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8	BEFORE THE BOARD OF PHARMACY		
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
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11	In the Matter of the Accusation Against:	ase No. 3355	
12	JESSE NUNEZ		
13	445 N. Fresno StreetLos Angeles, California 90063	CCUSATION	
14	Pharmacy Technician License No. TCH-74636		
15	Respondent.		
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18	Complainant alleges:		
19	PARTI	ES	
20	1. Virginia Herold (Complainant) brings t	his Accusation solely in her official capacity	
21	as the Executive Officer of the Board of Pharmacy,	Department of Consumer Affairs.	
22	2. On or about April 16, 2007, the Board of	of Pharmacy (Board) issued Pharmacy	
23	Technician License Number TCH-74636 to Jesse Nunez (Respondent). The Pharmacy		
24	Technician License was in full force and effect at all times relevant to the charges brought herein		
25	and will expire on February 28, 2011, 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	
6	suspension/expiration/surrender/cancellation of a license shall not deprive the	
7	Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period	
8	within which the license may be renewed, restored, reissued or reinstated.	
9	5. Section 4300 permits the Board to take disciplinary action to suspend or revoke a	
10	license issued by the Board.	
11	6. Section 4301 states:	
12	"The board shall take action against any holder of a license who is guilty of unprofessional	
13	conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.	
14	Unprofessional conduct shall include, but is not limited to, any of the following:	
15	••••	
16	"(h) The administering to oneself, of any controlled substance, or the use of any dangerous	
17	drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to	
18	oneself, to a person holding a license under this chapter, or to any other person or to the public, or	
19	to the extent that the use impairs the ability of the person to conduct with safety to the public the	
20	practice authorized by the license.	
21	· · · · ·	
22	"(j) The violation of any of the statutes of this state or of the United States regulating	
23	controlled substances and dangerous drugs.	
24	••••	
25	"(1) The conviction of a crime substantially related to the qualifications, functions, and	
26	duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13	
27	(commencing with Section 801) of Title 21 of the United States Code regulating controlled	
28	substances or of a violation of the statutes of this state regulating controlled substances or — —	
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1	dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the		
2	record of conviction shall be conclusive evidence only of the fact that the conviction occurred.		
3	The board may inquire into the circumstances surrounding the commission of the crime, in order		
4	to fix the degree of discipline or, in the case of a conviction not involving controlled substances		
5	or dangerous drugs, to determine if the conviction is of an offense substantially related to the		
6	qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or		
7	a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning		
8	of this provision. The board may take action when the time for appeal has elapsed, or the		
9	judgment of conviction has been affirmed on appeal or when an order granting probation is made		
10	suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of		
11	the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not		
12	guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or		
13	indictment."		
14	REGULATORY PROVISIONS		
15	7. California Code of Regulations, title 16, section 1770, states:		
16	"For the purpose of denial, suspension, or revocation of a personal or facility license		
17	pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a		
18	crime or act shall be considered substantially related to the qualifications, functions or duties of a		
19	licensee or registrant if to a substantial degree it evidences present or potential unfitness of a		
20	licensee or registrant to perform the functions authorized by his license or registration in a manner		
21	consistent with the public health, safety, or welfare."		
22	CONTROLLED SUBSTANCE CLASSIFICATION		
23	8. Marijuana is a Schedule I controlled substance as defined in Health and Safety Code		
24	section 11054, subdivision (d)(13).		
25	<u>COST RECOVERY</u>		
26	9. Section 125.3 of the Code states, in pertinent part, that the Board may request the		
27	administrative law judge to direct a licentiate found to have committed a violation or violations of		
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the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
 enforcement of the case.

## FIRST CAUSE FOR DISCIPLINE

## (Conviction of Substantially-Related Crime)

10. Respondent is subject to disciplinary action under section 4301, subdivision (l), as a 5 result of Respondent's conviction of a crime that is substantially related to the qualifications, 6 functions, and duties of a licensed pharmacy technician. On or about September 3, 2008, after 7 pleading nolo contendere, Respondent was convicted of one misdemeanor count of violating 8 Vehicle Code section 23152, subdivision (b) [driving with a blood-alcohol content level greater 9 than .08%] in the criminal proceeding entitled The People of the State of California v. Jesse 10 Nunez (Super. Ct. Los Angeles County, 2008, No. 8EA08980). Respondent was placed on three 11 years probation and ordered to complete a three-month first-offender drug and alcohol education 12 and counseling program. The underlying factual circumstances occurred on or about August 4, 13 2008, when Respondent was arrested by officers of the City of Vernon Police Department after 14 exhibiting objective signs of intoxication during a traffic stop. 15 SECOND CAUSE FOR DISCIPLINE 16

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## (Dangerous Use of Alcohol)

18 11. Respondent is subject to disciplinary action under section 4301, subdivision (h), in
19 that Respondent used alcohol in a manner dangerous to himself and others, as follows:

20a.Respondent used alcohol in a manner dangerous to himself and others when he21drove with a blood-alcohol content level greater than .08% on or about August 4, 2008.

Complainant refers to and incorporates all the allegations contained in paragraph 10, as though set
forth fully.

b. Respondent used alcohol in a manner dangerous to himself and others on or
about May 3, 2009, when officers of the County of Los Angeles Sheriff's Department arrested
Respondent after observing him swaying back and forth on the sidewalk, and stumbling as he

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1	tried to walk. <sup>1</sup> During a booking search, Respondent was also found to be in possession of a
2	small amount of marijuana. He was charged with one misdemeanor count of violating Penal
3	Code section 647, subdivision (f) [disorderly conduct], and one misdemeanor count of violating
. 4	Health and Safety Code section 11357, subdivision (b) [possession of less than one ounce of
5	marijuana].
6 THIRD CAUSE FOR DISCIPLINE	
7	(Unlawful Possession of Marijuana)
8	12. Respondent is subject to disciplinary action under section 4301, subdivision (j)
9	[violation of a statute regulating controlled substances], for violating Health and Safety Code
10	section 11357, subdivision (b) [possession of less than one ounce of marijuana] on or about
11	May 3, 2009. Complainant refers to and incorporates all the allegations contained in
12	paragraph 12, subparagraph b, as through set forth fully.
13	PRAYER
14	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
15	and that following the hearing, the Board issue a decision:
16	1. Revoking or suspending Pharmacy Technician License Number TCH-74636, issued
17	to Respondent;
18	2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
19	enforcement of this case, pursuant to section 125.3; and
20	3. Taking such other and further action as deemed necessary and proper.
21	
22	DATED: 125/10 Dimining Acold
23	VIRGINIA HEROLD Executive Officer
24	Board of Pharmacy Department of Consumer Affairs
25	State of California Complainant
26	Complantant
27	<sup>1</sup> An official inquiry has been made with the Superior Court of California, County of Los Angeles, to determine whether criminal charges have been filed as a result of this arrest.
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	Accusation

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