

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

In the Matter of the Accusation Against:

DAVID PAUL ARMSTRONG, JR.
1111 N Orange Avenue
La Puente, CA 91744
Pharmacy Technician Registration
No. TCH 102594

Respondent

Case No. 4007

OAH No. 2011070540

DECISION AND ORDER

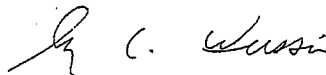
The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on June 25, 2012.

It is so ORDERED on May 25, 2012.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STANLEY C. WEISSER
Board President

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PROPOSED DECISION

Michael R. Diliberto, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on February 27, 2012, in Los Angeles, California.

Matthew A. King, Deputy Attorney General, represented Virginia Herold (Complainant), Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Department).

David Paul Armstrong, Jr. (Respondent) appeared at the hearing and represented himself.

The record was left open until March 19, 2012 to allow Respondent to submit evidence of dismissal of his criminal case and to allow Complainant to file objections to such evidence, if any. On March 9, 2012, Respondent faxed a portion of the court docket records to the undersigned Administrative Law Judge, which were marked for identification as Exhibit F. Because it did not appear that Respondent served court documents on Complainant, the Administrative Law Judge issued an order dated March 12, 2012, extending the closing date for the record to March 23, 2012, to allow Complainant to file objections to Exhibit F. Complainant did not file an objection, and the court docket records were admitted into evidence as Exhibit F. The record was closed and the matter was deemed submitted on March 23, 2012. The Administrative Law Judge makes his factual findings, legal conclusions and orders as follows:

FACTUAL FINDINGS

Jurisdiction

1. Complainant filed the Accusation in her official capacity.
2. Respondent has been licensed as a pharmacy technician since August 24, 2010 and his license will expire on August 31, 2012, unless renewed.
3. Respondent timely requested a hearing on the Accusation, and this hearing ensued.

Criminal Conduct

4. On December 14, 2010, in the Superior Court of the State of California, County of Los Angeles, in Case No. 0JB11500, Respondent plead guilty to violating Health and Safety Code section 11364, subdivision (a) (possession of a smoking device), and 11377, subdivision (a) (possession of methamphetamine), both misdemeanors. The court found that a factual basis existed for Respondent's guilty plea and accepted his plea. The court placed him on deferred entry of judgment for a period of 18 months with various terms and conditions, including an order to complete a 20-week drug treatment program, refrain from using narcotics or restricted drugs, and pay fines and restitution of \$200.00. Respondent complied with the terms of his deferred entry of judgment, and on January 30, 2012, the court dismissed Respondent's criminal case pursuant to Penal Code section 1000.3. Pursuant to Penal Code section 1000.1, subdivision (d), Respondent's guilty plea does not constitute a conviction because the criminal court did not enter a judgment of guilty against him.¹

5. The facts and circumstances underlying the criminal conduct are that on October 7, 2010, the police observed Respondent and a passenger sitting in a car in a parking lot. The police had prior knowledge that the parking lot was used by people to commit illegal drug-related activities. When the police approached Respondent, he appeared nervous. The police asked him if he had drugs in his vehicle, and Respondent initially said "no." After the police asked him for permission to search the vehicle, Respondent admitted he had methamphetamine and a glass pipe "loaded" with the drug inside the vehicle, but he told the police he was not selling drugs. After obtaining Respondent's consent to search the vehicle, the police found a white plastic bindle containing methamphetamine and a glass pipe containing a white crystalline residue. Respondent admitted that the glass pipe belonged to him and told the police

¹ Penal Code section 1000.1, subdivision (d) provides: "[a] defendant's plea of guilty pursuant to this chapter shall not constitute a conviction for any purpose unless a judgment of guilty is entered pursuant to Section 1000.3." The court did not enter a judgment of guilty against Respondent.

the methamphetamine belonged to his passenger, his boyfriend. Respondent also told the police he had smoked methamphetamine that morning, and then drove his boyfriend to buy more methamphetamine. After purchasing the drug, they parked on a side street and smoked it. Respondent then drove to the parking lot where they smoked more methamphetamine before the police arrived. At hearing, Respondent's testimony about the crime was consistent with his admissions to the police on the date of his crime.

Rehabilitation

6. Respondent completed his court-ordered 20-week drug treatment program and paid his court-ordered fines and restitution. He is 24 years old and lives with his mother. He graduated from high school in June 2005 and attended San Antonio Community College in Walnut, California for 18 months, studying education to become a teacher, but he did not obtain a degree. On October 8, 2010, he graduated from United Education, Inc. with a pharmacy technician certificate. He has not yet been employed as a pharmacy technician. As part of his pharmacy technician education, he participated in a one-month externship as a volunteer at Santa Maria Pharmacy in El Monte, California, which he completed on October 7, 2010. During that month, he filled bulk medications but did not handle any controlled substances. From June 25, 2007 to September 4, 2008 he worked as a cashier at a clothing store until it went out of business. From October 2006 for six months, he worked at the Lanterman Developmental Center in Pomona, California as a student assistant in the recreation and leisure department. His duties were to assist the consumers with recreational activities, feeding and hygiene.

7. For the past four years, he has provided child care assistance from Monday to Friday for a 10-year old child. Respondent drives the child's mother to work, drives the child to school, helps the child with homework after school and drives the mother home from work. He has been unemployed since September 4, 2008. He receives government assistance with food stamps. Respondent admits that methamphetamine stays in the body's nervous system for three days after ingestion. His claim that he timed his methamphetamine use to avoid being under the influence of drugs while performing his externship and child care duties appears credible, in light of the fact that he was candid at hearing about his drug use.

8. Respondent dated his boyfriend for approximately one year before his arrest. They began smoking methamphetamine together after six months into the relationship. Since the arrest, he has ceased further contact with his boyfriend. Respondent has no plans to attend future drug treatment classes, and he has no sponsor. Respondent smoked methamphetamine to avoid feeling depressed over his financial problems, but asserts that he does not need a drug treatment program now. The drug program he completed opened his eyes to show him that when he used drugs, he hurt his family by shutting them out of his life. The program also taught him how methamphetamine destroys the body. He stated that he has not used methamphetamine since his arrest date, and he also stopped drinking alcoholic beverages. He

wants to work to help his disabled mother who also has financial problems. As a result of their financial problems, Respondent and his mother both lost their cars. Respondent now drives a vehicle that his mother's boyfriend purchased for him. This disciplinary action was brought within one and one-half years after he received his pharmacy technician's license. There was no evidence that Respondent has committed any other crime or has had any other encounters with the criminal justice system. Respondent's criminal conduct did not occur while he was engaged in activities for which a pharmacy technician's license is required.

9. Inspector Simin Samari (Samari) has worked as an inspector for the Board since October 2005. Her duties include investigating all complaints received by the Board and inspecting pharmacists to ensure compliance with board requirements. She obtained a Doctor of Pharmacy degree and worked as a clinical pharmacist from 1988 to 2005. Samari stated that pharmacy technicians process the prescription drug needs of consumers and have access to controlled substances. Pharmacists must be able to rely upon their technicians and trust that their technicians will not use or steal drugs from the pharmacy. She further stated that Respondent's use of methamphetamine demonstrated poor judgment.

10. The board submitted a certification of prosecution costs supported by the declaration of Matthew A. King (King), Deputy Attorney General, employed by the California Department of Justice, Office of the Attorney General. Twenty-one hours of professional services were incurred for the investigation and enforcement of this case up to the date of hearing, for the total sum of \$3345.00. However, Respondent admitted he used methamphetamine and the board did not establish a conviction for his use and possession of methamphetamine. Accordingly, the Administrative Law Judge finds investigation and enforcement costs in the sum of \$2508.75 reasonable under the circumstances.

LEGAL CONCLUSIONS

Applicable Law

1. Business and Professions Code section 480, subdivision (a), states that a board may deny a license regulated by this code on the grounds that the applicant has either been convicted of a crime, or done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another, or done any act that if done by a licensee would be grounds for suspension or revocation of the license. (Bus. & Prof. Code, § 480, subds. (a)(1), (2) and (3)(A)).

2. Business and Professions Code section 4202, subdivision (d), provides that "[t]he board may suspend or revoke any registration issued pursuant to this section on any ground specified in Section 4301." Section 4301 states, in pertinent part:

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:

[¶] . . . [¶]

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, 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 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.

[¶] . . . [¶]

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee . . . [T]he 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 . . . 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.

[¶] . . . [¶]

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

3. Business and Professions Code section 4300, subdivision (a), provides that “[e]very license issued may be suspended or revoked.”

Substantial Relationship

4. 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

5. Health and Safety Code section 11055, subdivision (d)(2), identifies "methamphetamine" as a Schedule II controlled substance. Because methamphetamine is a controlled substance, it is illegal to buy it without a prescription, and it is categorized as a "dangerous drug" under Business and Professions Code section 4022.

Board Guidelines

6. The board's Disciplinary Guidelines (Guidelines), revised October 2007, identify offenses for which the board may take disciplinary action against a license. Included among grounds for discipline are violations of the pharmacy law, violations of regulations promulgated by the board, and violations of other state or federal statutes or regulations. The categories of possible violations used by the board to determine appropriate disciplinary penalties range from Category I, for "violations which are relatively minor but are potentially harmful," to Category III for "most criminal convictions involving dangerous drugs or controlled substances." These categories represent the judgment of the board as to the perceived seriousness of particular offenses. The Guidelines identify possession or use of "dangerous drugs and/or controlled substances" or "personal misuse of drugs" as Category III violations, with a recommended disciplinary penalty of revocation. If the maximum penalty of revocation is not imposed, the board recommends a minimum Category III level of discipline, which would include suspension and probation. (Guidelines, pp. 5, 15, and 43.)

7. In determining whether the minimum, maximum, or an intermediate penalty should be imposed, the board considers the following factors. No single one or combination of these factors is required to justify the minimum and/or maximum penalty in a given case, as opposed to an intermediate penalty:

- a. actual or potential harm to the public;
- b. actual or potential harm to any consumer;
- c. prior disciplinary record, including level of compliance with disciplinary order(s)
- d. prior warning(s), including but not limited to citation(s) and fine(s), letter(s) of admonishment, and/or correction notice(s);
- e. number and/or variety of current violations;
- f. nature and severity of the act(s), offense(s) or crime(s) under consideration;
- g. aggravating evidence;

- h. mitigating evidence;
- i. rehabilitation evidence;
- j. compliance with terms of any criminal sentence, parole, or probation;
- k. overall criminal record;
- l. if applicable, evidence of proceedings for case being set aside and dismissed pursuant to Section 1203.4 of the Penal Code;
- m. time passed since the act(s) or offense(s);
- n. whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct; and
- o. financial benefit to the respondent from the misconduct. (Guidelines p. 3.)

Cause for Discipline

8. Cause does not exist to suspend or revoke Respondent's license pursuant to Business and Professions Code sections 4202, subdivision (d), 4300, subdivision (a), and 4301, subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, for unprofessional conduct, because Respondent was not convicted of a crime substantially related to the qualifications, functions, or duties of a licensee. Respondent plead guilty in his criminal case and the court placed him on deferred entry of judgment for a period of 18 months. Respondent complied with the terms of his deferred entry of judgment, and the court dismissed Respondent's criminal case pursuant to Penal Code section 1000.3. Pursuant to Penal Code section 1000.1, subdivision (d), Respondent's guilty plea does not constitute a conviction because the criminal court did not enter a judgment of guilty against him. (Factual Findings 4 and 5 and Legal Conclusions 4 through 7.)

9. Cause exists to suspend or revoke Respondent's license pursuant to Business and Professions Code sections 4202, subdivision (d), 4300, subdivision (a), and 4301, subdivision (h), for use of a controlled substance to the extent or in a manner as to be dangerous or injurious to himself or to the public. Respondent admitted that he drove a car soon after he smoked methamphetamine, creating the potential to harm himself and/or the public. In addition, Respondent's methamphetamine use created the potential to destroy his own body. (Factual Findings 4 and 5 and Legal Conclusions 4 through 7.)

10. Cause exists to suspend or revoke Respondent's license pursuant to Business and Professions Code sections 4300, subdivision (a), and 4301, subdivision (f), for committing an act involving dishonesty, in that Respondent initially denied to the police that he had drugs in his car, when in fact he was aware of the drugs and loaded pipe in his car. (Factual Findings 4 and 5 and Legal Conclusions 4 through 7.)

11. Cause exists to suspend or revoke Respondent's license pursuant to Business and Professions Code sections 4300, subdivision (a), and 4301, subdivision (p), and 480,

subdivision (3)(A), for conduct which would warrant denial of a license. Respondent admitted that he possessed and used methamphetamine, a dangerous drug and controlled substance, which is grounds for suspension or revocation of a license as a Category III violation under the Guidelines. (Factual Findings 4 and 5 and Legal Conclusions 4 through 7.)

Criteria for Rehabilitation

12. California Code of Regulations, title 16, section 1769, subdivision (a) provides the criteria to evaluate the rehabilitation of a licensee, in considering whether or not to suspend or revoke the license based on a crime or conduct committed by the licensee, as follows:

(a) When considering the denial of a facility or personal license under Section 480 of the Business and Professions Code, the board, in evaluating the rehabilitation of the applicant and his present eligibility for licensing or registration, will consider the following criteria:

(1) The nature and severity of the act(s) or offense(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial under Section 480 of the Business and Professions Code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

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

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

13. Respondent has not satisfied the Department's applicable criteria for rehabilitation. Although Respondent did not commit any additional acts or crimes after his criminal conduct (Cal. Code Regs., tit. 16, § 1769, subd. (a)(2)), the acts he committed are serious in that his conduct involved use of methamphetamine and driving a motor vehicle, which presented a risk of harm or death to Respondent and others. (Cal. Code Regs., tit. 16, § 1769, subd. (a)(1)). He completed his court-ordered 20-week drug treatment program and paid his court-ordered fines, and the criminal court dismissed his criminal case on January 30, 2012. (Cal. Code Regs., tit. 16, § 1769, subd. (a)(4)). However, less than one and one-half years have passed since the date of Respondent's criminal conduct (Cal. Code Regs., tit. 16, § 1769, subd. (a)(3)). After completing the court-ordered drug treatment program, Respondent has not sought

additional counseling or treatment to help him understand his actions so that he will not repeat similar conduct in the future. (Cal. Code Regs., tit. 16, § 1769, subd. (a)(5)). (Factual Findings 6 through 8.) In Respondent's favor, he has volunteered his time in providing child-care and homework assistance to a 10-year old girl and driving her mother to and from work. To Respondent's credit, he is a sincere man who testified with candor and was forthright with the police after initially denying that he had drugs in his car.

14. The objective of a disciplinary proceeding is to protect the public, the licensed profession, maintain integrity, high standards, and preserve public confidence in licensees of the board. (*Camacho v. Youde* (1975) 95 Cal.App.3d, 161, 164; *Clerici v. Department of Motor Vehicles* (1990) 224 Cal.App.3rd 1016, 1029-1031; *Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 816). Fundamental character traits for a pharmacy technician include honesty, integrity and trustworthiness. Licensees have access to prescription medicine and are entrusted by the public with their prescription drug requirements. Taking into consideration the totality of the evidence, and the absence of sufficient evidence of rehabilitation, Respondent's pharmacy technician license must be revoked. (Factual Findings 4 through 9.) Respondent is encouraged to maintain his abstinence from use of drugs and alcohol before reapplying for his pharmacy technician registration.

15. The board is entitled to recover its reasonable costs of investigation and enforcement of this matter in the sum of \$2508.75 pursuant to Business and Professions Code section 125.3. (Factual Findings 10 and Legal Conclusions 8 through 11.) However, it is not reasonable to require Respondent to pay the entire amount at once, based upon Factual Findings 6 through 8, and the board may allow Respondent to make installment payments on a reasonable schedule based upon his ability to pay. (*Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45 [agencies must consider the licensee's ability to make payment when assessing costs under California Code of Regulations, title 16, section 317.5, a provision almost identical to Business and Professions Code section 125.3].)

ORDER

1. Pharmacy technician license number TCH 102594, issued to Respondent David Paul Armstrong, Jr. is revoked. Respondent shall relinquish his technician license to the board within ten days of the effective date of this decision. Respondent may not reapply or petition the board for reinstatement of his revoked technician license for three years from the effective date of this decision.

2. A condition of reinstatement shall be that the Respondent is certified as defined in Business and Professions Code section 4202, subdivision (a)(4) and provides satisfactory proof of certification to the board.

3. As a condition precedent to reinstatement of his revoked technician license, Respondent shall reimburse the board for its costs of investigation and enforcement in the amount of \$2508.75. Such amount shall be paid in full prior to the reapplication or reinstatement of his revoked technician license, unless otherwise ordered by the board.

DATED: April 16, 2012

A handwritten signature in cursive script, appearing to read "Michael R. Diliberto".

MICHAEL R. DILIBERTO
Administrative Law Judge
Office of Administrative Hearings

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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:

Case No. 4007

12 **DAVID PAUL ARMSTRONG, JR.**
1111 N. Orange Ave.
13 La Puente, CA 91744

A C C U S A T I O N

14 Pharmacy Technician Registration No. TCH
102594

15
16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about August 24, 2010, the Board of Pharmacy issued Original Pharmacy
23 Technician Registration Number TCH 102594 to David Paul Armstrong, Jr. (Respondent). The
24 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges
25 brought herein and will expire on August 31, 2012, unless renewed.

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1 **JURISDICTION**

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 unless otherwise indicated.

4 **STATUTORY PROVISIONS**

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

9 5. Section 480 states, in pertinent part:

10 "(a) A board may deny a license regulated by this code on the grounds that the applicant
11 has one of the following:

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

18 "(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially
19 benefit himself or herself or another, or substantially injure another.

20 ...

21 "(b) Notwithstanding any other provision of this code, no person shall be denied a license
22 solely on the basis that he or she has been convicted of a felony if he or she has obtained a
23 certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of
24 Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has
25 met all applicable requirements of the criteria of rehabilitation developed by the board
26 to evaluate the rehabilitation of a person when considering the denial of a license under
27 subdivision (a) of Section 482."

28 6. Section 4202, subdivision (d), provides that "[t]he board may suspend or revoke any

1 registration issued pursuant to this section on any ground specified in Section 4301.”

2 7. Section 4300, subdivision (a), states that “[e]very license issued may be suspended or
3 revoked.”

4 8. Section 4301 states, in pertinent part:

5 “The board shall take action against any holder of a license who is guilty of unprofessional
6 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
7 Unprofessional conduct shall include, but is not limited to, any of the following:

8 ...

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

12 ...

13 “(h) The administering to oneself, of any controlled substance, or the use of any dangerous
14 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
15 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
16 to the extent that the use impairs the ability of the person to conduct with safety to the public the
17 practice authorized by the license.

18 ...

19 “(l) The conviction of a crime substantially related to the qualifications, functions, and
20 duties of a licensee...[T]he record of conviction shall be conclusive evidence only of the fact that
21 the conviction occurred. The board may inquire into the circumstances surrounding the
22 commission of the crime, in order to fix the degree of discipline...A plea or verdict of guilty or a
23 conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
24 of this provision.

25 ...

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

27 ///

28 ///

1 **REGULATORY PROVISIONS**

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

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

9 **CONTROLLED SUBSTANCE**

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

13 **COST RECOVERY**

14 11. Section 125.3 states, in pertinent part, that the Board may request the administrative
15 law judge to direct a licentiate found to have committed a violation or violations of the licensing
16 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
17 case.

18 **FIRST CAUSE FOR DISCIPLINE**

19 (Conviction of Substantially Related Crime)

20 12. Respondent is subject to disciplinary action under sections 4202, 4300, and 4301,
21 subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, for
22 unprofessional conduct in that Respondent was convicted of a crime substantially related to the
23 qualifications, functions, and duties of a Registered Pharmacy Technician. On or about
24 December 14, 2010, Respondent was convicted, upon a plea of guilty, of violating Health and
25 Safety Code sections 11364, subdivision (a) (possession of smoking device), and 11377,
26 subdivision (a) (possession of methamphetamine), both misdemeanors, in the criminal proceeding
27 entitled *The People of the State of California v. David Paul Armstrong, Jr.* (Super. Ct. Los
28 Angeles County, 2010, No. OJB11500). The Court deferred entry of judgment pursuant to Penal

1 Code sections 1000.4 *et seq.*

2 12. The conviction was sustained upon facts showing Respondent possessed a smoking
3 pipe and .23 grams of methamphetamine for personal use. On or about October 7, 2010, West
4 Covina Police Department Officer Mosley observed Respondent parked in an area known for
5 illicit drug use. Officer Mosley approached the car and noticed that Respondent was
6 accompanied by a man later identified as J.K. Both Respondent and J.K. exhibited signs of
7 methamphetamine use. Respondent in particular appeared to be nervous and sweating. He licked
8 his lips repeatedly, swallowed constantly, and at moments stuttered. When asked if there were
9 weapons or drugs in the car, Respondent stammered and swallowed before saying "no."
10 Respondent consented to a search of the car, which revealed a glass pipe in the center console, a
11 glass pipe in the glove box, and a plastic bag containing a white crystalline substance located near
12 the front passenger seat. During the course of Respondent's contact with Officer Mosley,
13 Respondent claimed ownership of the glass pipe found in the center console. He expressed to
14 Officer Mosley his belief that the pipe was "loaded," meaning packed for use. Respondent
15 attributed to J.K. ownership of the plastic bag and remaining pipe. Officer Mosley arrested
16 Respondent and J.K. for possession of a controlled substance and possession of drug
17 paraphernalia. After being Mirandized, Respondent volunteered that he had smoked
18 methamphetamine the morning of October 7, 2010, prior to driving to J.K.'s house. Respondent
19 also stated that he and J.K. smoked methamphetamine on a side street before arriving at the
20 parking lot where they planned to "chill out." The plastic bag, weighing .23 grams, tested
21 positive for the presence of methamphetamine.

22 **SECOND CAUSE FOR DISCIPLINE**

23 (Use of Controlled Substance to an Extent Dangerous to Self or Others)

24 13. Respondent is subject to disciplinary action under sections 4202, 4300, and 4301,
25 subdivision (h), for use of a controlled substance to the extent or in a manner as to be dangerous
26 or injurious to oneself or to the public. Respondent possessed .23 grams of methamphetamine
27 and two glass "meth pipes." He also admitted to the ingestion of methamphetamine during a time
28 in which he was occupying or operating a car. Respondent's conduct involved the potential for

1 harm to the public. As such, Respondent is subject to disciplinary action. Complainant refers to
2 and by this reference incorporates the allegations set forth above in paragraphs 11–12, inclusive,
3 as though set forth fully.

4 **THIRD CAUSE FOR DISCIPLINE**

5 (Commission of an Act Involving Dishonesty)

6 14. Respondent is subject to disciplinary action under sections 4300 and 4301,
7 subdivision (f), for committing an act involving dishonesty in that Respondent lied to Officer
8 Mosley about the existence of drugs in Respondent’s car. Respondent denied having drugs in the
9 car when the facts and circumstances suggest that Respondent was aware of their presence. By
10 answering falsely instead of remaining silent or answering truthfully, Respondent committed an
11 act of dishonesty for which disciplinary action is appropriate. Complainant refers to and by this
12 reference incorporates the allegations set forth above in paragraphs 11–13, inclusive, as though
13 set forth fully.

14 **FOURTH CAUSE FOR DISCIPLINE**

15 (Conduct Warranting Denial)

16 15. Respondent is subject to disciplinary action under sections 4300, 4301, subdivision
17 (p), and 480, subdivisions (a)(1) and (a)(2), for conduct which would warrant denial of licensure.
18 Complainant refers to and by this reference incorporates the allegations set forth above in
19 paragraphs 11–14, inclusive, as though set forth fully.

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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 issue a decision:

1. Revoking or suspending Pharmacy Technician Registration Number TCH 102594, issued to Respondent;
2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 6/6/11 

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

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