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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 **AGNES VALENA MARLANG, AKA**
AGNES MARIE VALENA
13 10047 Bromley Way
Sacramento, CA 95827
14 **Pharmacy Technician License No.**
15 **TCH 91137**
16 Respondent.

Case No. 6114

A C C U S A T I O N

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18 Virginia Herold (“Complainant”) alleges:

19 **PARTIES**

- 20 1. Complainant brings this Accusation solely in her official capacity as the Executive
21 Officer of the Board of Pharmacy (“Board”), Department of Consumer Affairs.
22 2. On or about May 19, 2009, the Board issued Pharmacy Technician Registration
23 Number TCH 91137 to Agnes Valena Marlang, also known as Agnes Marie Valena
24 (“Respondent”). The Pharmacy Technician Registration was in full force and effect at all times
25 relevant to the charges brought herein and will expire on November 30, 2018, unless renewed.

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1 JURISDICTION

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

5 4. Code section 4300 states, in pertinent part:

6 (a) Every license issued may be suspended or revoked.

7 (b) The board shall discipline the holder of any license issued by the board,
8 whose default has been entered or whose case has been heard by the board and found
9 guilty, by any of the following methods:

10 (1) Suspending judgment.

11 (2) Placing him or her upon probation.

12 (3) Suspending his or her right to practice for a period not exceeding one year.

13 (4) Revoking his or her license.

14 (5) Taking any other action in relation to disciplining him or her as the board in
15 its discretion may deem proper . . .

16 5. Code section 4300.1 states:

17 The expiration, cancellation, forfeiture, or suspension of a board-issued license
18 by operation of law or by order or decision of the board or a court of law, the
19 placement of a license on a retired status, or the voluntary surrender of a license by a
20 licensee shall not deprive the board of jurisdiction to commence or proceed with any
21 investigation of, or action or disciplinary proceeding against, the licensee or to render
22 a decision suspending or revoking the license.

23 STATUTORY AND REGULATORY PROVISIONS

24 6. Code section 4301 states, in pertinent part:

25 The board shall take action against any holder of a license who is guilty of
26 unprofessional conduct. Unprofessional conduct shall include, but is not limited to,
27 any of the following:

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

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

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

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

5 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
6 abetting the violation of or conspiring to violate any provision or term of this chapter
7 or of the applicable federal and state laws and regulations governing pharmacy,
8 including regulations established by the board or by any other state or federal
9 regulatory agency.

10 7. Code section 4060 states, in pertinent part:

11 A person shall not possess any controlled substance, except that furnished to a
12 person upon the prescription of a physician, dentist, podiatrist, optometrist,
13 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant
14 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a
15 nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to
16 Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist
17 pursuant to Section 4052.1, 4052.2, or 4052.6. . . .

18 8. Health and Safety Code section 11377(a) states, in pertinent part:

19 Except as authorized by law and as otherwise provided in subdivision (b) or
20 Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of
21 Division 2 of the Business and Professions Code, every person who possesses any
22 controlled substance which is (1) classified in Schedule III, IV, or V, and which is
23 not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except
24 paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph
25 (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of
26 subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of
27 Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or
28 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 or pursuant to subdivision (h) of
Section 1170 of the Penal Code.

9. Health and Safety Code section 11550(a) states:

A person shall not use, or be under the influence of any controlled substance
that is (1) specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f)
of Section 11054, specified in paragraph (14), (15), (21), (22), or (23) of subdivision
(d) of Section 11054, specified in subdivision (b) or (c) of Section 11055, or
specified in paragraph (1) or (2) of subdivision (d) or in paragraph (3) of subdivision
(e) of Section 11055, or (2) a narcotic drug classified in Schedule III, IV, or V,
except when administered by or under the direction of a person licensed by the state
to dispense, prescribe, or administer controlled substances. It shall be the burden of
the defense to show that it comes within the exception. A person convicted of
violating this subdivision is guilty of a misdemeanor and shall be sentenced to serve
a term of not more than one year in a county jail. The court may also place a person
convicted under this subdivision on probation for a period not to exceed five years.

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10. Code section 492 states, in pertinent part:

Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and 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 agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest . . .

COST RECOVERY

11. Code section 125.3 provides, 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, 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.

DRUG

11. *Methamphetamine* is a Schedule II controlled substance as designated by Health and Safety Code section 11055(d)(2), and is a dangerous drug pursuant to Code section 4022.

FIRST CAUSE FOR DISCIPLINE

(Violation of State Laws Regulating Controlled Substances)

12. On or about December 21, 2016, deputies with the Sacramento County Sheriff's Department responded to a report of a domestic altercation at Respondent's residence involving a gun. When Respondent was questioned at her residence by a deputy, she denied that a gun was in her house. A search of Respondent's residence ensued and a baggie weighing approximately 2.70 grams of methamphetamine was found inside Respondent's purse. A deputy found in the garage of Respondent's residence: a substance weighing 13.20 grams that tested presumptive positive as Heroin, a substance weighing 220.23 grams that tested presumptive positive as methamphetamine, scales, and baggies inside a clothes dryer; and, a loaded .25 caliber semi-automatic handgun inside the pocket of a small jacket hanging on a hook. The heroin, methamphetamine, and gun were within reach of Respondent's children who resided there.

1 Respondent admitted to a deputy that she smokes methamphetamine and had used some that
2 morning. Respondent stated that she did not use methamphetamine every day and did not have a
3 drug problem.

4 13. Respondent is subject to disciplinary action pursuant to Code section 4301(j), on the
5 grounds of unprofessional conduct, in that Respondent violated statutes regulating controlled
6 substances and dangerous drugs, as follows:

7 a. Health & Safety Code section 11377: On or about December 21, 2016, Respondent
8 unlawfully possessed methamphetamine, a controlled substance and a dangerous drug.

9 b. Health and Safety Code Section 11550(a) and Code Section 4060: At times
10 unknown up to and including on or about December 21, 2016, Respondent unlawfully used
11 methamphetamine, a controlled substance.

12 **SECOND CAUSE FOR DISCIPLINE**

13 (Use of Controlled Substance in a Dangerous or Injurious Manner)

14 14. Respondent is subject to disciplinary action pursuant to Code section 4301(h), in that
15 at times unknown up to and including December 21, 2016, Respondent used methamphetamine in
16 a manner dangerous or injurious to herself and others, as set forth in paragraph 12 and
17 paragraph 13, subparagraph b, above.

18 **THIRD CAUSE FOR DISCIPLINE**

19 (Violation of the Pharmacy Law)

20 15. Respondent is subject to disciplinary action pursuant to Code section 4301(o), for
21 unprofessional conduct, in that Respondent violated laws governing pharmacy, as set forth in
22 paragraph 12 and paragraph 13, subparagraphs a and b, above.

23 **FOURTH CAUSE FOR DISCIPLINE**

24 (Acts Involving Dishonesty)

25 16. Respondent is subject to disciplinary action pursuant to Code section 4301(f), on the
26 grounds of unprofessional conduct, in that she committed an act involving dishonesty.
27 Specifically, on or about December 21, 2016, in response to questioning by a sheriff's deputy,

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1 Respondent told the deputy that a gun would not be found in her house. In fact, a gun was found
2 in Respondent's house, as set forth in paragraph 12, above.

3 **PRAYER**

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

6 1. Revoking or suspending Pharmacy Technician Registration Number TCH 91137,
7 issued to Agnes Valena Marlang, also known as Agnes Marie Valena;

8 2. Ordering Agnes Valena Marlang, also known as Agnes Marie Valena, to pay the
9 Board of Pharmacy the reasonable costs of the investigation and enforcement of this case,
10 pursuant to Business and Professions Code section 125.3; and,

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

12
13 DATED: _____

9/18/17



14 VIRGINIA HEROLD
15 Executive Officer
16 Board of Pharmacy
17 Department of Consumer Affairs
18 State of California
19 Complainant

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