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

12 In the Matter of the Accusation Against:

Case No. 5214

13 **NEVINN ENIEDA SAMANIEGO**
14 **8725 Belmont St.**
15 **Bellflower, CA 90706**

DEFAULT DECISION AND ORDER

16 **Pharmacy Technician License No. TCH**
17 **106433**

[Gov. Code, §11520]

18 Respondent.
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22 **FINDINGS OF FACT**

23 1. On or about February 23, 2015, Complainant Virginia K. Herold, in her official
24 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs,
25 filed Accusation No. 5214 against Nevinn Enieda Samaniego (Respondent) before the Board of
26 Pharmacy. (Accusation attached as Exhibit A.)
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1 2. On or about October 13, 2010, the Board of Pharmacy (Board) issued Pharmacy
2 Technician License No. TCH 106433 to Respondent. The Pharmacy Technician License was in
3 full force and effect at all times relevant to the charges brought in Accusation No. 5214 and will
4 expire on December 31, 2015, unless renewed.

5 3. On or about March 6, 2015, Respondent was served by Certified Mail copies of the
6 Accusation No. 5214, Statement to the Respondent, Request for Discovery, blank copy of Notice
7 of Defense, and Discovery Statutes (Government Code sections 11507.5 and 11507.6 and
8 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
9 section 4100, is required to be reported and maintained with the Board. Respondent's address of
10 record was and is:

11 8725 Belmont St.
12 Bellflower, CA 90706.

13 4. Service of the Accusation was effective as a matter of law under the provisions of
14 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
15 124.

16 5. On or about March 11, 2015, the aforementioned documents were delivered to the
17 Respondent. Respondent signed the Certified Mail Return Receipt on March 11, 2015.

18 6. Government Code section 11506 states, in pertinent part:

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

24 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
25 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 5214.

26 8. California Government Code section 11520 states, in pertinent part:

27 (a) If the respondent either fails to file a notice of defense or to appear at the
28 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.

1 9. Pursuant to its authority under Government Code section 11520, the Board finds
2 Respondent is in default. The Board will take action without further hearing and, based on the
3 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
4 taking official notice of all the investigatory reports, exhibits and statements contained therein on
5 file at the Board's offices regarding the allegations contained in Accusation No. 5214, finds that
6 the charges and allegations in Accusation No. 5214, are separately and severally, found to be true
7 and correct by clear and convincing evidence.

8 10. Taking official notice of its own internal records, pursuant to Business and
9 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
10 and Enforcement is \$2,665.00 as of September 1, 2015.

11 **DETERMINATION OF ISSUES**

12 1. Based on the foregoing findings of fact, Respondent Nevinn Enieda Samaniego has
13 subjected her Pharmacy Technician License No. TCH 106433 to discipline.

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

15 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
16 License based upon the following violations alleged in the Accusation which are supported by the
17 evidence contained in the Default Decision Evidence Packet in this case:

18 a. Sections 490, 4300, and 4301, subdivision (l) of the Code, in conjunction with
19 California Code of Regulations, title 16, section 1770, on the grounds of unprofessional conduct,
20 in that Respondent was convicted of crimes substantially related to the qualifications, functions or
21 duties of a registered pharmacy technician which to a substantial degree evidence her present or
22 potential unfitness to perform the functions authorized by her registration in a manner consistent
23 with the public health, safety, or welfare;

24 b. Sections 4300 and 4301, subdivision (k) of the Code, on the grounds of
25 unprofessional conduct, in that on or about January 9, 2014, Respondent sustained two (2) felony
26 and three (3) misdemeanor convictions involving dangerous drugs;

27 c. Sections 4300, 4301, subdivision (j) of the Code, on the grounds of unprofessional
28 conduct, in that on or about November 9, 2013 or December 8, 2013, Respondent violated Health

1 and Safety Code section 11173, subdivision (a), when she was in possession of Clonazepam,
2 Marijuana and Methamphetamine, controlled substances and dangerous drugs, without valid
3 prescriptions;

4 d. Sections 4300, and 4301, subdivision (o) of the Code, on the grounds of
5 unprofessional conduct, for violating section 4060, in that on or about November 9, 2013, and on
6 or about December 8, 2013, Respondent violated or attempted to violate the Pharmacy law when
7 she was in possession of Clonazepam, Marijuana and Methamphetamine, controlled substances
8 and dangerous drugs, without valid prescriptions. Said crime or act is substantially related to the
9 qualifications, functions, or duties of registered pharmacy technician;

10 e. Sections 4300 and 4301, subdivision (g) of the Code, on the grounds of
11 unprofessional conduct, in that on or about February 8, 2014, Respondent, under penalty of
12 perjury to the truth and accuracy of all statements, answers and representations made in her
13 Delinquent Renewal Application (registration expired 12/31/13), knowingly made a false
14 statement of fact required to be revealed in her application for licensure and procured her license
15 by fraud or misrepresentation;

16 f. Sections 4300 and 4301, subdivision (f) of the Code, on the grounds of
17 unprofessional conduct, in that Respondent committed acts involving moral turpitude, dishonesty,
18 fraud, deceit, or corruption;

19 g. Sections 4300 and 4301, subdivision (p) of the Code, on the grounds of
20 unprofessional conduct, for violating section 480, in that Respondent committed conduct that
21 would have warranted denial of a license.

22 **ORDER**

23 **IT IS SO ORDERED** that Pharmacy Technician License No. TCH 106433, heretofore
24 issued to Respondent Nevinn Enieda Samaniego, is revoked.

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

1 This Decision shall become effective on October 30, 2015.

2 It is so ORDERED September 30, 2015.

3 BOARD OF PHARMACY
4 DEPARTMENT OF CONSUMER AFFAIRS
5 STATE OF CALIFORNIA

6 

7
8 By

9 Amy Gutierrez, Pharm.D.
10 Board President

11 51897458.DOC
12 DOJ Matter ID: LA2014512363

13 Attachment:
14 Exhibit A: Accusation
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Exhibit A

Accusation

(NEVINN ENIEDA SAMANIEGO)

1 KAMALA D. HARRIS
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2 GREGORY J. SALUTE
Supervising Deputy Attorney General
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Attorneys for Complainant
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8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 5214

12 **NEVINN ENIEDA SAMANIEGO**
8725 Belmont St.
13 Bellflower, CA 90706

A C C U S A T I O N

14 Pharmacy Technician License No. TCH 106433

15 Respondent.

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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 October 13, 2010, the Board issued Pharmacy Technician License
23 No. TCH 106433 to Nevinn Enieda Samaniego (Respondent). The Pharmacy Technician License
24 was in full force and effect at all times relevant to the charges brought herein and will expire on
25 December 31, 2015, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board, under the authority of the following
28 laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

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

5. Section 480 provides that a board may deny a license if the applicant has been convicted of a crime substantially related to the qualifications, functions or duties of the business or profession for which application is made, has committed any act involving dishonesty, fraud or deceit, has committed any act which if done by a licensee would be grounds for suspension or revocation of a license, or has knowingly made a false statement of fact required to be revealed in the application.

6. Section 490 provides 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.

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

8. 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 committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

"(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

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

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

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

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24 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
25 violation of or conspiring to violate any provision or term of this chapter or of the applicable
26 federal and state laws and regulations governing pharmacy, including regulations established by
27 the board or by any other state or federal regulatory agency.

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

PHARMACY LAW

9. Section 4060 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.

"Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices."

DRUG STATUTES

10. Health and Safety Code section 11007 states:

" "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."

11. Health and Safety Code section 11173, subdivision (a), provides that it is illegal to possess a controlled substance without a valid prescription.

12. United States Code Service, title 21, section 844 states, in pertinent part:

"(a) Unlawful acts; penalties. It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription . . .

"(c) "Drug, narcotic, or chemical offense" defined. As used in this section, the term " drug, narcotic, or chemical offense" means any offense which proscribes the possession, distribution,

1 manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute,
2 manufacture, cultivate, sell or transfer any substance the possession of which is prohibited under
3 this title."

4 **REGULATORY PROVISION**

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

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

12 **COST RECOVERY**

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

17 **CONTROLLED SUBSTANCE / DANGEROUS DRUG**

18 15. Clonazepam (Klonopin) is a Schedule IV controlled substance under Health and
19 Safety Code section 11057(d)(7) and a dangerous drug pursuant to section 4022.

20 16. Marijuana is a hallucinogenic Schedule I controlled substance under State and federal
21 law (Health & Saf. Code § 11054 subd. (d)(13); and 21 U.S.C. § 812.), and a dangerous drug
22 pursuant to section 4022.

23 17. Methamphetamine is a Schedule II controlled substance under Health and Safety
24 Code section 11055, subdivision (d)(2), and a dangerous drug pursuant to section 4022.

25 **FIRST CAUSE FOR DISCIPLINE**

26 **(Convictions of Substantially Related Crimes)**

27 18. Respondent is subject to disciplinary action under sections 490, 4300, and 4301,
28 subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, on the

1 grounds of unprofessional conduct, in that Respondent was convicted of crimes substantially
2 related to the qualifications, functions or duties of a registered pharmacy technician which to a
3 substantial degree evidence her present or potential unfitness to perform the functions authorized
4 by her registration in a manner consistent with the public health, safety, or welfare, as follows:

5 a. On or about January 9, 2014, after pleading guilty, Respondent was convicted of
6 three (3) counts, felony Count 1, violating Health and Safety Code section 11360(a) [sale or
7 transportation of marijuana], felony Count 2, violating Health and Safety Code section 11359
8 [possession of marijuana for sale], and misdemeanor Count 3, violating Vehicle Code
9 section 12500(a) [drive motor vehicle without a valid license] in the criminal proceeding entitled
10 *The People of the State of California v. Nevinn Eneida Samaniego* (Super. Ct. Orange County,
11 2014, No. 13NF3719.) The Court sentenced Respondent to 120 days jail, placed her on three (3)
12 years formal probation, and ordered her to register as a controlled substance offender, pursuant to
13 Health and Safety Code section 11590.

14 b. The circumstances underlying the conviction are that on or about November 9, 2013,
15 while driving a vehicle with a false 2014 registration tab and herself having a suspended/revoked
16 drivers license, Respondent was in possession of approximately 49 grams of marijuana, admitted
17 to occasionally smoking marijuana and as a source of income, growing approximately 30 plants
18 for sale and self-consumption.

19 c. On or about January 9, 2014, after pleading guilty, Respondent was convicted of
20 two (2) misdemeanor counts, reduced Count 1, violating Health and Safety Code section 11377(a)
21 [possession of a controlled substance, to wit, methamphetamine] and Count 2, violating Health
22 and Safety Code section 11375(b) [possession of designated substance, to wit, Clonazepam] in the
23 criminal proceeding entitled *The People of the State of California v. Nevinn Eneida Samaniego*
24 (Super. Ct. Orange County, 2014, No. 13NF4307). The Court sentenced Respondent to 120 days
25 jail, and ordered to register pursuant to Health and Safety Code section 11590.

26 d. The circumstances underlying the conviction are that on or about December 8, 2013,
27 Respondent was in possession of methamphetamine and 10 tablets of Clonazepam.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Misstatement on License Delinquent Renewal Application)**

3 22. Respondent is subject to disciplinary action under sections 4300 and 4301,
4 subdivision (g), on the grounds of unprofessional conduct, in that on or about February 8, 2014,
5 Respondent, under penalty of perjury to the truth and accuracy of all statements, answers and
6 representations made in her Delinquent Renewal Application (registration expired 12/31/13),
7 knowingly made a false statement of fact required to be revealed in her application for licensure
8 and procured her license by fraud or misrepresentation. Respondent answered "No" to the
9 question:

10 Since you last renewed your license, have you had any license disciplined by a
11 government agency or other disciplinary body; or, have you been convicted of any
12 crime in any state, the U.S.A. and its territories, military court or a foreign country?
13 PLEASE READ INSTRUCTIONS BEFORE ANSWERING.

14 **SIXTH CAUSE FOR DISCIPLINE**

15 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

16 23. Respondent is subject to disciplinary action under sections 4300 and 4301,
17 subdivision (f), on the grounds of unprofessional conduct, in that Respondent committed acts
18 involving moral turpitude, dishonesty, fraud, deceit, or corruption. Complainant refers to and by
19 this reference incorporates the allegations set forth above in paragraphs 18 through 22, inclusive,
20 as though set forth fully.

21 **SEVENTH CAUSE FOR DISCIPLINE**

22 **(Conduct Warranting Denial of License)**

23 24. Respondent is subject to disciplinary action under sections 4300 and 4301,
24 subdivision (p), on the grounds of unprofessional conduct, for violating section 480, in that
25 Respondent committed conduct that would have warranted denial of a license. Complainant
26 refers to and by this reference incorporates the allegations set forth above in paragraphs 18
27 through 23, inclusive, as though set forth fully.

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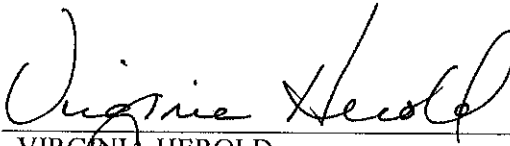
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PRAYER

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

1. Revoking or suspending Pharmacy Technician License No. TCH 106433, issued to Nevinn Enieda Samaniego;
2. Ordering Nevinn Eneida Samaniego 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: 2/23/15


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

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