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8  
9 **BEFORE THE**  
**BOARD OF PHARMACY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**  
11

12 In the Matter of the Accusation Against:

Case No. 3239

13 **MANUEL ARMENDARIZ**  
14 **9019 Lemoran Avenue**  
**Downey, CA 90240**

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

15 **Pharmacy Tech. Registration No. TCH**  
16 **49698**

17 Respondent.

18  
19 FINDINGS OF FACT

20 1. On or about April 16, 2009, Complainant Virginia Herold, in her official capacity as  
21 the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed  
22 Accusation No. 3239 against Manuel Armendariz (Respondent) before the Board of Pharmacy.

23 2. On or about August 29, 2003, the Board of Pharmacy (Board) issued Pharmacy  
24 Technician Registration No. TCH 49698 to Respondent. The Pharmacy Technician Registration  
25 was in full force and effect at all times relevant to the charges brought herein and expired on  
26 February 8, 2009.

27 3. On or about April 22, 2009, Juana Mejia, an employee of the Department of Justice,  
28 served by Certified and First Class Mail a copy of the Accusation No. 3239, Statement to

1 Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5,  
2 11507.6, and 11507.7 to Respondent's address of record with the Board: 9019 Lemoran Avenue,  
3 Downey, CA 90240. On or about April 24, 2009, the certified mail receipt for the  
4 aforementioned documents was signed by Linda Mera. A copy of the Accusation is attached as  
5 exhibit A, and is incorporated herein by reference.

6 4. Service of the Accusation was effective as a matter of law under the provisions of  
7 Government Code section 11505, subdivision (c).

8 5. Government Code section 11506 states, in pertinent part:

9 (c) The respondent shall be entitled to a hearing on the merits if the respondent  
10 files a notice of defense, and the notice shall be deemed a specific denial of all  
11 parts of the accusation not expressly admitted. Failure to file a notice of defense  
12 shall constitute a waiver of respondent's right to a hearing, but the agency in its  
13 discretion may nevertheless grant a hearing.

14 Respondent failed to file a Notice of Defense within 15 days after service upon him of the  
15 Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 3239.

16 6. California Government Code section 11520 states, in pertinent part:

17 (a) If the respondent either fails to file a notice of defense or to appear at the  
18 hearing, the agency may take action based upon the respondent's express  
19 admissions or upon other evidence and affidavits may be used as evidence  
20 without any notice to respondent.

21 7. Pursuant to its authority under Government Code section 11520, the Board finds  
22 Respondent is in default. The Board will take action without further hearing and, based on the  
23 evidence on file herein, finds that the allegations in Accusation No. 3239 are true.

24 8. The total cost for investigation and enforcement in connection with the Accusation  
25 are \$3,973.00, as of May 14, 2009.

#### 26 DETERMINATION OF ISSUES

27 1. Based on the foregoing findings of fact, Respondent Manuel Armendariz has  
28 subjected his Pharmacy Technician Registration No. TCH 49698 to discipline.

1. A copy of the Accusation is attached.

2. The agency has jurisdiction to adjudicate this case by default.

1 4. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician  
2 Registration based upon the following violations alleged in the Accusation:

3 a. Business & Professions Code sections 490 and 4301, and Health & Safety Code  
4 section 11351, for felony conviction for possession of cocaine for sale, as enhanced by Penal  
5 Code section 12022, subdivision (c) because Respondent was in possession of a firearm in the  
6 commission of the principal offense;

7 b. Business & Professions Code sections 4301, subdivision (j), 4059, and 4060 for  
8 unprofessional conduct by possessing methamphetamine for sale;

9 c. Business and Professions Code sections 4301, subdivisions (h) and (j), for  
10 unprofessional conduct by being under the influence of a controlled substance; and

11 d. Business and Professions Code section 4301, subdivision (p), by engaging in conduct  
12 that would have warranted denial of a pharmacy technician registration.

13 ORDER


14 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 49698, heretofore  
15 issued to Respondent Manuel Armendariz, is revoked.

16 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a  
17 written motion requesting that the Decision be vacated and stating the grounds relied on within  
18 seven (7) days after service of the Decision on Respondent. The agency in its discretion may  
19 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

20 This Decision shall become effective on October 9, 2009.

21 It is so ORDERED September 9, 2009.

22 BOARD OF PHARMACY  
23 DEPARTMENT OF CONSUMER AFFAIRS  
24 STATE OF CALIFORNIA

25 By   
26 KENNETH H. SCHELL  
Board President

27 Attachment: Exhibit A: Accusation No. 3239

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

12 In the Matter of the Accusation Against:

Case No. 3239

13 MANUEL ARMENDARIZ  
9019 Lemoran Avenue  
14 Downey, CA 90240

**A C C U S A T I O N**

15 Pharmacy Tech. Registration No. TCH 49698

16 Respondent.

17  
18 Complainant alleges:

19 PARTIES

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

23 2. On or about August 29, 2003, the Board of Pharmacy issued Pharmacy  
24 Technician Registration Number TCH 49698 to Manuel Armendariz (Respondent). The  
25 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges  
26 brought herein and will expire on February 8, 2009, 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 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

6. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

7. Section 4300, subdivision (a) of the Code states "Every license issued may be suspended or revoked."

8. 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:

....

1 (h) The administering to oneself, of any controlled substance, or the use of  
2 any dangerous drug or of alcoholic beverages to the extent or in a manner as to be  
3 dangerous or injurious to oneself, to a person holding a license under this chapter,  
4 or to any other person or to the public, or to the extent that the use impairs the  
5 ability of the person to conduct with safety to the public the practice authorized  
6 by the license.

7 . . . .

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

10 . . . .

11 (l) The conviction of a crime substantially related to the qualifications,  
12 functions, and duties of a licensee under this chapter. The record of conviction of  
13 a violation of Chapter 13 (commencing with Section 801) of Title 21 of the  
14 United States Code regulating controlled substances or of a violation of the  
15 statutes of this state regulating controlled substances or dangerous drugs shall be  
16 conclusive evidence of unprofessional conduct. In all other cases, the record of  
17 conviction shall be conclusive evidence only of the fact that the conviction  
18 occurred. The board may inquire into the circumstances surrounding the  
19 commission of the crime, in order to fix the degree of discipline or, in the case of  
20 a conviction not involving controlled substances or dangerous drugs, to determine  
21 if the conviction is of an offense substantially related to the qualifications,  
22 functions, and duties of a licensee under this chapter. A plea or verdict of guilty  
23 or a conviction following a plea of nolo contendere is deemed to be a conviction  
24 within the meaning of this provision. The board may take action when the time  
25 for appeal has elapsed, or the judgment of conviction has been affirmed on appeal  
26 or when an order granting probation is made suspending the imposition of  
27 sentence, irrespective of a subsequent order under Section 1203.4 of the Penal  
28 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.

. . . .

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

. . . .

9. . . Section 4022 of the Code states

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

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

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

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

3 10. Section 4059 of the Code states, in pertinent part, that a person may not  
4 furnish any dangerous drug except upon the prescription of a physician, dentist, podiatrist,  
5 optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not  
6 furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist,  
7 optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

8 11. Section 4060 of the Code states:

9 No person shall possess any controlled substance, except that furnished to  
10 a person upon the prescription of a physician, dentist, podiatrist, optometrist,  
11 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished  
12 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section  
13 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant  
14 pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or  
15 a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause  
16 (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.  
17 This section shall not apply to the possession of any controlled substance by a  
18 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,  
19 optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse  
20 practitioner, or physician assistant, when in stock in containers correctly labeled  
21 with the name and address of the supplier or producer.

22 . . . .

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

24 For the purpose of denial, suspension, or revocation of a personal or  
25 facility license pursuant to Division 1.5 (commencing with Section 475) of the  
26 Business and Professions Code, a crime or act shall be considered substantially  
27 related to the qualifications, functions or duties of a licensee or registrant if to a  
28 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.

13. California Code of Regulations, title 16, section 1769 states:

. . . .

(b) When considering the suspension or revocation of a facility or a  
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 criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

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(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) Evidence, if any, of rehabilitation submitted by the licensee.

14. 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.

**DRUGS**

15. Cocaine is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (b)(6), and is a dangerous drug pursuant to Business & Professions Code section 4022.

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

**FIRST CAUSE FOR DISCIPLINE**

**(July 21, 2008 Criminal Conviction for Possession of Cocaine for Sale)**

17. Respondent has subjected his license to discipline under sections 490 and 4301, subdivision (l) of the Code in that he was convicted of a crime that is substantially related to the qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

a. On or about July 21, 2008, in a criminal proceeding entitled *People of the State of California v. Manuel Armendariz*, in Riverside County Superior Court, case number SWF018750, Respondent was convicted on his plea of guilty to violating Health and Safety Code section 11351, possession of a controlled substance for sale, to wit, cocaine, a felony. The conviction was enhanced pursuant to Penal Code section 12022, subdivision (c) in that Respondent was in possession of a firearm in the commission of the principal offense.

///



1                   b.       As a result of the conviction, on or about July 21, 2008, the court  
2 sentenced Respondent to 365 days in the custody of the sheriff, with credit for 13 days, stayed  
3 until September 2, 2008. Formal probation was granted for a period of 60 months. Respondent  
4 was ordered to attend 52 Narcotics Anonymous meetings, participate in drug counseling or a  
5 rehabilitation program, and not use or possess illegal controlled substances. Respondent was  
6 further required to submit to search, biological chemical testing, not own or possess firearms or  
7 deadly weapons for life, and payment of fees, fines, and court costs.

8                   c.       The facts that lead to the conviction were that on or about the  
9 afternoon of November 1, 2006, a deputy from the Riverside County Sheriff's Department  
10 conducted a traffic stop on Respondent who was driving a Cadillac Escalade with overly tinted  
11 windows. Respondent appeared to be very nervous, so the deputy requested and received  
12 permission to search the vehicle. Under the back seat of the vehicle, the deputy located an  
13 eyeglass case containing 1.48 ounces of what later tested positive for methamphetamine. Based  
14 on the quantity of the methamphetamine, the deputy contacted the department's narcotics unit to  
15 conduct a search of Respondent's residence. Respondent's wife was intercepted while picking  
16 her children up from school and she waited with a deputy outside the residence until the search  
17 warrant was issued. During a search of the residence, three handguns were located in the closet  
18 of the master bedroom: a Ruger 6-shot revolver, a Smith & Wesson six-shot revolver, and a  
19 Smith & Wesson 9mm semi-automatic loaded with five rounds in the magazine. A records  
20 check revealed the revolvers were stolen. Additional ammunition and \$211 in U.S. currency was  
21 located in the closet. A one-ounce bag of cocaine was found in a linen cabinet in the master  
22 bathroom. All of the items found were in locations easily accessible by Respondent's two  
23 children. Respondent agreed to speak with the deputies and stated that the cocaine was for  
24 personal use purchased for an upcoming family trip to Las Vegas. Respondent stated that he was  
25 selling methamphetamine because of financial problems and he needed the money. Respondent  
26 had \$500 in U.S. currency in his right front pants pocket. Respondent also exhibited the signs  
27 and symptoms of being under the influence of a central nervous system stimulant. Child  
28 Protective Services were called and the two minor children were removed from the residence.

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct - Illegal Possession & Sale of Controlled Substances)**

3 18. Respondent is subject to disciplinary action under sections 4301,  
4 subdivision (j), 4059, and 4060 of the Code in that Respondent violated California and federal  
5 statutes regulating controlled substances and dangerous drugs, in that on or about November 1,  
6 2006, Respondent possessed controlled substances without a prescription, and possessed  
7 methamphetamine for the purpose of sale, as detailed in paragraph 17, above.

8 **THIRD CAUSE FOR DISCIPLINE**

9 **(Unprofessional Conduct - Use of Dangerous Drugs)**

10 19. Respondent is subject to disciplinary action under sections 4301,  
11 subdivisions (h) and (j) of the Code, in that on or about November 1, 2006, while being  
12 interviewed by a Riverside County deputy sheriff, Respondent was determined to be under the  
13 influence of a controlled substance, as detailed in paragraph 17, above.

14 **FOURTH CAUSE FOR DISCIPLINE**

15 **(Conduct That Would Have Warranted Denial of a License)**

16 20. Respondent is subject to disciplinary action under sections 4301,  
17 subdivision (p) of the Code, in that Respondent’s conviction, as detailed in paragraph 17, above,  
18 would have warranted the denial of a pharmacy technician registration.

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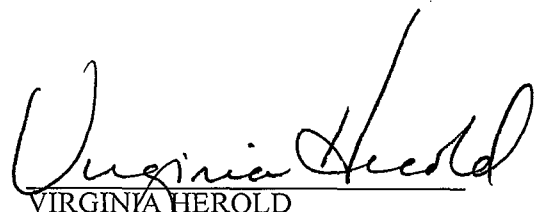
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PRAYER

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 Registration Number TCH 49698, issued to Manuel Armendariz;
2. Ordering Manuel Armendariz 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: 4/16/09



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

SD2008803167