	· ()	
1	Edmund G. Brown Jr.	
2	Attorney General of California GREGORY J. SALUTE	
3	Supervising Deputy Attorney General NANCY A. KAISER	
4	Deputy Attorney General State Bar No. 192083	
5	300 So. Spring Street, Suite 1702 Los Angeles, CA 90013	
6	Telephone: (213) 897-5794 Facsimile: (213) 897-2804	
7	Attorneys for Complainant	
8	BEFORE TH	Œ
9	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS	
10	STATE OF CALIF	
11	In the Matter of the Accusation Against:	Case No. 3490
12	ALBERT ANGEL AVALOS	
13	18726 Villa Park Street La Puente, CA 91744	ACCUSATION
14	Pharmacy Technician License No. TCH 69538	
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 January 26, 2007, the Board of Pharmacy issued Pharmacy Technician	
22	License Number TCH 69538 to Albert Angel Avalos (Respondent). The Pharmacy Technician	
23	License was in full force and effect at all times relevant	t to the charges brought herein and will
24	expire on June 30, 2010, unless renewed.	
25	JURISDICTI	<u>NC</u>
26	3. This Accusation is brought before the Boar	d of Pharmacy (Board), under the
27	authority of the following laws. All section references are to the Business and Professions Code	
28	(Code) unless otherwise indicated.	
	1	
		Accusation (Avalos

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

5. 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:

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.

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

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

28

1

2

Ż

4

5

6

7

guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment." 2

6.

1

3

Section 492 of the Code states, in part:

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

12

13

14

15

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

16

23

8.

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

"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 20 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a 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

STATE DRUG STATUTES

3

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

///

///

28

27

ú		
1	10. Health and Safety Code section 11377, subdivision (a), states, in part, that:	
2	"Except as authorized by law and as otherwise provided in subdivision (b) or Section	
3	11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the	
4	Business and Professions Code, every person who possesses any controlled substance which is	
5	. (5) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the prescription of a	
6	physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished	
7	by imprisonment in a county jail for a period of not more than one year or in the state prison."	
8	CONTROLLED SUBSTANCE	
9	11. Methamphetamine, a stimulant, is a Schedule II controlled substance as designated by	
10	Health and Safety Code section 11055, subdivision (d)(2), and is categorized as a dangerous drug	
11	pursuant to section 4022 of the Code.	
12	COST RECOVERY	
13	12. Section 125.3 of the Code provides that the Board may request the administrative law	
14	judge to direct a licentiate found to have committed a violation or violations of the licensing act to	
15	pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.	
16	FIRST CAUSE FOR DISCIPLINE	
17	(Conviction of Substantially Related Crime)	
18	13. Respondent has subjected his license to disciplinary action under sections 4301,	
19	subdivisions (k) and (l) of the Code, in conjunction with California Code of Regulations, title 16,	
20.	section 1770, on the grounds of unprofessional conduct, in that Respondent was convicted of a	
21	crime, which is substantially related to the qualifications, functions, or duties of a pharmacy	
22	technician, as follows:	
23	a. On or about April 17, 2008, in a criminal proceeding entitled <i>People of the State of</i>	
24	California v. Albert Angel Avalos, in Los Angeles County Superior Court, Case No. KA082583,	
25	Respondent pled guilty to violating Health and Safety Code section 11377, subdivision (a),	
26	(possession of a controlled substance, Methamphetamine), a felony. Respondent was placed on	
27	deferred entry of judgment for eighteen (18) months and fined. The circumstances are as follows:	
28		
	. 4	
	Accusation (Avalos)	

1		
1	b. On or about February 5, 2008, Los Angeles County Deputy Sheriffs observed	
2	Respondent riding a bicycle against traffic and failing to stop at a posted stop sign. Respondent	
3	was contacted by a traffic stop to warn/cite. Upon making contact with Respondent, the deputies	
4	noticed that Respondent appeared very nervous and acted as if he wanted to reach into his	
5	pockets. The deputies asked if they could search him. He consented to the search and then stated	
6	that he had two baggies of "Meth" that he had just found. Deputy Perallon searched Respondent	
7	and located a zip-lock bag containing Methamphetamine. Respondent was arrested for	
8	possession of Methamphetamine in violation of Health and Safety Code section 11377.	
9	SECOND CAUSE FOR DISCIPLINE	
10	(Violation of State Laws Regulating Controlled Substances)	
11	14. Respondent has subjected his license to disciplinary action under section 4301,	
12	subdivision (j), on the grounds of unprofessional conduct, in that Respondent violated Health and	
13	Safety Code sections 11377, subdivision (a), by possessing a controlled substance,	
14	Methamphetamine, as set forth in paragraph 13, above.	
15	PRAYER	
16	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,	
17	and that following the hearing, the Board of Pharmacy issue a decision:	
18	1. Revoking or suspending Pharmacy Technician License Number TCH 69538, issued	
19	to Albert Angel Avalos;	
20	2. Ordering Albert Angel Avalos to pay the Board of Pharmacy the reasonable costs of	
21	the investigation and enforcement of this case, pursuant to Business and Professions Code section	
22	125.3; and,	
23	3. Taking such other and further action as deemed necessary and proper.	
24	DATED: 4/1/10 linging Lend	
25	VIRGINIA K. HEROLD	
26	Executive Officer Board of Pharmacy	
27	State of California Complainant	
28		
	5	
	Accusation (Avalos)	