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

10 In the Matter of the Accusation Against:

Case No. 3706

11 **SYSAVATH JIMMY BOUNTHAPANYA**
12 2315 Barlow Avenue
San Jose, CA 95122
13 **Pharmacy Technician License No. TCH**
68660

A C C U S A T I O N

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15 Respondent.

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18 Complainant alleges:

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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.

23 2. On or about April 18, 2006, the Board of Pharmacy issued Pharmacy Technician
24 License Number TCH 68660 to Sysavath Jimmy Bounthapanya (Respondent). The Pharmacy
25 Technician License was in full force and effect at all times relevant to the charges brought herein
26 and will expire on January 31, 2012, unless renewed.

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JURISDICTION

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

4. Section 4300 of the Code states:

"(a) Every license issued may be suspended or revoked. . ."

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:

...

"(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 practice authorized by the license.

"(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."

...

"(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United 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 board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the

1 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
2 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
3 of this provision. The board may take action when the time for appeal has elapsed, or the
4 judgment of conviction has been affirmed on appeal or when an order granting probation is made
5 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
6 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
7 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
8 indictment.

9 ...”

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

14 7. Section 4022 of the Code states

15 "Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in
16 humans or animals, and includes the following:

17 "(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without
18 prescription," "Rx only," or words of similar import.

19 "(b) Any device that bears the statement: "Caution: federal law restricts this device to sale
20 by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled
21 in with the designation of the practitioner licensed to use or order use of the device.

22 "(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
23 prescription or furnished pursuant to Section 4006."

24 8. Section 4060 of the Code states:

25 "No person shall possess any controlled substance, except that furnished to a person upon
26 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
27 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
28 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a

1 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
2 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
3 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
4 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
5 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
6 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
7 labeled with the name and address of the supplier or producer.

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

11 9. Section 490(a) of the Code states:

12 "In addition to any other action that a board is permitted to take against a licensee, a board
13 may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if
14 the crime is substantially related to the qualifications, functions, or duties of the business or
15 profession for which the license was issued."

16 10. Health and Safety Code section 11377(a) states:

17 "Except as authorized by law and as otherwise provided in subdivision (b) or Section
18 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the
19 Business and Professions Code, every person who possesses any controlled substance which is
20 (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in
21 subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d),
22 (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2)
23 or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section
24 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to
25 practice in this state, shall be punished by imprisonment in a county jail for a period of not more
26 than one year or in the state prison."

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1 DRUGS INVOLVED

2 11. Methamphetamine is a Schedule II controlled substance pursuant to Health and
3 Safety Code section 11055(d)(2) and a dangerous drug pursuant to section 4022 if the Code.

4 FIRST CAUSE FOR DISCIPLINE

5 (Violation of Drug Laws)

6 12. Respondent is subject to disciplinary action under section 4301(j) of the code in that
7 Respondent violated Health and Safety sections 11377 and 11364 and Business and Professions
8 Code section 4060; all three are California statutes regulating controlled substances and
9 dangerous drugs. On or about March 26, 2009, Fremont police found Respondent in possession
10 of methamphetamine and a methamphetamine pipe.

11 SECOND CAUSE FOR DISCIPLINE

12 (Dangerous Use of Drugs)

13 13. Respondent is subject to disciplinary action under section 4301(h) of the Code in that
14 Respondent used methamphetamine in March 2009. Respondent was arrested on March 26,
15 2009 for possession of methamphetamine and a methamphetamine pipe.

16 THIRD CAUSE FOR DISCIPLINE

17 (Conviction)

18 14. Respondent is subject to disciplinary action under sections 4301(l) and 490 of the
19 Code in that Respondent was convicted of a crime that is substantially related to the duties,
20 functions, or qualifications of a pharmacy technician. On or about April 7, 2010, in Alameda
21 County Superior Court Case No. 233207A, Respondent was convicted of possession of controlled
22 substance (Methamphetamine) in violation of Health and Safety Code section 11377. The
23 circumstances leading to Respondent conviction are described in paragraphs 12-13, above.

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:

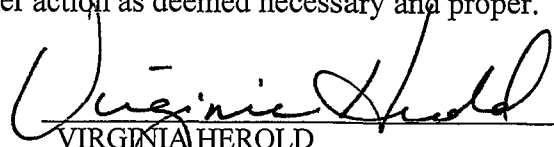
27 1. Revoking or suspending Pharmacy Technician License Number TCH 68660, issued
28 to Sysavath Jimmy Bounthapanya;

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2. Ordering Sysavath Jimmy Bounthapanya 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: 8/4/10



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

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