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BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: RAMON GERARDO LAGUNA 244 Santa Louisa Irvine, CA 92606 Pharmacy Technician License No. 44921 Respondent.	Case No. 3224 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about January 8, 2003, the Board of Pharmacy issued Pharmacy Technician License No. 44921 to Ramon Gerardo Laguna (Respondent). The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2011, unless renewed.

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 477 of the Code states:

As used in this division:

(a) "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency."

(b) "License" includes certificate, registration or other means to engage in a business or profession regulated by this code.

5. Section 118, subdivision (b), of the Code provides that the suspension/expiration/surrender/cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

6. Section 490 of the Code states:

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in Petropoulos v. Department of Real Estate (2006) 142 Cal. App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session do not constitute a change to, but rather are declaratory of, existing law.

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7. Section 492 of the Code states:

> 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 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a 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.
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> This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division.

8. Section 4202(d) of the Code states that the board may suspend or revoke a license issued pursuant to this section on any ground specified in Section 4301.

9. Section 4300 of the Code states:

> (a) Every license issued may be suspended or revoked.
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> (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:
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> (1) Suspending judgment.
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> (2) Placing him or her upon probation.
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> (3) Suspending his or her right to practice for a period not exceeding one year.
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> (4) Revoking his or her license.
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> (5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.
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> . . . .

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:
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> . . . .
>
> (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 to any other

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

. . . .

(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.

. . . .

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

(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. Section 4021 of the Code defines "controlled substance" as any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health & Safety Code.

12. 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, 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.

. . . .

13. Section 125.3 of the Code 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, including charges imposed by the Attorney General. Under section 125.3 (c), a certified copy of the actual costs or a good faith estimate of costs where actual costs are not available, including investigative and enforcement costs and charges of the Attorney General up to the date of the hearing, signed by the designated representative of the entity bringing the proceeding shall be *prima facie* evidence of the reasonable costs of investigation and prosecution of the case.

14. This Accusation also refers to the following sections of the Health & Safety Code:

15. Health & Safety Code § 11170 states that "[n]o person shall prescribe, administer, or furnish a controlled substance for himself."

16. California Code of Regulations, title 16, section 1769, subdivision (b), states:

> When considering the suspension or revocation of a facility or personal license on the ground that the licensee or the registrant has been convicted of a crime, the board in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following:
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> (1) The nature and severity of the act(s) or offenses(s);
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> (2) Total criminal record;
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> (3) Time that has elapsed since the commission of the act(s) or offense(s);
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> (4) Whether the licensee has complied with all terms of parole, probation, restitution, or any other sanctions lawfully imposed against the licensee; and
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> (5) Evidence, if any, of rehabilitation submitted by the licensee.

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

> For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a

substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare.

CONTROLLED SUBSTANCE AT ISSUE

18. **"Methamphetamine"** is a Schedule II controlled substance as designated by Health and Safety Code Section 11055, subdivision (d)(2).

FACTUAL BACKGROUND

19. On September 8, 2006, at approximately 6:30 p.m., an Irvine police officer stopped an automobile driven by Respondent because the automobile registration tag had expired in June 2006. During the stop, the officer learned that Respondent was driving with a suspended driver's license. The license was suspended because of a warrant issued by the Los Angeles Sheriff's Department for a failure to appear on March 29, 2006 for traffic violations.

20. Respondent was arrested for the outstanding warrant and taken to the Irvine Police Department, where an officer conducted an in-custody search and found a zip-lock bag in Respondent's front shirt pocket. Respondent admitted that the substance in the bag was "Speed." The bag contained 3.9 grams of a white powdery substance that tested positive for amphetamine. Respondent admitted that he had bought the drug that morning before work "for this weekend." Respondent admitted to an officer that the last time he had used "speed" was two weeks previously.

21. On October 10, 2006, Respondent pled guilty to violation of Health & Safety Code section 11377(a) (possession of methamphetamine, a felony), and Vehicle Code section 14601.1(a) (driving on a suspended license, a misdemeanor), in Superior Court, County of Orange, Case no. 06HF1893. Respondent was sentenced on the misdemeanor count to three years informal probation, ordered to pay fines and fees, and not permitted to drive without a valid license.

22. On July 14, 2008, after the completion of a PC 1000 Drug Program, Respondent's felony charge of possession of methamphetamine was dismissed.

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FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Possession of a Controlled Substance)

23. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the Code, in that he violated a statute regulating controlled substances, and Code Section 4060 by possessing a controlled substance, methamphetamine, without a prescription, as detailed in paragraphs 19-22, above.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Violation of Chapter)

24. Respondent is subject to disciplinary action under section 4301, subdivision (o) of the Code, for unprofessional conduct for violating Business & Professions Code section 4060, in that he possessed a controlled substance without a prescription, as detailed in paragraphs 19-22, above.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Conviction for Driving with a Suspended License)

25. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision (l) of the Code, for unprofessional conduct in that he was convicted of driving with a suspended license, a crime that is substantially related to the qualifications, functions and duties of a pharmacy technician, as detailed in paragraphs 19-22, above.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Self-Administration of a Controlled Substance)

26. Respondent is subject to disciplinary action under section 4301, subdivision (h) of the Code for unprofessional conduct, in that on or about August 22, 2006 Respondent illegally administered a controlled substance to himself, methamphetamine, as evidenced by his admission made to a police officer as detailed in paragraph 20, above.

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PRAYER

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

1. Revoking or suspending Pharmacy Technician License No. 44921, issued to Ramon Gerardo Laguna.

2. Ordering Ramon Gerardo Laguna 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;

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

DATED: 3/24/09

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

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