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

11 In the Matter of the Accusation Against:

Case No. 4031

12 **ALFONSO TORRES**
13 **246 5th Avenue**
14 **Chula Vista, CA 91910**

15 **and**

16 **C/O Ironwood State Prison**
17 **Inmate #AF9234**
P.O. Box 2229
Blythe, CA 92226

ACCUSATION

18 **Pharmacy Technician Registration No. TCH**
19 **83487**

20 Respondent.

21
22 Complainant alleges:

23 **PARTIES**

- 24
- 25 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
26 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
 - 27 2. On or about May 19, 2008, the Board of Pharmacy issued Pharmacy Technician
28 Registration Number TCH 83487 to Alfonso Torres (Respondent). The Pharmacy Technician

1 Registration was in full force and effect at all times relevant to the charges brought herein and
2 will expire on June 30, 2011, unless renewed.

3 **JURISDICTION**

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

7 4. Section 118 of the Code states:

8 ...

9 (b) The suspension, expiration, or forfeiture by operation of law of a
10 license issued by a board in the department, or its suspension, forfeiture, or
11 cancellation by order of the board or by order of a court of law, or its
12 surrender without the written consent of the board, shall not, during any
13 period in which it may be renewed, restored, reissued, or reinstated, deprive
the board of its authority to institute or continue a disciplinary proceeding
against the licensee upon any ground provided by law or to enter an order
suspending or revoking the license or otherwise taking disciplinary action
against the licensee on any such ground.

14 ...

15 5. Section 482 of the Code states:

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

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

18 or

19 (b) Considering suspension or revocation of a license under Section
20 490.

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

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23 6. Section 4300 of the Code states:

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

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STATUTORY PROVISIONS

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 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, and the board may inquire into the circumstances surrounding the commission of 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.

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

9. 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:

(a) Gross immorality.

...

(f) 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 whether the act is a felony or misdemeanor or not.

...

(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

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

15 ...

16 REGULATORY PROVISIONS

17 10. California Code of Regulations, title 16, section 1769, states:

18

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

24 (1) Nature and severity of the act(s) or offense(s).

25 (2) Total criminal record.

26 (3) The time that has elapsed since commission of the act(s) or
27 offense(s).

28 (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.

11. 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.

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1 **COSTS**

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

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(October 20, 2010 Criminal Conviction for Lewd acts Upon a Child with an Enhancement
8 for Great Bodily Injury)**

9 13. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision
10 (l) in that Respondent was convicted of crimes that are substantially related to the qualifications,
11 duties, and functions of a pharmacy technician. The circumstances are as follows:

12 a. On or about October 20, 2010 in a criminal proceeding entitled *The People of the*
13 *State of California v. Alfonso Torres*, in San Diego County Superior Court (South County
14 Division), case number CS232580, Respondent was convicted on his plea of guilty of violating
15 Penal Code section 288 (a), lewd acts with a minor, a felony, with an enhancement under Penal
16 Code section 12022.7 (a), for inflicting great bodily injury during the commission of a felony.

17 b. As a result of his conviction, Respondent was sentenced to six years in prison for
18 lewd acts upon a child, Penal Code section 288 subsection (a) and three years in prison for the
19 enhancement of great bodily injury, Penal Code section 12022.7 subsection (a) sentences to be
20 served consecutively for a total of nine years; Respondent was further ordered to register as a sex
21 offender under Penal Code section 290 for the rest of his life, to pay fines in the amount of
22 \$3,670, to pay restitution in the amount of \$5,310 and serve four years of probation after his
23 release from the state penitentiary.

24 c. The facts that led to the conviction are that between December 2008 and January
25 2009, the twenty-one year old Respondent began having sex with a sixth grade girl, age eleven or
26 twelve (Jane Doe). Respondent was living in the same home as Jane Doe because he was in a
27 romantic relationship with Doe's mother. Respondent proceeded to have sex on multiple
28 occasions with the eleven or twelve year old Jane Doe, including oral copulation and vaginal

1 intercourse. Respondent's intercourse with the eleven or twelve year old Jane Doe resulted in
2 Jane Doe giving birth to a child when she was only twelve years old.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct- Gross Immorality)**

5 14. Respondent is subject to disciplinary action for unprofessional conduct under section
6 4301, subdivision (a) of the Code, for gross immorality. The circumstances are that from
7 approximately, December 2008 through January 2009, Respondent repeatedly orally copulated
8 and had sexual intercourse with an 11 or 12 year old child as outlined in paragraph 13, above.

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct- Moral Turpitude)**

11 15. Respondent is subject to disciplinary action for unprofessional conduct under section
12 4301, subdivision (f) of the Code, for commission of a crime involving moral turpitude. The
13 circumstances are that from approximately, December 2008 through January 2009, Respondent
14 orally copulated and had sexual intercourse with an 11 or 12 year old child as outlined in
15 paragraph 13, above.

16 **PRAYER**

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

19 1. Revoking or suspending Pharmacy Technician Registration Number TCH 83487,
20 issued to Alfonso Torres

21 2. Ordering Alfonso Torres to pay the Board of Pharmacy the reasonable costs of the
22 investigation and enforcement of this case, pursuant to Business and Professions Code section
23 125.3;

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

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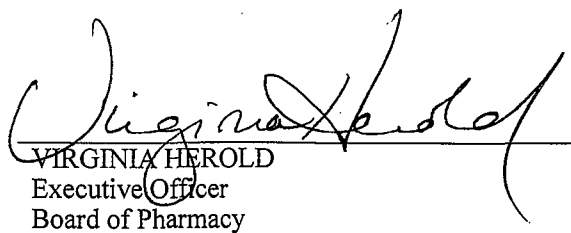
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DATED: 5/31/11



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

SD2011800380