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

12 In the Matter of the Accusation Against: Case No. 3224

13 RAMON GERARDO LAGUNA
14 244 Santa Louisa
Irvine, CA 92606
15 Pharmacy Technician License No. 44921

A C C U S A T I O N

16 Respondent.

17 Complainant alleges:

18 PARTIES

- 19 1. Virginia Herold (Complainant) brings this Accusation solely in her official
20 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
21 2. On or about January 8, 2003, the Board of Pharmacy issued Pharmacy Technician
22 License No. 44921 to Ramon Gerardo Laguna (Respondent). The Pharmacy Technician License
23 was in full force and effect at all times relevant to the charges brought herein and will expire on
24 January 31, 2011, unless renewed.

25 JURISDICTION

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

1 4. Section 477 of the Code states:

2 As used in this division:

3 (a) "Board" includes "bureau," "commission," "committee," "department,"
4 "division," "examining committee," "program," and "agency."

5 (b) "License" includes certificate, registration or other means to engage in
6 a business or profession regulated by this code.

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

11 6. Section 490 of the Code states:

12 (a) In addition to any other action that a board is permitted to take against
13 a licensee, a board may suspend or revoke a license on the ground that the
14 licensee has been convicted of a crime, if the crime is substantially related to the
15 qualifications, functions, or duties of the business or profession for which the
16 license was issued.

17 (b) Notwithstanding any other provision of law, a board may exercise any
18 authority to discipline a licensee for conviction of a crime that is independent of
19 the authority granted under subdivision (a) only if the crime is substantially
20 related to the qualifications, functions, or duties of the business or profession for
21 which the licensee's license was issued.

22 (c) A conviction within the meaning of this section means a plea or verdict
23 of guilty or a conviction following a plea of nolo contendere. Any action that a
24 board is permitted to take following the establishment of a conviction may be
25 taken when the time for appeal has elapsed, or the judgment of conviction has
26 been affirmed on appeal, or when an order granting probation is made suspending
27 the imposition of sentence, irrespective of a subsequent order under the provisions
28 of Section 1203.4 of the Penal Code.

29 (d) The Legislature hereby finds and declares that the application of this
30 section has been made unclear by the holding in *Petropoulos v. Department of
31 Real Estate* (2006) 142 Cal. App.4th 554, and that the holding in that case has
32 placed a significant number of statutes and regulations in question, resulting in
33 potential harm to the consumers of California from licensees who have been
34 convicted of crimes. Therefore, the Legislature finds and declares that this section
35 establishes an independent basis for a board to impose discipline upon a licensee,
36 and that the amendments to this section made by Senate Bill 797 of the 2007 -08
37 Regular Session do not constitute a change to, but rather are declaratory of,
38 existing law.

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7. Section 492 of the Code states:

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.

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

8. Section 4202(d) of the Code states that the board may suspend or revoke a license issued pursuant to this section on any ground specified in Section 4301.

9. Section 4300 of the Code states:

(a) Every license issued may be suspended or revoked.

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

(1) Suspending judgment.

(2) Placing him or her upon probation.

(3) Suspending his or her right to practice for a period not exceeding one year.

(4) Revoking his or her license.

(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

....

10. 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:

....

(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

1 person or to the public, or to the extent that the use impairs the ability of the person to
2 conduct with safety to the public the practice authorized by the license.

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

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

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

. . . .

11. Section 4021 of the Code defines "controlled substance" as any substance listed
in Chapter 2 (commencing with Section 11053) of Division 10 of the Health & Safety Code.

12. 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
manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,

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

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5 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request
6 the administrative law judge to direct a licentiate found to have committed a violation or
7 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
8 and enforcement of the case, including charges imposed by the Attorney General. Under section
9 125.3 (c), a certified copy of the actual costs or a good faith estimate of costs where actual costs
10 are not available, including investigative and enforcement costs and charges of the Attorney
11 General up to the date of the hearing, signed by the designated representative of the entity
12 bringing the proceeding shall be *prima facie* evidence of the reasonable costs of investigation
13 and prosecution of the case.

14 14. This Accusation also refers to the following sections of the Health & Safety
15 Code:

16 15. Health & Safety Code § 11170 states that "[n]o person shall prescribe, administer,
17 or furnish a controlled substance for himself."

18 16. California Code of Regulations, title 16, section 1769, subdivision (b), states:

19 When considering the suspension or revocation of a facility or personal
20 license on the ground that the licensee or the registrant has been convicted of a
21 crime, the board in evaluating the rehabilitation of such person and his present
22 eligibility for a license will consider the following:

- 23 (1) The nature and severity of the act(s) or offenses(s);
- 24 (2) Total criminal record;
- 25 (3) Time that has elapsed since the commission of the act(s) or offense(s);
- 26 (4) Whether the licensee has complied with all terms of parole, probation,
27 restitution, or any other sanctions lawfully imposed against the licensee; and
- 28 (5) Evidence, if any, of rehabilitation submitted by the licensee.

17. 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

1 substantial degree it evidences present or potential unfitness of a licensee or
2 registrant to perform the functions authorized by his license or registration in a
manner consistent with the public health, safety, or welfare.

3 **CONTROLLED SUBSTANCE AT ISSUE**

4 18. "Methamphetamine" is a Schedule II controlled substance as designated by
5 Health and Safety Code Section 11055, subdivision (d)(2).

6 **FACTUAL BACKGROUND**

7 19. On September 8, 2006, at approximately 6:30 p.m., an Irvine police officer
8 stopped an automobile driven by Respondent because the automobile registration tag had expired
9 in June 2006. During the stop, the officer learned that Respondent was driving with a
10 suspended driver's license. The license was suspended because of a warrant issued by the Los
11 Angeles Sheriff's Department for a failure to appear on March 29, 2006 for traffic violations.

12 20. Respondent was arrested for the outstanding warrant and taken to the Irvine
13 Police Department, where an officer conducted an in-custody search and found a zip-lock bag in
14 Respondent's front shirt pocket. Respondent admitted that the substance in the bag was
15 "Speed." The bag contained 3.9 grams of a white powdery substance that tested positive for
16 amphetamine. Respondent admitted that he had bought the drug that morning before work "for
17 this weekend." Respondent admitted to an officer that the last time he had used "speed" was two
18 weeks previously.

19 21. On October 10, 2006, Respondent pled guilty to violation of Health & Safety
20 Code section 11377(a) (possession of methamphetamine, a felony), and Vehicle Code section
21 14601.1(a) (driving on a suspended license, a misdemeanor), in Superior Court, County of
22 Orange, Case no. 06HF1893. Respondent was sentenced on the misdemeanor count to three
23 years informal probation, ordered to pay fines and fees, and not permitted to drive without a
24 valid license.

25 22. On July 14, 2008, after the completion of a PC 1000 Drug Program, Respondent's
26 felony charge of possession of methamphetamine was dismissed.

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3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct-Possession of a Controlled Substance)**

5 23. Respondent is subject to disciplinary action under section 4301, subdivision (j) of
6 the Code, in that he violated a statute regulating controlled substances, and Code Section 4060
7 by possessing a controlled substance, methamphetamine, without a prescription, as detailed in
8 paragraphs 19-22, above.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct-Violation of Chapter)**

11 24. Respondent is subject to disciplinary action under section 4301, subdivision (o) of
12 the Code, for unprofessional conduct for violating Business & Professions Code section 4060, in
13 that he possessed a controlled substance without a prescription, as detailed in paragraphs 19-22,
14 above.

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(Unprofessional Conduct-Conviction for Driving with a Suspended License)**

17 25. Respondent is subject to disciplinary action under sections 490 and 4301,
18 subdivision (l) of the Code, for unprofessional conduct in that he was convicted of driving with
19 a suspended license, a crime that is substantially related to the qualifications, functions and
20 duties of a pharmacy technician, as detailed in paragraphs 19-22, above.

21 **FOURTH CAUSE FOR DISCIPLINE**

22 **(Unprofessional Conduct-Self-Administration of a Controlled Substance)**

23 26. Respondent is subject to disciplinary action under section 4301, subdivision (h) of
24 the Code for unprofessional conduct, in that on or about August 22, 2006 Respondent illegally
25 administered a controlled substance to himself, methamphetamine, as evidenced by his
26 admission made to a police officer as detailed in paragraph 20, above.

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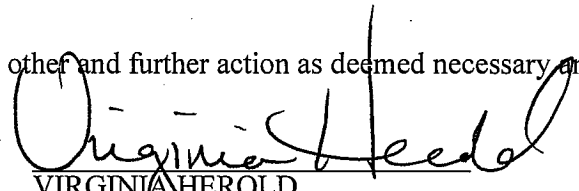
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PRAYER

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

1. Revoking or suspending Pharmacy Technician License No. 44921, issued to Ramon Gerardo Laguna.
2. Ordering Ramon Gerardo Laguna 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: 3/24/09



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

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