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

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|---|----------------------------|
| 11 In the Matter of the Accusation Against: | Case No. AC-2009-3469 |
| 12 FRANK MENDOZA, a.k.a. | |
| 13 FRANK MALDONADO MENDOZA | |
| 14 4720 East Kavaland Avenue | A C C U S A T I O N |
| 15 Fresno, CA 93725 | |
| 16 Pharmacy Technician | |
| Registration Number TCH 71410 | |
| Respondent. | |

17 Complainant alleges:

18 **PARTIES**

- 19 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 21 2. On or about August 22, 2006, the Board of Pharmacy issued Pharmacy Technician
22 Registration Number TCH 71410 to Frank Mendoza, a.k.a. Frank Maldonado Mendoza
23 (Respondent). The Pharmacy Technician Registration was in full force and effect at all times
24 relevant to the charges brought herein and will expire on October 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 (Code) unless otherwise indicated.

1 4. Section 4300 of the Code authorizes the Board to discipline holders of any license
2 issued by the Board including, license suspension or revocation, probation, or any other
3 disciplinary action as the Board in its discretion deems may be proper.

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

8 **STATUTORY PROVISIONS**

9 6. Section 4301 of the Code states, in pertinent part:

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

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

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

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

25 7. Section 4060 of the Code states, in pertinent part:

26 No person shall possess any controlled substance, except that furnished to a
27 person upon the prescription of a physician, dentist, podiatrist, optometrist,
28 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

1 (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.
2 This section shall not apply to the possession of any controlled substance by a
3 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
4 optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
5 practitioner, or physician assistant, when in stock in containers correctly labeled
6 with the name and address of the supplier or producer.

7 8. Section 480 of the Code states, in pertinent part:

9 (a) A board may deny a license regulated by this code on the grounds that
10 the applicant has one of the following:

11 (1) Been convicted of a crime. A conviction within the meaning of this
12 section means a plea or verdict of guilty or a conviction following a plea of nolo
13 contendere. Any action that a board is permitted to take following the establish-
14 ment of a conviction may be taken when the time for appeal has elapsed, or the
15 judgment of conviction has been affirmed on appeal, or when an order granting
16 probation is made suspending the imposition of sentence, irrespective of a
17 subsequent order under the provisions of Section 1203.4 of the Penal Code.

18 (3) (A) Done any act that if done by a licentiate of the business or profes-
19 sion in question, would be grounds for suspension or revocation of license.

20 (B) The board may deny a license pursuant to this subdivision only if the
21 crime or act is substantially related to the qualifications, functions, or duties of
22 the business or profession for which application is made.

23 9. Health and Safety Code section 11359 provides:

24 Every person who possesses for sale any marijuana, except as otherwise
25 provided by law, shall be punished by imprisonment in the state prison.

26 10. Health and Safety Code section 11590 states, in pertinent part:

27 (a) [A] any person who is convicted in the State of California of any
28 offense defined in Section . . . 11359, . . . shall within 30 days of his or her
coming into any county or city, or city and county in which he or she resides or
is temporarily domiciled for that length of time, register with the chief of police
of the city in which he or she resides or the sheriff of the county if he or she
resides in an unincorporated area.

29 DRUG

30 11. **Marijuana** is a Schedule I controlled substance as designated in Health and
31 Safety Code section 11054, subdivision (d)(13).

32 COST RECOVERY

33 12. Section 125.3 of the Code states, in pertinent part, that the Board may request the
34 administrative law judge to direct a licentiate found to have committed a violation or violations of
35 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
36 enforcement of the case.

1 FIRST CAUSE FOR DISCIPLINE

2 (CONVICTION OF CRIME INVOLVING CONTROLLED SUBSTANCE)

3 13. Respondent is subject to disciplinary action under Code sections 4300 and 4301,
4 subdivision (l), on the grounds of unprofessional conduct in that on or about November 17, 2008,
5 Respondent was convicted in the case of *People v. Frank Mendoza*, Shasta County Superior
6 Court Case No. 08-08050, on his plea of guilty of violating Health and Safety Code section 11359
7 [possession of marijuana for sale], a felony. Said conviction is substantially related to the
8 qualifications, duties, and functions of a Registered Pharmacy Technician. Respondent was
9 sentenced to State Prison for the aggravated term of three years, execution of sentence was
10 suspended and imposition of sentence was suspended for five years. Respondent was admitted to
11 formal probation under specified terms and conditions including, but not limited to: serving time
12 in Shasta County jail for 365 days, with credit for time served and custody conduct credits for a
13 total of 240 days; payment of restitution, fines, and fees counseling; provide specified samples
14 and specimens, register as a controlled substance offender under Health & Safety Code section
15 11590; and, submit to random chemical testing and warrantless search, with or without probable
16 cause of his person, property, and vehicle.

17 14. The underlying circumstances are: Respondent knowingly attempted to transport
18 155.1 pounds of packaged Marijuana to Spokane, Washington, in exchange for the payment of
19 \$3,000.00. The Marijuana was in the bed of Respondent's truck. Respondent was stopped by
20 law enforcement officers in Redding, California, for a traffic violation; those officers discovered
21 the Marijuana in Respondent's truck. The packaged Marijuana was concealed under three
22 locking bed covers and blanket(s) and in large plastic bags. Respondent attempted to mask the
23 odor of Marijuana by using detergent in the interior of his truck. Detergent is commonly used to
24 mask the odor of controlled substances from law enforcement K-9 dogs; however, a K-9 dog
25 detected the odor of Marijuana in the truck bed and alerted the officers. Respondent possessed
26 the controlled substance Marijuana without a prescription.

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1 SECOND CAUSE FOR DISCIPLINE
2 (VIOLATION OF STATUTES REGULATING
3 CONTROLLED SUBSTANCES)

4 15. Respondent is subject to disciplinary action under section Code sections 4300 and
5 4301, subdivision (j), on the grounds of unprofessional conduct in that Respondent violated
6 statutes regulating the controlled substance Marijuana as follows:

7 a. Respondent violated Health and Safety Code section 11359 when he possessed the
8 controlled substance Marijuana with the intent for sale, as alleged in paragraph 14, above.

9 b. Respondent violated Code section 4060 when he possessed the controlled substance
10 Marijuana, a controlled substance , without a prescription, as alleged in paragraph 14, above.

11 THIRD CAUSE FOR DISCIPLINE
12 (ACTS WARRANTING LICENSE DENIAL)

13 16. Respondent is subject to disciplinary action under Code sections 4300 and 4301,
14 subdivision (p), on the grounds of unprofessional conduct, in conjunction with Code section 480,
15 as follows:

16 a. Respondent was convicted of a crime on his plea of guilty of violating Health and
17 Safety Code section 11359, a felony, as alleged in paragraph 13, above, in violation of Code
18 section 480, subdivision (a)(1). Said conviction is substantially related to the qualifications,
19 functions, or duties of a Registered Pharmacy Technician.

20 b. Respondent did an act that that would be grounds for suspension or revocation of
21 license as alleged in paragraphs 13, 14, and 15, above, in violation of Code section 480,
22 subdivision (a)(3)(A). Said act is substantially related to the qualifications, functions, or duties of
23 a Registered Pharmacy Technician.

24 PRAYER

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

27 1. Revoking or suspending Pharmacy Technician Registration Number TCH 71410,
28 issued to Frank Mendoza, a.k.a. Frank Maldonado Mendoza.

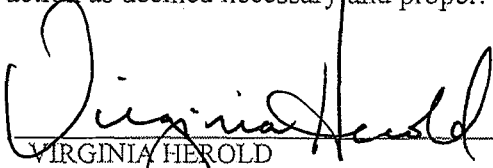
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2. Ordering Frank Mendoza, a.k.a. Frank Maldonado Mendoza, to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED:

1/26/10



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

SA2009102668