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

11 In the Matter of the Accusation Against:

Case No. 3010

12
13 **JAMES ALFRED JUNIO**
2560 W Glenoaks Avenue
14 Anaheim, CA 92801

ACCUSATION

15 **Original Pharmacy Technician Registration**
16 **No. TCH 64371**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about August 10, 2005, the Board of Pharmacy issued Original Pharmacy
24 Technician Registration Number TCH 64371 to James Alfred Junio (Respondent). The Original
25 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges
26 brought herein and will expire on March 31, 2011, unless renewed.

1 JURISDICTION

2 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
3 Consumer Affairs, under the authority of the following laws. All section references are to the
4 Business and Professions Code unless otherwise indicated.

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

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

11 STATUTORY PROVISIONS

12 6 Section 4301 of the Code states:

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

17

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

23

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

26

27 (l) The conviction of a crime substantially related to the qualifications,
28 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

1 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
2 contendere is deemed to be a conviction within the meaning of this provision. The
3 board may take action when the time for appeal has elapsed, or the judgment of
4 conviction has been affirmed on appeal or when an order granting probation is made
5 suspending the imposition of sentence, irrespective of a subsequent order under
6 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
7 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
8 dismissing the accusation, information, or indictment.

9

10 (o) Violating or attempting to violate, directly or indirectly, or assisting
11 in or abetting the violation of or conspiring to violate any provision or term of this
12 chapter or of the applicable federal and state laws and regulations governing
13 pharmacy, including regulations established by the board or by any other state or
14 federal regulatory agency.

15

16 7. Section 4022 of the Code states:

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

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

21 (b) Any device that bears the statement: 'Caution: federal law
22 restricts this device to sale by or on the order of a _____,' 'Rx only,' or words of
23 similar import, the blank to be filled in with the designation of the practitioner
24 licensed to use or order use of the device.

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

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

9. Section 4060 of the Code states:

No person shall possess any controlled substance, except that
furnished to a person upon the prescription of a physician, dentist, podiatrist,
optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or
furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to
Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician
assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section
3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or
clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.
This section shall not apply to the possession of any controlled substance by a

1 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
2 optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
3 practitioner, or physician assistant, when in stock in containers correctly labeled with
4 the name and address of the supplier or producer.

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

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

12 11. Section 492 of the Code states:

13 Notwithstanding any other provision of law, successful completion of any
14 diversion program under the Penal Code, or successful completion of an alcohol and
15 drug problem assessment program under Article 5 (commencing with section
16 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any
17 agency established under Division 2 ([Healing Arts] commencing with Section 500)
18 of this code, or any initiative act referred to in that division, from taking disciplinary
19 action against a licensee or from denying a license for professional misconduct,
20 notwithstanding that evidence of that misconduct may be recorded in a record
21 pertaining to an arrest.

22 This section shall not be construed to apply to any drug diversion
23 program operated by any agency established under Division 2 (commencing with
24 Section 500) of this code, or any initiative act referred to in that diversion.

25 12. Section 493 of the Code states:

26 Notwithstanding any other provision of law, in a proceeding conducted
27 by a board within the department pursuant to law to deny an application for a license
28 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.'

13. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to
evaluate the rehabilitation of a person when:

1 (a) Considering the denial of a license by the board under Section 480; or

2 (b) Considering suspension or revocation of a license under Section 490.

3 Each board shall take into account all competent evidence of
4 rehabilitation furnished by the applicant or licensee.

5 **REGULATORY PROVISIONS**

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

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

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

15

16 (b) When considering the suspension or revocation of a facility or a
17 personal license on the ground that the licensee or the registrant has been convicted of
18 a crime, the board, in evaluating the rehabilitation of such person and his present
19 eligibility for license will consider the following criteria:

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

21 (2) Total criminal record.

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

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

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

27 **COST RECOVERY**

28 16. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
administrative law judge to direct a licensee 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.

1 DRUG

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

5 FIRST CAUSE FOR DISCIPLINE

6 **(May 21, 2008 Criminal Conviction for Possession of Controlled Substance for Purpose of**
7 **Sale and Burglary on November 28, 2007)**

8 18. Respondent is subject to disciplinary action under section 490 and 4301, subdivision
9 (1) in that he was convicted of crimes that are substantially related to the qualifications, duties,
10 and functions of a pharmacy technician. The circumstances are as follows:

11 a. On or about May 21, 2008, in a criminal proceeding entitled *People of the State of*
12 *California v. James Alfred Junio*, in Orange County Superior Court, case number 07NF4220,
13 Respondent was convicted on his plea of guilty for violating Health and Safety Code section
14 11378, possession of methamphetamine for purpose of sale, a felony and Penal Code sections
15 459-460(b), second degree commercial burglary, a felony.

16 b. As a result of the conviction, on or about May 21, 2008, Respondent was sentenced to
17 three years formal probation, to pay fees totaling \$545.00 and to register pursuant to Health and
18 Safety Code 11590.

19 c. The facts that led to the conviction were that on or about November 28, 2007, police
20 arrested Respondent after receiving a report that individuals in a white Toyota had burglarized a
21 pet store on La Palma Avenue in Anaheim. After locating the vehicle that matched that
22 description parked in front of a house located on West Catalpa Avenue, police knocked on the
23 door of that house and Respondent answered the door. Police searched Respondent and found
24 glass pipes commonly used to smoke methamphetamine, plastic baggies, money and crystal-like
25 substances resembling methamphetamine in baggies on his person. The police officer asked
26 Respondent about the suspected methamphetamine and Respondent first stated it was for personal
27 use. The officer then asked him if he was kidding and pointed out that he had "at least an ounce
28 of methamphetamine, packaged separately in different quantities, a large amount of cash, and

1 your phone keeps ringing.” Respondent answered “[y]our right I’m not going to lie to you.” The
2 police officer subsequently searched Respondent’s car and found a digital scale and multiple
3 empty baggies. When the police officer asked Respondent if he was a drug courier for someone,
4 Respondent responded that “[i]t’s something along those lines but more complicated.” The
5 crystal-like substances tested positive for amphetamine. The police found a total of 33.08 net
6 grams of methamphetamine either on Respondent or in his car.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Unprofessional Conduct-Violating State Laws Regulating Controlled Substance**
9 **and Possession of Controlled Substance)**

10 19. Respondent is subject to disciplinary action under section 4301, subdivisions, (j) and
11 (o), in that on or about December 20, 2007, three weeks after his November 28, 2007 arrest and
12 while out on bail, Respondent possessed methamphetamine (in violation of section 4060 of the
13 Code) and violated Health and Safety Code sections 11378 (possession of a controlled substance
14 for sale) and 11379 (transport of a controlled substance) after being stopped by police for traffic
15 infractions on Magnolia Street approaching Trask Avenue in the City of Garden Grove.
16 Respondent told the officer that he had been arrested previously for possession of
17 methamphetamine and that he had recently used methamphetamine. Therefore, the police
18 searched his car and found plastic baggies commonly used to package narcotics for sale, a four-
19 inch clear glass pipe commonly used to smoke methamphetamine, \$765.00, a notepad commonly
20 used by individuals selling narcotics to manage and account for their funds and products and a
21 scale commonly used to weigh out narcotics before packaging them. The police officer also
22 located 5 bags of a crystalline substance in Respondent’s girlfriend’s purse and 3 bags of the
23 same substance in the backseat of Respondent’s car. The officer NIK tested the crystalline
24 substance in the eight baggies which tested positive for methamphetamine. The police found a
25 total of 47.5 net grams of methamphetamine.

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(August, 14, 2009 Criminal Conviction for Possession of Controlled Substance**
3 **on June 27, 2009)**

4 20. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision
5 (l) of the Code in that he was convicted of a crime that is substantially related to the
6 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

7 a. On or about August 14, 2009, in a criminal proceeding entitled *People of the*
8 *State of California v. James Alfred Junio*, case number 09NM08017, Respondent was convicted
9 on his plea of guilty for violating Health & Safety Code section 11550(a), possession of
10 methamphetamine, a misdemeanor.

11 b. As a result of the conviction, on or about August 14, 2009, Respondent was
12 sentenced to three years informal probation, to pay fees in the amount of \$310.00 and to complete
13 the Nancy Clark Drug Rehabilitation Program.

14 c. The facts that led to the conviction were that on or about June 27, 2009, police
15 approached a group of individuals in the driveway of a home located at 1214 West Laster in
16 Anaheim where one of the primary residents was known to be on parole for narcotic sales.
17 Respondent was one of the individuals standing in the driveway. The officers conducted a drug
18 screen evaluation of Respondent's person which was positive for drugs. Additionally, Respondent
19 admitted to the arresting officers that he had smoked methamphetamine a couple of hours prior to
20 the arrest. Respondent was on probation for selling methamphetamine at the time of this arrest.

21 **FOURTH CAUSE FOR DISCIPLINE**

22 **(Unprofessional Conduct-Use of Controlled Substance)**

23 21. Respondent is subject to disciplinary action under section 4301, subdivision (h) of the
24 Code in that on or about December 20, 2007 and June 27, 2009, Respondent administered a
25 controlled substance, namely methamphetamine to himself in a manner dangerous or injurious to
26 himself or the public, as is more fully set forth in paragraph 19-20 above.

1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct-Violating State Laws Regulating Controlled Substances)**

3 22. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the
4 Code in that on or about November 28, 2007 and June 27, 2009, Respondent violated the
5 California Uniform Controlled Substances Act (Health and Safety Code 11000, et seq.), as is
6 more fully set forth in paragraphs 18 and 20 above.

7 **DISCIPLINARY CONSIDERATIONS**

8 23. To determine the degree of discipline, if any, to be imposed on Respondent,
9 Complainant alleges that Respondent possessed controlled substances in violation of section 4060
10 of the Code prior to the time when he was licensed as a pharmacy technician. The circumstances
11 are that on or about July 13, 2003, police pulled alongside a parked vehicle which then sped out at
12 a high rate of speed on Fairview in Buena Park. The police pursued the vehicle which began to
13 fishtail back and forth when Respondent jumped out of the driver's side of the vehicle. Police
14 searched Respondent and discovered .4 grams of what appeared to be methamphetamine on
15 Respondent. Respondent admitted to the police that he intended to smoke methamphetamine
16 before sighting the police unit. The police tested the white crystalline substance that had been
17 found on Respondent and it tested positive for amphetamine.

18 24. In a criminal proceeding entitled *People of the State of California v. James Alfred*
19 *Junio*, in Orange County Superior Court, case number 03NF2445FA, Respondent plead guilty to
20 a charge of violating Health and Safety Code section 11377(a), possession of a controlled
21 substance and was granted deferred entry of judgment. After completing a drug program pursuant
22 to Penal Code 1000, his plea of guilty was withdrawn and the charge against him dismissed.

23 **PRAYER**

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

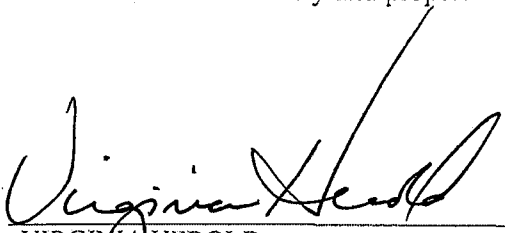
26 1. Revoking or suspending Original Pharmacy Technician Registration Number TCH
27 64371, issued to James Alfred Junio;

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2. Ordering James Alfred Junio 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: 5/6/10



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

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