address of record with the Board, which was and is: 18726 Villa Park Street, La Puente, CA 91744.

- 4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c).
- 5. On or about April 16, 2010, a signed certified mail return receipt from the Accusation package sent to Respondent was received by the Attorney General's Office.
 - 6. Government Code section 11506 states, in pertinent part:
 - (c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.
- 7. Respondent failed to file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 3490.
 - 8. California Government Code section 11520 states, in pertinent part:
 - (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.
- 9. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based upon the evidence contained in the Default Decision Evidence Packet, finds that the charges and allegations in Accusation No. 3490, are separately and severally, true and correct.
- 10. The total cost for investigation and enforcement in connection with the Accusation are \$2276.50 as of May 28, 2010.

DETERMINATION OF ISSUES

- 1. Based on the foregoing findings of fact, Respondent Albert Angel Avalos has subjected his Pharmacy Technician License No. TCH 69538 to discipline.
 - 2. The agency has jurisdiction to adjudicate this case by default.

Exhibit A Accusation No. 3490

| | | • | |
|----|---|---|---------------|
| 1 | EDMUND G. BROWN JR. Attorney General of California | | |
| 2 | GREGORY J. SALUTE Supervising Deputy Attorney General | | |
| 3 | NANCY A. KAISER Deputy Attorney General | | |
| 4 | State Bar No. 192083 300 So. Spring Street, Suite 1702 | | |
| 5 | Los Angeles, CA 90013 Telephone: (213) 897-5794 | | |
| .6 | Facsimile: (213) 897-2804 Attorneys for Complainant | | |
| 7 | Attorneys j | or Complainani | |
| 8 | BEFORE THE | | |
| 9 | BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS | | |
| 10 | STATE OF CALIFORNIA | | |
| 11 | In the Mat | ter of the Accusation Against: | Case No. 3490 |
| 12 | ALBERT ANGEL AVALOS | | |
| 13 | 18726 Villa Park Street La Puente, CA 91744 ACCUSATION | | |
| 14 | Pharmacy Technician License No. TCH 69538 | | |
| 15 | | Respondent. | |
| 16 | | | |
| 17 | Complainant alleges: | | |
| 18 | PARTIES | | |
| 19 | 1. Virginia K. Herold (Complainant) brings this Accusation solely in her official | | |
| 20 | capacity as the Executive Officer of the Board of Pharmacy. | | |
| 21 | 2. On or about January 26, 2007, the Board of Pharmacy issued Pharmacy Technician | | |
| 22 | License Number TCH 69538 to Albert Angel Avalos (Respondent). The Pharmacy Technician | | |
| 23 | License was in full force and effect at all times relevant to the charges brought herein and will | | |
| 24 | expire on June 30, 2010, unless renewed. | | |
| 25 | JURISDICTION | | |
| 26 | 3. | 3. This Accusation is brought before the Board of Pharmacy (Board), under the | |
| 27 | authority of the following laws. All section references are to the Business and Professions Code | | |
| 28 | (Code) unless otherwise indicated. | | |
| | . 1 | | |

22.

4. Section 4300 of the Code permits the Board to take disciplinary action to suspend or revoke a license issued by the Board.

5. 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.

"(k) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances.

"(1) 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."

6. Section 492 of the Code states, in 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 ([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."

- 7. 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.
 - 8. 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."

STATE DRUG STATUTES

9. Health and Safety Code section 11007 states that "controlled substance" unless otherwise specified, means a drug, substance, or immediate precursor which is listed in any schedule in Section 11054, 11055, 11056, 11057, or 11058.

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10. Health and Safety Code section 11377, subdivision (a), states, in part, that:

"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 . . (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 or in the state prison."

CONTROLLED SUBSTANCE

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

COST RECOVERY

12. Section 125.3 of the Code provides 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

(Conviction of Substantially Related Crime)

- 13. Respondent has subjected his license to disciplinary action under sections 4301, subdivisions (k) and (l) of the Code, in conjunction with California Code of Regulations, title 16, section 1770, on the grounds of unprofessional conduct, in that Respondent was convicted of a crime, which is substantially related to the qualifications, functions, or duties of a pharmacy technician, as follows:
- a. On or about April 17, 2008, in a criminal proceeding entitled *People of the State of California v. Albert Angel Avalos*, in Los Angeles County Superior Court, Case No. KA082583, Respondent pled guilty to violating Health and Safety Code section 11377, subdivision (a), (possession of a controlled substance, Methamphetamine), a felony. Respondent was placed on deferred entry of judgment for eighteen (18) months and fined. The circumstances are as follows:

b. On or about February 5, 2008, Los Angeles County Deputy Sheriffs observed Respondent riding a bicycle against traffic and failing to stop at a posted stop sign. Respondent was contacted by a traffic stop to warn/cite. Upon making contact with Respondent, the deputies noticed that Respondent appeared very nervous and acted as if he wanted to reach into his pockets. The deputies asked if they could search him. He consented to the search and then stated that he had two baggies of "Meth" that he had just found. Deputy Perallon searched Respondent and located a zip-lock bag containing Methamphetamine. Respondent was arrested for possession of Methamphetamine in violation of Health and Safety Code section 11377.

SECOND CAUSE FOR DISCIPLINE

(Violation of State Laws Regulating Controlled Substances)

14. Respondent has subjected his license to disciplinary action under section 4301, subdivision (j), on the grounds of unprofessional conduct, in that Respondent violated Health and Safety Code sections 11377, subdivision (a), by possessing a controlled substance, Methamphetamine, as set forth in paragraph 13, above.

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 Number TCH 69538, issued to Albert Angel Avalos;
- 2. Ordering Albert Angel Avalos 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: 4/1/10

VIRGINIA K. HEROLD Executive Officer

Board of Pharmacy
State of California

Complainant