuant to Business and Professions
13 Code section 125.3;

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

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18 DATED: 4/16/16



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

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