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

12 In the Matter of the Accusation Against:
13 **LORENA ARMENTA**
14 **750 Erica Street**
Escondido, CA 92027
15 **Pharmacy Technician Registration No. TCH**
106294
16 Respondent.

Case No. 4006

A C C U S A T I O N

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19 Complainant alleges:

20 **PARTIES**

21 1.e Virginia Herold (Complainant) brings this Accusation solely in her official capacitye
22 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

23 2. On or about September 1, 2010, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 106294 to Lorena Armenta (Respondent). The Pharmacy Technician
25 Registration was in full force and effect at all times relevant to the charges brought herein and
26 will expire on July 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 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, or 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.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

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

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

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

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

7. Section 490 of the Code provides, in pertinent part, 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 duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the

1 qualifications, functions, and duties of the licensee in question, the record of conviction of the
2 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
3 and the board may inquire into the circumstances surrounding the commission of the crime in
4 order to fix the degree of discipline or to determine if the conviction is substantially related to the
5 qualifications, functions, and duties of the licensee in question.

6 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
7 'registration.'"

8 9. Section 4301 of the Code states:

9 "The board shall take action against any holder of a license who is guilty of unprofessional
10 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

11 Unprofessional conduct shall include, but is not limited to, any of the following:

12 "....

13 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
14 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
15 whether the act is a felony or misdemeanor or not.

16 "....

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

19 "....

20 "(l) The conviction of a crime substantially related to the qualifications, functions, and
21 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
22 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
23 substances or of a violation of the statutes of this state regulating controlled substances or
24 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
25 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
26 The board may inquire into the circumstances surrounding the commission of the crime, in order
27 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
28 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 “(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
11 violation of or conspiring to violate any provision or term of this chapter or of the applicable
12 federal and state laws and regulations governing pharmacy, including regulations established by
13 the board or by any other state or federal regulatory agency.

14 “. . . .”

15 10. Section 4022 of the Code states:

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

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

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

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

25 11. Section 4059 of the Code states, in pertinent part, that a person may not furnish any
26 dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,
27 veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any
28

1 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist,
2 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

3 12. Section 4060 of the Code states:

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

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

18 COSTS

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

23 DRUGS

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

1 15. Marijuana is a Schedule I controlled substance as designated by Health and Safety
2 Code section 11054 and is a dangerous drug pursuant to Business and Professions Code section
3 4022.

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(January 18, 2011 Criminal Conviction for Child Endangerment on November 9, 2010)**

6 16. Respondent is subject to disciplinary action under section 4301, subdivision (l) of the
7 Code in that she was convicted of a crime substantially related to the qualifications, functions,
8 and duties of a pharmacy technician. The circumstances are as follows:

9 17. On or about January 18, 2011, in a criminal proceeding entitled *People v. Lorena*
10 *Armenta*, in San Diego County Superior Court, case number CN284712, Respondent was
11 convicted on her plea of guilty of violating Penal Code section 273a, subdivision (a), child
12 endangerment, a felony. An additional count of violating Health and Safety Code section 11387,
13 possession for sale of a controlled substance, with a special allegation of violating Health and
14 Safety Code section 11370.4, subdivision (b)(1), possession of a substance containing
15 methamphetamine, was dismissed pursuant to a plea agreement.

16 18. As a result of the conviction, on January 18, 2011, Respondent was sentenced to four
17 years probation to expire on January 17, 2015, and was ordered to: commitment to the sheriff for
18 180 days; pay a fine of \$800.00; pay a \$30.00 court security fee; pay a \$30.00 criminal conviction
19 assessment; pay a \$154.00 booking fee; pay \$800.00 for restitution fines; pay a \$800.00 probation
20 revocation restitution fine; and pay \$5,000.00 for a restitution fine pursuant to Penal Code section
21 294, which was stayed pending successful completion of probation. Respondent was further
22 ordered to: report to the probation officer; obtain the probation officer's consent before leaving
23 San Diego County; submit her person, vehicle, and property to search when required by a
24 probation officer or law enforcement; maintain full-time employment or schooling if directed to
25 do so; attend and complete an individual and group counsel program if directed to do so; attend
26 and complete a 52-week child abuse counseling program; and receive probation officer approval
27 for her residence, employment, and contact with Respondent's minor child, referred to as "L" for
28 the purposes of this proceeding.

1 19. The facts that led to the conviction are that on or about November 9, 2010, after
2 months of investigation involving the Drug Enforcement Administration and other agencies on
3 the area's Narcotics Task Force, Escondido police officers arrested six men and three women,
4 including Respondent, in a raid of five Escondido homes linked to a suspected drug ring. Nine
5 children were taken into protective custody, including L, Respondent's eight-year-old son.

6 20. At roughly 4:16 a.m. that day, detectives and agents wearing tactical gear with law
7 enforcement markings approached the residence at 21478 Pueblo Glen in Escondido pursuant to a
8 search warrant. When the officers knocked and identified themselves, no one opened the front
9 door. The front door was forced open and they entered. Once inside, they saw a Hispanic male,
10 Respondent, and her son, L. Detectives handcuffed the male and Respondent while they cleared
11 the house. A K-9 sniff-searched the residence. The K-9 alerted to a green duffel bag inside the
12 master bedroom closet. The duffel bag was on the floor, behind the unlocked closet door. It
13 contained the following: a clear plastic bag with 18 clear plastic bags each containing an off-
14 white rocky substance (344.6 grams approximate gross weight); a plastic Rubbermaid container
15 containing 4 clear plastic bags each containing an off-white rocky substance (1078.1 grams
16 approximate gross weight); a plastic bag containing an off-white rocky substance (49.7 grams
17 approximate gross weight); a black plastic bag containing 3 blister packs of blue pills (101.1
18 grams approximate gross weight); and a plastic Rubbermaid container containing an off-white
19 rocky substance (1,170.1 grams approximate gross weight). One of the off-white substances was
20 tested and this test indicated the substance was methamphetamine. The duffel bag was in an area
21 that was unsecured and L could have easily accessed it.

22 21. Detectives continued to search. They found: a clear plastic bag in a kitchen drawer
23 containing a green leafy substance (47.5 grams approximate weight); a black plastic Snap-on case
24 on the master bedroom closet floor that had: an aluminum foil package containing an off-white
25 substance (119.9 grams approximate weight); a clear plastic bag containing an off-white rocky
26 substance (301.7 grams approximate weight); and 16 clear plastic bindles containing an off-white
27 rocky substance (248.4 grams approximate gross weight). They also found a black Snap-on tool
28

1 case in the master bedroom closet containing drug paraphernalia, a digital scale, two paper cups, a
2 plastic container, and packaging.

3 22. On the top shelf of the master bedroom closet, detectives found a brown cardboard
4 box labeled with "Bebe" markings on the side. They opened it and found an undisclosed amount
5 of U.S. currency. Stacks of the currency were wrapped in clear shrink-wrap plastic. Near this
6 box, they found a digital scale.

7 23. One detective searched the kitchen and found a glass jar in the kitchen cabinet with a
8 green leafy substance that looked like marijuana (226.6 grams approximate weight).

9 24. L was released to the custody of the Drug Endangered Children unit. Respondent
10 was then arrested.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Unprofessional Conduct-Violation of State Laws Regulating Controlled Substances)**

13 25. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the
14 Code in that she violated statutes regulating controlled substances and dangerous drugs. The
15 circumstances are that on or about November 9, 2010, Respondent maintained a place for the
16 purpose of unlawfully selling, giving away, or using a controlled substance, which violated
17 Health and Safety Code section 11366; she attempted to or transported, sold, or gave away a
18 controlled substance, which violated Health and Safety Code section 11379; she possessed a
19 controlled substance, which violated Health and Safety Code section 11377(a); and she possessed
20 a controlled substance for sale, which violated Health and Safety Code section 11378, as detailed
21 in paragraphs 19-24, above.

22 **THIRD CAUSE FOR DISCIPLINE**

23 **(Unprofessional Conduct-Violation of the Chapter)**

24 26. Respondent is subject to disciplinary action under Section 4031, subdivision (o) of
25 the Code in that on or about November 9, 2010, as described in paragraphs 19-24, above,
26 Respondent violated or attempted to violate Section 4059 of the Code by furnishing
27 methamphetamine and marijuana, and violated or attempted to violate Section 4060 of the Code
28 by possessing methamphetamine and marijuana.

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FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Commission of an Act Involving Moral Turpitude or Corruption)

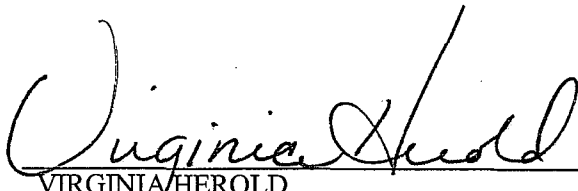
27. Respondent is subject to disciplinary action under section 4301, subdivision (f) of the Code in that on or about November 9, 2010, as described in paragraphs 19-24, above, Respondent possessed for sale methamphetamine, which is an act of moral turpitude or corruption.

PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 106294, issued to Lorena Armenta;
2. Ordering Lorena Armenta 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; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 6/2/11



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

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