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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:
12 **ARMANDO MANZANO FABIAN**
13 **1337 Garner Avenue, Apt. 2**
14 **Salinas, CA 93905**
15 **Pharmacy Technician License No. 102520**

Respondent.

Case No. 4244

A C C U S A T I O N

16 Complainant alleges:

17 **PARTIES**

- 18 1. Complainant Virginia Herold brings this Accusation solely in her official capacity as
19 the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.
20 2. On or about November 4, 2010, the Board issued Pharmacy Technician License
21 number 102520 to Respondent Armando Manzano Fabian. Respondent's Pharmacy Technician
22 License was in full force and effect at all times relevant to the charges brought in this Accusation
23 and will expire on October 31, 2012, unless renewed.

24 **JURISDICTION**

- 25 3. This Accusation is brought before the Board under the authority of the following
26 laws. All section references are to the Business and Professions Code unless otherwise indicated.
27 4. Section 118, subdivision (b), provides:

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1 "The suspension, expiration, or forfeiture by operation of law of a license issued by a board
2 in the department, or its suspension, forfeiture, or cancellation by order of the board or by order
3 of a court of law, or its surrender without the written consent of the board, shall not, during any
4 period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
5 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
6 provided by law or to enter an order suspending or revoking the license or otherwise taking
7 disciplinary action against the licensee on any such ground."

8 5. Section 4300 provides, in pertinent part:

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

10 "(b) The board shall discipline the holder of any license issued by the board, whose default
11 has been entered or whose case has been heard by the board and found guilty, by any of the
12 following methods:

13 "(1) Suspending judgment.

14 "(2) Placing him or her upon probation.

15 "(3) Suspending his or her right to practice for a period not exceeding one year.

16 "(4) Revoking his or her license.

17 "(5) Taking any other action in relation to disciplining him or her as the board in its
18 discretion may deem proper."

19 STATUTORY AUTHORITY

20 6. Section 490, subdivision (a), provides:

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

25 7. Section 4060 provides:

26 "No person shall possess any controlled substance, except that furnished to a person upon
27 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
28 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified

1 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
2 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
3 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
4 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
5 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
6 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
7 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
8 labeled with the name and address of the supplier or producer.”

9 8. Section 4301 provides, in pertinent part:

10 “The board shall take action against any holder of a license who is guilty of unprofessional
11 conduct 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.

22 . . .

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

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1 **COST RECOVERY**

2 9. Section 125.3, subdivision (a), provides:

3 "Except as otherwise provided by law, in any order issued in resolution of a disciplinary
4 proceeding before any board within the department . . . upon request of the entity bringing the
5 proceedings, the administrative law judge may direct a licentiate found to have committed a
6 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
7 investigation and enforcement of the case."

8 **DRUGS**

9 10. "Marijuana" is a Schedule I controlled substance pursuant to Health and Safety Code
10 section 11054, subdivision (d)(13), and a dangerous drug within the meaning of Business and
11 Professions Code section 4022. It is a recreational drug.

12 11. "Cocaine" is a Schedule II controlled substance pursuant to Health and Safety Code
13 section 11055, subdivision (b)(6), and a dangerous drug within the meaning of Business and
14 Professions Code section 4022. It is a recreational drug.

15 12. "Methamphetamine" is a Schedule II controlled substance pursuant to Health and
16 Safety Code section 11055, subdivision (d)(2), and a dangerous drug within the meaning of
17 Business and Professions Code section 4022. It is a recreational drug.

18 **FACTUAL BACKGROUND**

19 13. (a) On or about December 3, 2010, Respondent was sitting in the driver seat of his
20 vehicle on Garner Avenue in Salinas, California. Another male was in the back seat, and others
21 were around the vehicle. A police officer came up and spoke with Respondent, and noticed the
22 strong odor of marijuana coming from the vehicle. Respondent and the others appeared nervous.
23 The male in the back seat reached down underneath the front seat. The officer removed
24 Respondent and the other male from the vehicle and searched it. Inside the vehicle on top of the
25 center console was a bag containing 10 individually wrapped baggies of marijuana and a glass
26 smoking pipe with methamphetamine residue. This bag was on top of a wallet that had items
27 belonging to Respondent in it. Additionally, a loaded 9 mm handgun was underneath the front

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1 seat and a loaded .40 caliber handgun was near the center console. Neither handgun was
2 registered to Respondent.

3 (b) Everyone at the scene except Respondent admitted to being either a member of
4 the Sureno criminal street gang or a Sureno associate. Respondent admitted to possessing the bag
5 containing the marijuana and pipe, and to owning one of the handguns in the vehicle. He said
6 that he had gotten the handgun that day because his best friend had just been killed and he wanted
7 to protect himself. He said that he used to be a Sureno.

8 (c) Respondent was arrested and charged with a felony violation of Penal Code
9 section 12031, subdivision (a)(1) (carrying a loaded firearm);¹ with special allegations that during
10 the offense he was an active participant in a criminal street gang within the meaning of Penal
11 Code section 12031, subdivision (a)(1)(C), and that he was not the registered owner of a firearm
12 within the meaning of Penal Code section 12031, subdivision (a)(2)(F). This charge also carried
13 an enhancement pursuant to Penal Code section 186.22, subdivision (b)(1), that he committed the
14 crime for the Sureno criminal street gang with the specific intent to promote criminal conduct by
15 gang members. Respondent also was charged with a felony violation of Health and Safety Code
16 section 11370.1, subdivision (a) (possession of controlled substances with a loaded firearm), and

17
18 ¹ Section 12031 was repealed effective January 1, 2012. It provided, in pertinent part:

19 “(a)(1) A person is guilty of carrying a loaded firearm when he or she carries a loaded
20 firearm on his or her person or in a vehicle while in any public place or on any public street in an
21 incorporated city or in any public place or on any public street in a prohibited area of
22 unincorporated territory.

21 “(2) Carrying a loaded firearm is punishable as follows:

22 ...

23 “(C) Where the person is an active participant in a criminal street gang, as defined in
24 subdivision (a) of Section 186.22, ... as a felony.

25 ...

26 “(F) Where the person is not listed with the Department of Justice pursuant to Section
27 11106, as the registered owner of the pistol, revolver, or other firearm capable of being concealed
28 upon the person, by imprisonment in the state prison, or by imprisonment in a county jail not to
exceed one year, by a fine not to exceed one thousand dollars (\$1,000), or by both that fine and
imprisonment.”

1 a felony violation of Health and Safety Code section 11379 (possession of marijuana for sale)
2 with an enhancement pursuant to Penal Code section 186.22, subdivision (b)(1). In addition,
3 Respondent was charged with felony violations of Health and Safety Code section 11377,
4 subdivision (a) (possession of a controlled substance), and Penal Code section 186.22,
5 subdivision (a) (criminal street gang activity).

6 (d) On or about May 19, 2011, in the Superior Court of California, Monterey County,
7 in *People v. Armando Manzano Fabian*, case number SS102722B, Respondent pled no contest to
8 a felony violation of Penal Code section 12031, subdivision (a)(1), admitted the special allegation
9 pursuant to Penal Code section 12031, subdivision (a)(2)(F), and pled no contest to a felony
10 violation of Penal Code section 186.22, subdivision (a). All other counts, allegations, and
11 enhancements were dismissed. Imposition of sentence was suspended, and Respondent was
12 placed on formal probation for three years, which included, but was not limited to, the following
13 terms: not to use or possess drugs, or associate with those who do; not be present in gang-
14 gathering areas; not to associate with gang members or drug users; register as a gang member; not
15 to be in a stolen vehicle or one that contains firearms; not to wear items or get tattoos associated
16 with gang affiliation, and 271 days' incarceration.

17 14. (a) On or about December 16, 2010, at about 3:22 a.m., Respondent and another
18 person were driving in Respondent's vehicle on King Street in King City, California. They were
19 stopped by the King City police for not having a front license plate. Respondent said it was his
20 vehicle and that the officers could search it if they wanted. During the search, they found an
21 Altoids container with two baggies of marijuana, two bindles of methamphetamine, and one
22 bindle of cocaine in an ashtray behind the center console. Respondent said that he was unaware
23 of the drugs and blamed the other person in the vehicle; that person also denied knowledge of the
24 drugs. Both were arrested. When Respondent was booked, he asked to be housed with the
25 Surenos in jail.

26 (b) Respondent was charged with a felony violation of Health and Safety Code
27 section 11352, subdivision (a) (transportation of a controlled substance – cocaine), with an
28 enhancement pursuant to Penal Code section 186.22, subdivision (b)(1), that he committed the

1 crime for the Sureno criminal street gang with the specific intent to promote criminal conduct by
2 gang members. He was also charged with a felony violation of Health and Safety Code section
3 11379, subdivision (a) (transportation of a controlled substance – methamphetamine), with an
4 enhancement pursuant to Penal Code section 186.22, subdivision (b)(1). Finally, he was charged
5 with a special allegation that he at the time of the offenses he was released from custody on bail
6 within the meaning of Penal Code section 12022.1.

7 (c) On or about May 19, 2011, in the Superior Court of California, Monterey County,
8 in *People v. Armando Fabian*, case number SS102762A, Respondent pled no contest to a felony
9 violation of Health and Safety Code section 11352, subdivision (a), and admitted the special
10 allegation pursuant to Penal Code section 12022.1. All other counts, allegations, and
11 enhancements were dismissed. Imposition of sentence was suspended, and Respondent was
12 placed on formal probation for three years, which included, but was not limited to, the following
13 terms: not to use or possess drugs, or associate with those who do; not be present in gang-
14 gathering areas; not to associate with gang members or drug users; not to be in a stolen vehicle or
15 one that contains firearms; register as a narcotics offender; not to wear items or get tattoos
16 associated with gang affiliation, and 90 days' incarceration.

17 15. (a) On or about December 27, 2010, at about 10:59 p.m., Respondent's ex-girlfriend
18 called the police claiming that Respondent threatened to kill her, is possibly armed, and is a
19 Sureno gang member. When officers arrived at the location, they found Respondent and his
20 friend, who both fled when the officers arrived. Both suspects were stopped a short time later.

21 (b) The ex-girlfriend, who wanted to remain anonymous, said that Respondent had
22 begun to again associate with the Sureno street gang. She did not want their child in common to
23 be part of that lifestyle. She told the officers that when she told Respondent she wanted to leave
24 with their child, he became angry. He called a friend whom she knows as a Sureno gang member
25 and told him that he wanted her "blasted." She had seen Respondent with a handgun the day
26 before and was fearful for her life.

27 (c) Respondent's brother and mother were at the scene. Both claimed that
28 Respondent's ex-girlfriend has a history of calling the police and providing false information

1 against Respondent. That day, she had been upset because Respondent had been text messaging
2 another girl. Respondent's brother, however, also alluded to Respondent's gang membership.
3 Moreover, Respondent had admitted his Sureno association to one of the responding officers
4 during a previous encounter.

5 (d) Respondent said that his argument with his ex-girlfriend was because she was
6 jealous. He did not want her to take their child to her house because the child was sick and had
7 just had a bath. She said she was going to call the police. Respondent said he got very angry and
8 told his mother that he felt like hurting her. He also admitted saying that he was going to "blast
9 her." He said that he had called his friend who was a Sureno gang member earlier in the day
10 before the argument, but added that neither he nor any of his friends who are Sureno gang
11 members would hurt her.

12 (e) Respondent was charged with a felony violation of Penal Code section 422
13 (criminal threats). He also was charged with a felony violation of Penal Code section 166,
14 subdivision (a)(4) (disobeying a court order), with an enhancement pursuant to Penal Code
15 section 186.22, subdivision (d), that he committed the crime for the Sureno criminal street gang
16 with the specific intent to promote criminal conduct by gang members. Finally, he was charged
17 with two special allegations that he at the time of the offenses he was released from custody on
18 bail on two separate cases within the meaning of Penal Code section 12022.1.

19 (f) On or about June 23, 2011, in the Superior Court of California, Monterey County,
20 in *People v. Armando Fabian*, case number SS102834A, the case was dismissed on the motion of
21 the District Attorney in the furtherance of justice.

22 **FIRST CAUSE FOR DISCIPLINE**
23 **(Criminal Convictions)**
24 **Bus. & Prof. Code, § 490, subd. (a)**

25 16. The allegations of paragraphs 13 and 14 are realleged and incorporated by reference
26 as if fully set forth.

27 17. Respondent has subjected his license to disciplinary action under section 490,
28 subdivision (a), for criminal convictions. As set forth in paragraphs 13 and 14 above, he
sustained criminal convictions in two separate cases.

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SECOND CAUSE FOR DISCIPLINE
(Unprofessional Conduct – Commission of Forbidden Acts)
Bus. & Prof. Code, § 4301, subd. (f)

18. The allegations of paragraphs 13-15 are realleged and incorporated by reference as if fully set forth.

19. Respondent has subjected his license to disciplinary action under section 4301, subdivision (f), for unprofessional conduct. As set forth in paragraphs 13-15 above, he committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption.

THIRD CAUSE FOR DISCIPLINE
(Unprofessional Conduct – Violation of Controlled Substances Laws)
Bus. & Prof. Code, § 4301, subd. (j)

20. The allegations of paragraphs 13 and 14 are realleged and incorporated by reference as if fully set forth.

21. Respondent has subjected his license to disciplinary action under section 4301, subdivision (j), for unprofessional conduct. As set forth in paragraphs 13 and 14 above, he violated California statutes regulating controlled substances and dangerous drugs by possessing methamphetamine, marijuana, and cocaine.

FOURTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct – Criminal Convictions)
Bus. & Prof. Code, § 4301, subd. (l)

22. The allegations of paragraphs 13 and 14 are realleged and incorporated by reference as if fully set forth.

23. Respondent has subjected his license to disciplinary action under section 4301, subdivision (l), for unprofessional conduct. As set forth in paragraphs 13 and 14 above, he sustained criminal convictions in two separate cases.

FIFTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct – Violation of Pharmacy Regulations)
Bus. & Prof. Code, § 4301, subd. (o)

24. The allegations of paragraph 13 and 14 are realleged and incorporated by reference as if fully set forth.

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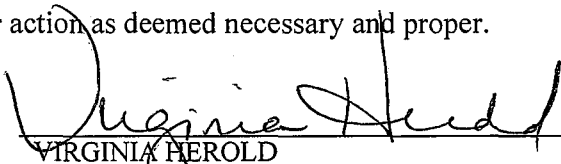
1 25. Respondent has subjected his license to disciplinary action under section 4301,
2 subdivision (o), for unprofessional conduct. As set forth in paragraphs 13 and 14 above, he
3 violated section 4060 by possessing controlled substances.

4 **PRAYER**

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

- 7 1. Revoking or suspending Pharmacy Technician License Number 102520, issued to
8 Armando Manzano Fabian;
- 9 2. Ordering Armando Manzano Fabian to pay the Board of Pharmacy the reasonable
10 costs of the investigation and enforcement of this case, pursuant to Business and Professions
11 Code section 125.3; and
- 12 3. Taking such other and further action as deemed necessary and proper.

13
14 DATED: 7/12/12


15 VIRGINIA HEROLD
16 Executive Officer
17 Board of Pharmacy
18 Department of Consumer Affairs
19 State of California
20 Complainant

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