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

11 In the Matter of the Accusation Against:

Case No. 4104

12 **RICHARD ANDREW ALAMILLO**
5761 Pioneer Blvd
13 Whittier, CA 90606

A C C U S A T I O N

14 Pharmacy Technician Registration
15 No. TCH 68135

16 Respondent.

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 May 11, 2006, the Board of Pharmacy (Board) issued Pharmacy
22 Technician Registration No. TCH 68135 to Richard Andrew Alamillo (Respondent). The
23 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges
24 brought herein, expired on January 31, 2014, and has not been renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board under the authority of the following
27 laws. All section references are to the Business and Professions Code unless otherwise indicated.

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STATUTORY PROVISIONS

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2 4. Section 118, subdivision (b) provides, in pertinent part, that the expiration of a license
3 shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period
4 within which the license may be renewed, restored, reissued or reinstated.

5 5. Section 490 states, in pertinent part:

6 “(a) In addition to any other action that a board is permitted to take against a licensee, a
7 board may suspend or revoke a license on the ground that the licensee has been convicted of a
8 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
9 or profession for which the license was issued.

10 “(b) Notwithstanding any other provision of law, a board may exercise any authority to
11 discipline a licensee for conviction a crime that is independent of the authority granted under
12 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
13 of the business or profession for which the licensee’s license was issued.

14 “(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
15 conviction following a plea of nolo contendere. Any action that a board is permitted to take
16 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
17 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
18 made suspending the imposition of sentence, irrespective of a subsequent order under the
19 provisions of Section 1203.4 of the Penal Code.”

20 6. Section 4060 states, in pertinent part:

21 “No person shall possess any controlled substance, except that furnished to a person upon
22 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
23 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-
24 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician
25 assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a
26 pharmacist pursuant to either Section 4052.1 or 4052.2. This section shall not apply to the
27 possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist,

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1 physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-
2 midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled
3 with the name and address of the supplier or producer.”

4 7. Section 4300 provides, in pertinent part, that every license issued by the Board is
5 subject to discipline, including suspension or revocation.

6 8. Section 4301 states, in pertinent part:

7 “The Board shall take action against any holder of a license who is guilty of unprofessional
8 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

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

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11 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous
12 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
13 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
14 to the extent that the use impairs the ability of the person to conduct with safety to the public the
15 practice authorized by the license.

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.

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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.

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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 **REGULATORY PROVISIONS**

15 9. California Code of Regulations, title 16, section 1770 states, in pertinent part;

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

22 **COST RECOVERY**

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

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1 11. **CONTROLLED SUBSTANCE**

2 "Marijuana," is a Schedule I controlled substance as designated by Health and Safety Code
3 section 11054, subdivision (d)(13) and is categorized as a dangerous drug pursuant to section
4 4022.

5 **FIRST CAUSE FOR DISCIPLINE**

6 **(Convictions of Substantially Related Crimes)**

7 12. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and
8 490, in conjunction with California Code of Regulations, title 16, section 1770, in that
9 Respondent has been convicted of crimes substantially related to the qualifications, functions, or
10 duties of a pharmacy technician. On or about April 1, 2009, after pleading nolo contendere,
11 Respondent was convicted of one misdemeanor count of violating Vehicle Code section 23152,
12 subdivision (b) [driving while having 0.08% and more, by weight, of alcohol in his blood] and
13 one misdemeanor count of Vehicle Code section 12500, subdivision (a) [driving without a valid
14 driver's license] in the criminal proceeding entitled *The People of the State of California v.*
15 *Richard Andrew Alamillo* (Super. Ct. Los Angeles County, 2009, No. 9WW01470). The Court
16 placed Respondent on 36 month of probation, with terms and conditions. The circumstances
17 surrounding the conviction are that on or about February 2, 2009, Respondent drove a vehicle
18 while having 0.12% of alcohol in his blood. While speaking to Respondent, the Whittier Police
19 Department Officer detected an odor of an alcoholic beverage emitting from his person. He was
20 observed to have bloodshot watery eyes. When asked if he had been drinking, Respondent
21 admitted that he had been drinking beer earlier that day. When asked how many beers he drank,
22 Respondent admitted that he drank 2 beers.

23 **SECOND CAUSE FOR DISCIPLINE**

24 **(Dangerous Use of Alcohol)**

25 13. Respondent is subject to disciplinary action under sections 4301, subdivision (h), in
26 that on or about February 2, 2009, Respondent used alcoholic beverages to an extent or in a
27 manner dangerous or injurious to himself, another person, or the public, when he operated a
28 vehicle while having 0.12% of alcohol in his blood. Complainant refers to, and by this reference

1 incorporates, the allegations set forth above in paragraph 12, subparagraph (b), as though set forth
2 fully.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Illegal Possession of a Controlled Substance)**

5 14. Respondent is subject to disciplinary action under sections 4301, subdivisions (j) and
6 (o), for violating section 4060, in that Respondent was found to be in illegal possession of a
7 controlled substance, as follows:

8 a. On or about April 10, 2010, during a traffic stop by the Downey Police Department,
9 Respondent was found to be in illegal possession of a controlled substance, to wit: Marijuana. He
10 was cited for violating Vehicle Code section 23222, subdivision (b) [driving a vehicle while
11 possessing less than 28.5 grams of marijuana].

12 b. On or about September 13, 2009, during a traffic stop by the Los Angeles County
13 Sheriff's Department, Respondent was contacted. While speaking to Respondent, the officer
14 detected an odor of fresh Marijuana emitting from the vehicle. When asked if there was anything
15 illegal inside the vehicle, Respondent stated, "No. Well, I might in my center console." A search
16 of Respondent's vehicle revealed a green plastic M & M container, containing a green leafy
17 substance resembling Marijuana. He was cited for violating Health and Safety Code section
18 11357, subdivision (b) [possessing less than 28.5 grams of marijuana].

19 **DISCIPLINE CONSIDERATIONS**

20 15. To determine the degree of discipline, if any, to be imposed on Respondent,
21 Complainant alleges the following:

22 a. On or about January 25, 2005, after pleading nolo contendere, Respondent was
23 convicted of one misdemeanor count of violating Vehicle Code section 23222, subdivision (b)
24 [driving a vehicle while possessing less than 28.5 grams of marijuana] in the criminal proceeding
25 entitled *The People of the State of California v. Richard Andrew Alamillo* (Super. Ct. Los
26 Angeles County, 2005, No. 5WH00108) The Court ordered Respondent to pay fines and
27 restitution. The circumstances surrounding the conviction are that on or about

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1 November 28, 2004, Respondent was found to be driving a vehicle while in possession of less
2 than 28.5 grams of Marijuana.

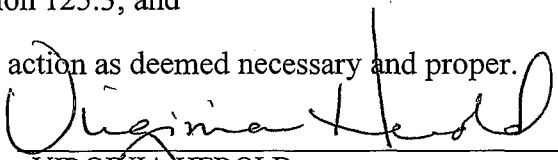
3 b. On or about April 8, 2002, after pleading nolo contendere, Respondent was convicted
4 of one misdemeanor count of violating Health and Safety Code section 11357, subdivision (b)
5 [possessing less than 28.5 grams of marijuana] in the criminal proceeding entitled *The People of*
6 *the State of California v. Richard Andrew Alamillo* (Super. Ct. Los Angeles County, 2002, No.
7 2DW01496) The Court placed Respondent on 12 months probation, with terms and conditions.
8 The circumstances surrounding the conviction are that on or about March 3, 2002, Respondent
9 was found to be in possession of less than 28.5 grams of Marijuana.

10 **PRAYER**

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

- 13 1. Revoking or suspending Pharmacy Technician Registration No. TCH 68135, issued
14 to Respondent;
- 15 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
16 enforcement of this case, pursuant to section 125.3; and
- 17 3. Taking such other and further action as deemed necessary and proper.

18 DATED: 5/29/12



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

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