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

12 In the Matter of the Accusation Against:

Case No. 4130

13 **JOSE JORGE VASQUEZ**  
740 N. Pacific Avenue  
San Pedro, CA 90731

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

14 **Pharmacy Technician Registration**  
15 **No. TCH 105715**

Respondent.

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17 Complainant alleges:

18 **PARTIES**

19 1. Virginia K. Herold ("Complainant") brings this Accusation solely in her official  
20 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

21 2. On or about August 2, 2010, the Board of Pharmacy ("Board") issued Original  
22 Pharmacy Technician Registration No. TCH 105715 to Jose Jorge Vasquez ("Respondent"). The  
23 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges  
24 and allegations brought herein, and will expire on November 30, 2013, unless 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 ("Code") unless otherwise  
28 indicated.

1 4. Code Section 4011 provides:

2 "The board shall administer and enforce this chapter [Pharmacy Law, (Business and  
3 Professions Code, Sec 4000 et seq.)] and the Uniform Controlled Substances Act (Division 10  
4 (commencing with Section 11000) of the Health and Safety Code)."

5 5. Code Section 4300 permits the Board to take disciplinary action to suspend or revoke  
6 a license issued by the Board.

7 6. Code section 118(b) provides:

8 "The suspension, expiration, or forfeiture by operation of law of a license issued by  
9 a board in the department, or its suspension, forfeiture, or cancellation by order of  
10 the board or by order of a court of law, or its surrender without the written consent  
11 of the board, shall not, during any period in which it may be renewed, restored,  
12 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."

13 **STATUTORY PROVISIONS**

14 7. Code section 490 provides in pertinent part:

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

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

21 (c) A conviction within the meaning of this section means a plea or verdict of  
22 guilty or a conviction following a plea of nolo contendere. Any action that a board  
is permitted to take following the establishment of a conviction may be taken when  
23 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 the provisions of Section  
1203.4 of the Penal Code. . ."

24 8. Code section 493 provides:

25 "Notwithstanding any other provision of law, in a proceeding conducted by a board  
26 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  
27 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  
28 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,

1 and the board may inquire into the circumstances surrounding the commission of  
2 the crime in order to fix the degree of discipline or to determine if the conviction is  
3 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."

4 9. Code section 4301 provides in pertinent part:

5 "The board shall take action against any holder of a license who is guilty of  
6 unprofessional conduct or whose license has been procured by fraud or  
misrepresentation or issued by mistake. Unprofessional conduct shall include, but  
7 is not limited to, any of the following:

8 (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  
9 or otherwise, and whether the act is a felony or misdemeanor or not.

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

11 (l) The conviction of a crime substantially related to the qualifications, functions,  
12 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  
13 Code regulating controlled substances or of a violation of the statutes of this state  
regulating controlled substances or dangerous drugs shall be conclusive evidence  
14 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  
15 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  
16 controlled substances or dangerous drugs, to determine if the conviction is of an  
offense substantially related to the qualifications, functions, and duties of a  
17 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  
18 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  
19 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  
20 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.

21 (o) Violating or attempting to violate, directly or indirectly, or assisting in or  
22 abetting the violation of or conspiring to violate any provision or term of this  
chapter or of the applicable federal and state laws and regulations governing  
23 pharmacy, including regulations established by the board or by any other state or  
federal regulatory agency."

24 10. Code section 4021 provides:

25 "Controlled substance" means any substance listed in Chapter 2 (commencing with Section  
26 11053) of Division 10 of the Health and Safety Code.

27 11. Code section 4022 provides:

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

- 1 (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing  
2 without prescription," "Rx only," or words of similar import.  
3 (b) Any device that bears the statement: "Caution: federal law restricts this device  
4 to sale by or on the order of a \_\_\_\_\_," "Rx only," or words of similar import, the  
5 blank to be filled in with the designation of the practitioner licensed to use or order  
6 use of the device.  
7 (c) Any other drug or device that by federal or state law can be lawfully dispensed  
8 only on prescription or furnished pursuant to Section 4006.

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11 12. Code section 4060 provides in pertinent part:

12 "No person shall possess any controlled substance, except that furnished to a  
13 person upon the prescription of a physician, dentist, podiatrist, optometrist,  
14 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished  
15 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section  
16 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant  
17 pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a  
18 pharmacist pursuant to either Section 4052.1 or 4052.2. . ."

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**REGULATORY PROVISION**

13. California Code of Regulations, title 16, section 1770, provides:

"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."

**CONTROLLED SUBSTANCES AND DANGEROUS DRUGS**

14. Marijuana is listed as a Schedule I controlled substance per Health and Safety Code  
section 11054(d)(13). Marijuana is also defined as a dangerous drug per Business and  
Professions Code section 4022.

15. Health and Safety Code section 11359 provides:

"Every person who possesses for sale any marijuana, except as otherwise provided by law,  
shall be punished by imprisonment in the state prison."

**COST RECOVERY**

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

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Conviction of a Substantially Related Crime)**

3 17. Respondent has subjected his pharmacy technician registration to discipline under  
4 Code sections 490(a) and 4301(l), in accordance with California Code of Regulations, Title 16,  
5 section 1770, because the Respondent has been convicted of a crime substantially related to the  
6 qualifications, functions, and duties of a pharmacy technician, as follows:

7 a. On January 4, 2012, in the Superior Court of the State of California, County of Los  
8 Angeles, the Respondent entered a no contest plea and was convicted of the crime of Possession  
9 of Marijuana for Sale, in violation of Health and Safety Code section 11359, a felony. The  
10 Respondent was sentenced to three (3) years probation, ordered to serve 17 days in jail, enroll in a  
11 drug treatment program and register as a narcotic offender. (*People v. Jose Vasquez, Superior*  
12 *Court of the State of California, County of Los Angeles, Case No.: YA079389, 01/4/2012*).

13 b. The facts and circumstances surrounding the criminal conviction are that on or about  
14 October 15, 2010, Los Angeles Police Department officers contacted the Respondent who was  
15 parked in Inglewood, CA. During the contact, the Respondent admitted that there was marijuana  
16 in his vehicle. A search by police revealed a black plastic trash bag containing two bags of  
17 marijuana, and five smaller plastic baggies containing marijuana. The police also found a digital  
18 scale and cash currency.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Commission of an Act Involving Moral Turpitude)**

21 18. Respondent has subjected his pharmacy technician registration to discipline under  
22 Code section 4301(f), for unprofessional conduct because the Respondent committed an act  
23 involving moral turpitude, dishonesty, fraud, deceit, or corruption, committed in the course of  
24 relations as a licensee or otherwise, and the act is a felony or misdemeanor. Complainant refers  
25 to, and by this reference incorporates the allegations set forth in paragraph 17, inclusive, as  
26 though set forth fully herein.

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