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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. 4061

11 **OSVALDO GUTIERREZ**  
12 2197 Polar Avenue  
13 East Palo Alto, CA 94303

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

14 **Pharmacy Technician License No. TCH**  
**97983**

15 Respondent.

16  
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 February 11, 2010, the Board of Pharmacy issued Pharmacy Technician  
22 License Number TCH 97983 to Osvaldo Gutierrez (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 May 31, 2013, 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:

...

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

1           6. California Code of Regulations, title 16, section 1770, states:

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

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

12   DRUGS

13           8. Cocaine is a Schedule Schedule II controlled substance as designated by Health and  
14 Safety Code 11055(b)(6), and a dangerous drug as designated by Business and Professions Code  
15 section 4022. It is a narcotic drug.

16           9. Methamphetamine is a Schedule II controlled substance as designated by Health and  
17 Safety Code section 11055(d)(2) and a dangerous drug as designated by Business and Professions  
18 Code section 4022. It is a stimulant drug.

19   FIRST CAUSE FOR DISCIPLINE

20   (Conviction)

21           10. Respondent is subject to disciplinary action under section 4301(l) of the code in that  
22 Respondent was convicted of crimes that are substantially related to the duties, functions, and  
23 qualifications of a pharmacy technician. On or about March 2, 2011, in San Mateo County  
24 Superior Court Case No. SF373188 / SC072938, Respondent was convicted of violating:

- 25           a) Health and Safety Code section 11351, possession of a controlled substance (cocaine)  
26 for the purpose of sale. Respondent was also convicted of possessing a firearm during the  
27 commission of this crime in violation of Penal Code section 12022(c).

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1 b) Health and Safety Code section 11358, possession of a controlled substance  
2 (methamphetamine).

3 SECOND CAUSE FOR DISCIPLINE

4 (Violation of Drug Laws)

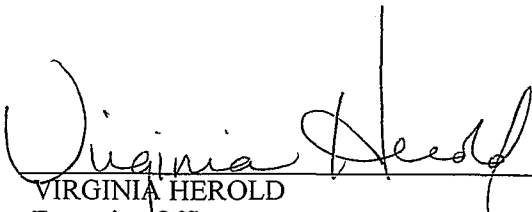
5 11. Respondent is subject to disciplinary action under section 4301(j) of the code in that  
6 Respondent violated a California statute regulating controlled substances. On or about October  
7 13, 2010, Respondent possessed a controlled substance (cocaine) for the purpose of sale in  
8 violation of Health and Safety Code Section 11351. On or about October 13, 2010, Respondent  
9 possessed a controlled substance (methamphetamine) in violation of Health and Safety Code  
10 Section 11358.

11 PRAYER

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

- 14 1. Revoking or suspending Pharmacy Technician License Number TCH 97983, issued  
15 to Osvaldo Gutierrez;
- 16 2. Ordering Osvaldo Gutierrez to pay the Board of Pharmacy the reasonable costs of the  
17 investigation and enforcement of this case, pursuant to Business and Professions Code section  
18 125.3;
- 19 3. Taking such other and further action as is deemed necessary and proper.
- 20

21  
22 DATED: 7/6/11

23   
24 VIRGINIA HEROLD  
25 Executive Officer  
26 Board of Pharmacy  
27 Department of Consumer Affairs  
28 State of California  
*Complainant*

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