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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. 3376

13 **MAYRA LETICIA GUERRERO**
4345 E. 5th Street
Los Angeles, CA 90022

ACCUSATION

14 **Pharmacy Technician License No. TCH 68342**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Virginia K. Herold (Complainant) brings this Accusation solely in her official
20 capacity as the Executive Officer of the Board of Pharmacy.

21 2. On or about April 7, 2006, the Board of Pharmacy issued Pharmacy Technician
22 License Number TCH 68342 to Mayra Leticia Guerrero (Respondent). The Pharmacy Technician
23 License was in full force and effect at all times relevant to the charges brought herein and will
24 expire on April 30, 2010, unless renewed.

25 **JURISDICTION**

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

1 4. Section 4300 of the Code permits the Board to take disciplinary action to suspend or
2 revoke a license issued by the Board.

3 5. Section 4301 of the Code states:

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

7 ...

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

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

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

3 6. Section 492 of the Code states, in part:

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

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

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

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

23 **STATE DRUG STATUTES**

24 9. Health and Safety Code section 11007 states that “controlled substance” unless
25 otherwise specified, means a drug, substance, or immediate precursor which is listed in any
26 schedule in Section 11054, 11055, 11056, 11057, or 11058.

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1 10. Health and Safety Code section 11364, subdivision (a), states, in part, that:
2 “(a) It is unlawful to possess an opium pipe or any device, contrivance, instrument, or
3 paraphernalia used for unlawfully injecting or smoking (1) a controlled substance specified in
4 subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in
5 paragraph (14), (15), or (20) of subdivision (d) of Section 11054, specified in subdivision (b) or
6 (c) of Section 11055, or specified in paragraph (2) of subdivision (d) of Section 11055, or (2) a
7 controlled substance which is a narcotic drug classified in Schedule III, IV, or V.”

8 11. Health and Safety Code section 11377, subdivision (a), states, in part, that:
9 “Except as authorized by law and as otherwise provided in subdivision (b) or Section
10 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the
11 Business and Professions Code, every person who possesses any controlled substance which is . .
12 . (5) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the prescription of a
13 physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished
14 by imprisonment in a county jail for a period of not more than one year or in the state prison.”

15 **COST RECOVERY**

16 12. Section 125.3 of the Code provides that the Board may request the administrative law
17 judge to direct a licensee found to have committed a violation or violations of the licensing act to
18 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(Conviction of Substantially Related Crimes)**

21 13. Respondent has subjected her license to disciplinary action under sections 4301,
22 subdivisions (k) and (l) of the Code, in conjunction with California Code of Regulations, title 16,
23 section 1770, on the grounds of unprofessional conduct, in that Respondent was convicted of
24 crimes, which are substantially related to the qualifications, functions, or duties of a pharmacy
25 technician, as follows:

26 a. On or about December 31, 2007, in a criminal proceeding entitled *People of the State*
27 *of California v. Mayra Leticia Guerrero*, in Los Angeles County Superior Court, Case No.
28 6EA11926, Respondent pled nolo contendere and was convicted of violating Health and Safety

1 Code section 11364, subdivision (a) (possession of controlled substance paraphernalia), a
2 misdemeanor. Respondent was placed on three years probation, sentenced to two days jail and
3 fined. The circumstances are as follows:

4 b. On or about October 25, 2006, Respondent was observed by Los Angeles County
5 Deputy Sheriffs sitting in a parked Ford Explorer that was blocking a fire hydrant. When
6 contacted, the deputies asked Respondent if they could search her purse. She replied, "Sure, sir,
7 go ahead, I think I have Meth." The deputies recovered a five inch glass pipe which was burnt at
8 one end from Respondent's purse, which is used to smoke Methamphetamine. Respondent told
9 the deputies "That's mine, sir, I started using Meth again." Respondent was arrested for the
10 possession of controlled substance paraphernalia in violation of Health and Safety Code section
11 11364, subdivision (a).

12 c. On or about December 19, 2006, in a criminal proceeding entitled *People of the State*
13 *of California v. Mayra Leticia Guerrero*, in Los Angeles County Superior Court, Case No.
14 6RI07806, Respondent pled guilty to violating Health and Safety Code section 11377,
15 subdivision (a), (possession of a controlled substance, Methamphetamine), a misdemeanor.
16 Respondent was placed on deferred entry of judgment for 36 months and fined. On or about June
17 5, 2009, the deferred entry of judgment was terminated and Respondent was convicted of the
18 charge. The circumstances are as follows:

19 d. On or about December 15, 2006, Los Angeles County Deputy Sheriffs contacted
20 Respondent in an under the influence/possession of narcotics investigation. Respondent told the
21 deputies that she did not have any narcotics on her person, but that there was a "loaded" narcotics
22 pipe inside of the hotel room registered to her and that the pipe was hers. The deputies also
23 discovered two clear plastic bindles containing Methamphetamine, which Respondent admitted
24 were hers. Respondent was arrested for possession of a controlled substance, Methamphetamine,
25 in violation of Health and Safety Code sections 11377, and possession of controlled substance
26 paraphernalia, in violation of Health and Safety section 11364, subdivision (a).

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Violation of State Laws Regulating Controlled Substances)**

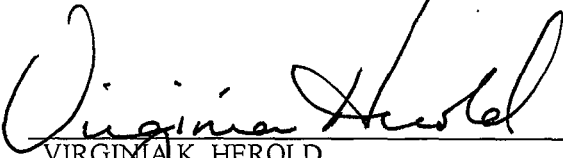
3 14. Respondent has subjected her license to disciplinary action under section 4301,
4 subdivision (j), on the grounds of unprofessional conduct, in that on or about December 15, 2006,
5 Respondent violated Health and Safety Code section 11377, subdivision (a), by illegally
6 possessing a controlled substance and dangerous drug, Methamphetamine, and Health and Safety
7 section 11364, subdivision (a), by illegally possessing narcotic paraphernalia, as set forth in
8 paragraph 13, above.

9 **PRAYER**

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

- 12 1. Revoking or suspending Pharmacy Technician License Number TCH 68342, issued
13 to Mayra Leticia Guerrero Mayra Leticia Guerrero;
- 14 2. Ordering Mayra Leticia Guerrero to pay the Board of Pharmacy the reasonable costs
15 of the investigation and enforcement of this case, pursuant to Business and Professions Code
16 section 125.3; and,
- 17 3. Taking such other and further action as deemed necessary and proper.

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20 DATED: 4/6/10


21 VIRGINIA K. HEROLD
22 Executive Officer
23 Board of Pharmacy
24 State of California
25 Complainant

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