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

11 In the Matter of the Accusation Against:
12
13 **ALFREDO RODRIGUEZ**
1216 S. Willow Brook
Compton, CA 90220
14
15 **Pharmacy Technician Registration No. TCH**
66606
16
17 Respondent.

Case No. 3528

ACCUSATION

18
19 Complainant alleges:

20 **PARTIES**

- 21 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
22 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
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24 2. On or about December 19, 2005, the Board of Pharmacy issued Pharmacy Technician
25 Registration Number TCH 66606 to Alfredo Rodriguez (Respondent). The Pharmacy Technician
26 Registration was in full force and effect at all times relevant to the charges brought herein and
27 will expire on September 30, 2011, unless renewed.
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1 **JURISDICTION**

2 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
3 Consumer Affairs, under the authority of the following laws. All section references are to the
4 Business and Professions Code unless otherwise indicated.

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

9 5. Section 4300, subdivision (a) of the Code states "[e]very license issued may be
10 suspended or revoked."

11 **STATUTORY AND REGULATORY PROVISIONS**

12 6. Section 482 of the Code states:

13 Each board under the provisions of this code shall develop criteria to
14 evaluate the rehabilitation of a person when:

15 (a) Considering the denial of a license by the board under Section 480; or

16 (b) Considering suspension or revocation of a license under Section 490.

17 Each board shall take into account all competent evidence of rehabilitation
18 furnished by the applicant or licensee.

19 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or
20 revoke a license on the ground that the licensee has been convicted of a crime substantially
21 related to the qualifications, functions, or duties of the business or profession for which the
22 license was issued.

23 8. Section 493 of the Code states:

24 Notwithstanding any other provision of law, in a proceeding conducted by a
25 board within the department pursuant to law to deny an application for a license or
26 to suspend or revoke a license or otherwise take disciplinary action against a
27 person who holds a license, upon the ground that the applicant or the licensee has
28 been convicted of a crime substantially related to the qualifications, functions, and
duties of the licensee in question, the record of conviction of the crime shall be
conclusive evidence of the fact that the conviction occurred, but only of that fact,

1 and the board may inquire into the circumstances surrounding the commission of
2 the crime in order to fix the degree of discipline or to determine if the conviction is
substantially related to the qualifications, functions, and duties of the licensee in
question.

3 As used in this section, "license" includes "certificate," "permit,"
4 "authority," and "registration."

5 9. Section 4060 of the Code states:

6 No person shall possess any controlled substance, except that furnished to a
7 person upon the prescription of a physician, dentist, podiatrist, optometrist,
8 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
9 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
10 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant
11 pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a
12 pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv)
13 of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This
section shall not apply to the possession of any controlled substance by a
14 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
15 optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
16 practitioner, or physician assistant, when in stock in containers correctly labeled
with the name and address of the supplier or producer.

14 Nothing in this section authorizes a certified nurse-midwife, a nurse
15 practitioner, a physician assistant, or a naturopathic doctor, to order his or her own
16 stock of dangerous drugs and devices.

17 10. Section 4301 of the Code states:

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

21

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

24

25 (l) The conviction of a crime substantially related to the qualifications,
26 functions, and duties of a licensee under this chapter. The record of conviction of
27 a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
28 States Code regulating controlled substances or of a violation of the statutes of this
state regulating controlled substances or dangerous drugs shall be conclusive
evidence of unprofessional conduct. In all other cases, the record of conviction
shall be conclusive evidence only of the fact that the conviction occurred. The

1 board may inquire into the circumstances surrounding the commission of the
2 crime, in order to fix the degree of discipline or, in the case of a conviction not
3 involving controlled substances or dangerous drugs, to determine if the conviction
4 is of an offense substantially related to the qualifications, functions, and duties of a
5 licensee under this chapter. A plea or verdict of guilty or a conviction following a
6 plea of nolo contendere is deemed to be a conviction within the meaning of this
7 provision. The board may take action when the time for appeal has elapsed, or the
8 judgment of conviction has been affirmed on appeal or when an order granting
9 probation is made suspending the imposition of sentence, irrespective of a
10 subsequent order under Section 1203.4 of the Penal Code allowing the person to
11 withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
12 the verdict of guilty, or dismissing the accusation, information, or indictment.

13

14 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
15 abetting the violation of or conspiring to violate any provision or term of this
16 chapter or of the applicable federal and state laws and regulations governing
17 pharmacy, including regulations established by the board or by any other state or
18 federal regulatory agency.

19

20 11. California Code of Regulations, title 16, section 1769, states:

21

22 (b) When considering the suspension or revocation of a facility or a
23 personal license on the ground that the licensee or the registrant has been
24 convicted of a crime, the board, in evaluating the rehabilitation of such person and
25 his present eligibility for a license will consider the following criteria:

- 26 (1) Nature and severity of the act(s) or offense(s).
- 27 (2) Total criminal record.
- 28 (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with all terms of parole, probation,
restitution or any other sanctions lawfully imposed against the licensee.
- (5) Evidence, if any, of rehabilitation submitted by the licensee.

12. 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

1 perform the functions authorized by his license or registration in a manner
2 consistent with the public health, safety, or welfare.

3 **COST RECOVERY**

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

8 **DRUG**

9 14. Marijuana is a Schedule I controlled substance as designated by Health and Safety
10 Code section 11054(d)(13), and is a dangerous drug pursuant to Business & Professions Code
11 section 4022.

12 **FIRST CAUSE FOR DISCIPLINE**

13 **(February 13, 2009 Conviction for Importing Marijuana and Aiding and Abetting on**
14 **October 30, 2008)**

15 15. Respondent is subject to disciplinary action under sections 490 and 4301(l) of the
16 Code in that he was convicted of a crime that is substantially related to the qualifications,
17 functions and duties of pharmacy technician. The circumstances are as follows:

18 a. On or about February 13, 2009, in a criminal proceeding entitled *United States of*
19 *America v. Alfredo Rodriguez et al.*, in the United States District Court for the Southern District
20 of California, case number 08CR4165-BEN, Respondent was convicted on his plea of guilty for
21 violation of Title 21, United States Code, Sections 952 and 960, knowingly and intentionally
22 importing 50 kilograms or more of marijuana, a Schedule I Controlled Substance, a felony and
23 Title 18, United States Code, Section 2, aiding and abetting, a felony.

24 b. The facts that led to the conviction are that on or about October 30, 2008, at
25 approximately 1727 hours, Respondent drove a vehicle when he and his co-defendant made entry
26 into the United States at the Calexico, California East Port of Entry. A United States Customs
27 and Border Protection Officer took a negative Customs declaration and referred Respondent and
28

1 his co-defendant to "secondary." In "secondary," an officer searched the vehicle driven by
2 Respondent and recovered 45 packages of a green leafy substance from the fuel tank. A sample
3 of the substance field-tested positive for marijuana. The total weight of the packages was 38.50
4 kilograms (84.70 pounds). Respondent admitted to a special agent that he believed that
5 controlled substances would be in the vehicle that he was driving.

6 c. As a result of his conviction, on or about May 26, 2009, Respondent was sentenced
7 to twelve months and one day in custody, supervised release for three years and ordered to pay a
8 fine in the amount of \$1000.00.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct-Violating Laws Regulating Controlled Substances)**

11 16. Respondent is subject to disciplinary action for unprofessional conduct under section
12 4301(j) of the Code in that on or about October 30, 2008, Respondent violated Title 21, United
13 States Code, Sections 952 and 960 as is more fully described in paragraph 15, above.

14 **THIRD CAUSE FOR DISCIPLINE**

15 **(Unprofessional Conduct-Violations of the Chapter)**

16 17. Respondent is subject to disciplinary action for unprofessional conduct under section
17 4301(o) for violations of the Pharmacy Act in that on or about October 30, 2008, Respondent
18 possessed a controlled substance, marijuana in violation of section 4060 of the Code as is more
19 fully described in paragraph 15, above.

20 **PRAYER**

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

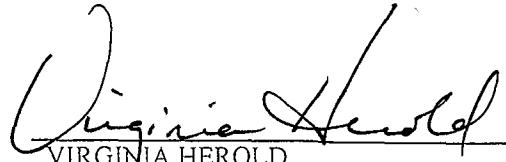
23 1. Revoking or suspending Pharmacy Technician Registration Number TCH 66606,
24 issued to Alfredo Rodriguez;

25 2. Ordering Alfredo Rodriguez to pay the Board of Pharmacy the reasonable costs of the
26 investigation and enforcement of this case, pursuant to Business and Professions Code section
27 125.3;

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

DATED: 7/2/10



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

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