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| 8 | BEFORE THE |
| 9 | BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS |
| 10 | STATE OF CALIFORNIA |
| 11 | In the Matter of the Accusation Against: Case No. 3494 |
| 12 | ERROL R. GERALDE |
| 13 | 16027 E. Ranch Lane La Mirada, CA 90638 ACCUSATION |
| 14 | Pharmacy Technician Registration No. TCH 68671 |
| 15 | Respondent. |
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| 18 | Complainant alleges: |
| 19 | <u>PARTIES</u> |
| 20 | 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity |
| 21 | as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board). |
| 22 | 2. On or about April 18, 2006, the Board issued Pharmacy Technician Registration No. |
| 23 | TCH 68671 to Errol R. Geralde (Respondent). The Pharmacy Technician Registration was in full |
| 24 | force and effect at all times relevant to the charges brought herein and will expire on February 29, |
| 25 | 2012, unless renewed. |
| 26 | JURISDICTION |
| 27 | 3. This Accusation is brought before the Board under the authority of the following |
| 28 | laws. All section references are to the Business and Professions Code unless otherwise indicated. |
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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

- Section 490 provides that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or
- Section 4060 provides that no person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician or other licensed authorized
 - Section 4300 states that "[e] very license issued may be suspended or revoked."

"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:

The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and

"(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 person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the

- "(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.
- "(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.
- "(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. . . .
- "(o) Violating or attempting to violate, directly or indirectly, or assisting in 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. . . ."

REGULATORY PROVISIONS

9. 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 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 consistent with the public health, safety, or welfare."

COST RECOVERY

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

CONTROLLED SUBSTANCES / DANGEROUS DRUGS

11. Methamphetamine is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (d)(2), and is categorized as a dangerous drug pursuant to Business and Professions Code section 4022.

FIRST CAUSE FOR DISCIPLINE

(Convictions of Substantially Related Crimes)

- 12. Respondent is subject to disciplinary action pursuant to Code sections 490, 4300, 4301, subdivision (l), on the grounds of unprofessional conduct in conjunction with California Code of Regulations, title 16, section 1770, in that on or about October 30, 2006, Respondent was convicted of a crime substantially related to the qualifications, functions or duties of a registered pharmacy technician which to a substantial degree evidence his present or potential unfitness to perform the functions authorized by his registration in a manner consistent with the public health, safety, or welfare, as follows:
- a. On or about October 30, 2006, after pleading guilty, in the criminal proceeding entitled *The People of the State of California v Errol Ramos Geralde* (Super. Ct. Orange County, 2006, No. 06WF3194), Respondent was convicted of two (2) felonies: violating Health and Safety code 11370.1 [possession of a controlled substance with firearm]; and Health and Safety Code 11377(a) [possession of a controlled substance, to wit, methamphetamine]. In conjunction with the felony convictions, Respondent was also convicted of three (3) misdemeanors: violating Penal Code sections 12025(a)(1)/(b)(6) [having a concealed firearm in vehicle]; Vehicle Code section 23152(a) [driving under the influence of alcohol/drugs]; and violating Vehicle Code section 23152(b) [driving with blood alcohol 0.08% or more]. The Court sentenced Respondent to 120 days in jail, placed him on three (3) years probation, ordered him to register as a narcotics offender and submit to DNA testing, ordered him to complete a three (3) month First Offender Alcohol Program and ordered him to seek training, schooling or employment and maintain a residence.
- b. The circumstances underlying the five (5) convictions are that on or about October 21, 2006, Respondent was involved in a single vehicle non-injury traffic collision. Respondent was driving while under the influence of alcohol and had BAC consecutive test results of 0.106, 0.115 and 0.09. Respondent was found in possession of methamphetamine and a loaded hand gun.

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SECOND CAUSE FOR DISCIPLINE

(Drug/Alcohol Related Convictions)

13. Respondent is subject to disciplinary action pursuant to Code sections 4300 and 4301, subdivision (k), on the grounds of unprofessional conduct, in that on or about October 30, 2006, Respondent was convicted of misdemeanors and felonies involving methamphetamine and alcohol, their use, consumption or self-administration. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 12, subparagraphs (a) and (b), as though set forth fully.

THIRD CAUSE FOR DISCIPLINE

(Dangerous Use of Alcohol/Drugs)

14. Respondent is subject to disciplinary action pursuant to Code sections 4300 and 4301, subdivision (h), on the grounds of unprofessional conduct, in that Respondent used alcohol/drugs to the extent or in a manner as to be dangerous or injurious to himself or others and / or to the extent that his use impairs his ability to conduct with safety to the public the practice authorized by his license. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 12 and 13 inclusive, as though set forth fully.

FOURTH CAUSE FOR DISCIPLINE

(Illegal Possession of Controlled Substances)

15. Respondent is subject to disciplinary action pursuant to Code sections 4300 and 4301, subdivision (j), on the grounds of unprofessional conduct in conjunction with section 4060, in that on or about October 21, 2006, Respondent was in possession of a controlled substances without a valid prescription. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 12 through 14, inclusive, as though set forth fully.

FIFTH CAUSE FOR DISCIPLINE

(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)

16. Respondent is subject to disciplinary action pursuant to Code sections 4300 and 4301, subdivision (f), on the grounds of unprofessional conduct, in that Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit and / or corruption. Complainant refers to,

| 1 | and by this reference incorporates, the allegations set forth above in paragraphs 12 through 15, |
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| 2 | inclusive, as though set forth fully. |
| 3 | SIXTH CAUSE FOR DISCIPLINE |
| 4 | (Unprofessional Conduct/Violating Pharmacy Law) |
| 5 | 17. Respondent is subject to disciplinary action pursuant to Code sections 4300 and 4301, |
| 6 | subdivision (o), in that Respondent committed acts constituting unprofessional conduct. |
| 7 | Complainant refers to, and by this reference incorporates, the allegations set forth above in |
| 8 | paragraphs 12 through 16, inclusive, as though set forth fully. |
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| 10 | <u>PRAYER</u> |
| 11 | WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, |
| 12 | and that following the hearing, the Board issue a decision: |
| 13 | 1. Revoking or suspending Pharmacy Technician Registration No. TCH 68671, issued |
| 14 | to Respondent; |
| 15 | 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and |
| 16 | enforcement of this case, pursuant to section 125.3; and |
| 17 | 3. Taking such other and further action as deemed necessary and proper. |
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| 20 | DATED 6/10/10 |
| 21 | DATED: 6/10/10 Ciginia HEROLD VIRGINIA HEROLD |
| 22 | Executive Officer Board of Pharmacy |
| 23 | Department of Consumer Affairs State of California |
| 24 | Complainant |
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