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7  
8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 3712

11 **JULIE MARIE MENDOZA**  
12 375 Ezie Street  
San Jose, CA 95111  
13 **Pharmacy Technician License No. TCH**  
**24030**

**A C C U S A T I O N**

14  
15 Respondent.

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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 October 22, 1997, the Board of Pharmacy issued Pharmacy Technician  
22 License Number TCH 24030 to Julie Marie Mendoza (Respondent). The Pharmacy Technician  
23 License was in full force and effect at all times relevant to the charges brought herein and will  
24 expire on April 30, 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 unless otherwise indicated.

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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 qualifications, functions, and duties of a licensee under this chapter. A plea or 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

1 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
2 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
3 indictment.

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

9 7. California Code of Regulations, title 16, section 1770, states:

10 "For the purpose of denial, suspension, or revocation of a personal or facility license  
11 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a  
12 crime or act shall be considered substantially related to the qualifications, functions or duties of a  
13 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a  
14 licensee or registrant to perform the functions authorized by his license or registration in a manner  
15 consistent with the public health, safety, or welfare."

16 8. Section 4022 of the Code states

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

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

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

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

26 9. Section 4060 of the Code states:

27 "No person shall possess any controlled substance, except that furnished to a person upon  
28 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor

1 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified  
2 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a  
3 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,  
4 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of  
5 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not  
6 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,  
7 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified  
8 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly  
9 labeled with the name and address of the supplier or producer.

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

13 10. Health and Safety Code section 11550(a) states:

14 "No person shall use, or be under the influence of any controlled substance which is (1)  
15 specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054,  
16 specified in paragraph (14), (15), (21), (22), or (23) of subdivision (d) of Section 11054, specified  
17 in subdivision (b) or (c) of Section 11055, or specified in paragraph (1) or (2) of subdivision (d)  
18 or in paragraph (3) of subdivision (e) of Section 11055, or (2) a narcotic drug classified in  
19 Schedule III, IV, or V, except when administered by or under the direction of a person licensed  
20 by the state to dispense, prescribe, or administer controlled substances. It shall be the burden of  
21 the defense to show that it comes within the exception. Any person convicted of violating this  
22 subdivision is guilty of a misdemeanor and shall be sentenced to serve a term of not less than 90  
23 days or more than one year in a county jail. The court may place a person convicted under this  
24 subdivision on probation for a period not to exceed five years and, except as provided in  
25 subdivision (c), shall in all cases in which probation is granted require, as a condition thereof, that  
26 the person be confined in a county jail for at least 90 days. Other than as provided by subdivision  
27 (c), in no event shall the court have the power to absolve a person who violates this subdivision  
28 from the obligation of spending at least 90 days in confinement in a county jail."

1 11. Health and Safety Code section 11377(a) states:  
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 (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in  
6 subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d),  
7 (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2)  
8 or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section  
9 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to  
10 practice in this state, shall be punished by imprisonment in a county jail for a period of not more  
11 than one year or in the state prison."

12 COSTS

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

17 DRUGS INVOLVED

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

20 FIRST CAUSE FOR DISCIPLINE

21 (Violation of Drug Laws)

22 14. Respondent is subject to disciplinary action under section 4301(j) of the Code in that  
23 Respondent violated Health and Safety sections 11377 and 11550 and Business and Professions  
24 Code section 4060; all three are California statutes regulating controlled substances and  
25 dangerous drugs. On or about May 25, 2007, San Jose police found Respondent under the  
26 influence and in possession of methamphetamine.

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1 SECOND CAUSE FOR DISCIPLINE

2 (Dangerous Use of Drugs)

3 15. Respondent is subject to disciplinary action under section 4301(h) of the code in that  
4 Respondent used methamphetamine on or about May 25, 2007. Respondent was arrested on  
5 May 25, 2007 for possessing and being under the influence of methamphetamine.

6 THIRD CAUSE FOR DISCIPLINE

7 (Conviction)

8 16. Respondent is subject to disciplinary action under sections 4301(l) and 490 of the  
9 code in that Respondent was convicted of a crime that is substantially related to the duties,  
10 functions, or qualifications of a pharmacy technician. On or about March 16, 2009, in Santa  
11 Clara County Superior Court Case No. CC770593, Respondent was convicted of fighting in  
12 public in violation of Penal Code section 415(1). The circumstances leading to Respondent's  
13 conviction are as follows:

14 17. On or about May 25, 2007, Respondent fought with the father of her child over the  
15 custody of that child. Respondent hit and scratched the father in the face. Respondent was  
16 arrested by San Jose Police and was charged with battery on a spouse/cohabitant in violation of  
17 Penal Code sections 242-243(e).

18 DISCIPLINE CONSIDERATIONS

19 18. To determine the degree of discipline, if any, to be imposed on Respondent,  
20 Complainant alleges that on or about February 26, 2004, in a prior action, the Board of Pharmacy  
21 issued Citation Number CL 2002 25501-c and ordered Respondent to pay \$500. Respondent  
22 worked as a pharmacy technician with an expired license in violation of section 4115(e)(1) of the  
23 code. That Citation is now final and is incorporated by reference as if fully set forth herein.

24 PRAYER

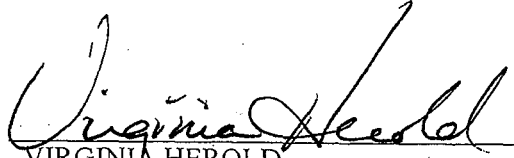
25 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
26 and that following the hearing, the Board of Pharmacy issue a decision:

27 1. Revoking or suspending Pharmacy Technician License Number TCH 24030, issued  
28 to Julie-Marie Mendoza:

1           2.    Ordering Julie Marie Mendoza to pay the Board of Pharmacy the reasonable costs of  
2 the investigation and enforcement of this case, pursuant to Business and Professions Code section  
3 125.3;

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

5  
6 DATED: 7/2/10

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

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