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

12 In the Matter of the Accusation Against:

Case No. 4280

13 **VIANET Y. ALDANA-CHACON**
1018 Evelyn Street
14 San Diego, CA 92114

A C C U S A T I O N

15 **Pharmacy Technician Registration**
16 **No. TCH 74867**

Respondent.

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19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about March 21, 2007, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 74867 to Vianet Y. Aldana-Chacon, also known as Vianet Yahaiza
25 Aldana (Respondent). The Pharmacy Technician Registration was in full force and effect at all
26 times relevant to the charges brought herein and will expire on November 30, 2012, unless
27 renewed.

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JURISDICTION

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

15 4. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
16 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
17 disciplinary action during the period within which the license may be renewed, restored, reissued
18 or reinstated.

19 5. Section 4300, subdivision (a) of the Code states "Every license issued may be
20 suspended or revoked."

STATUTORY PROVISIONS

21 6. Section 482 of the Code states:

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

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

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

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

28 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.

1 As used in this section, "license" includes "certificate," "permit," "authority,"
2 and "registration."

3 9. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
4 controlled substance, except that furnished to a person upon the prescription of a physician,
5 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor.

6 10. Section 4301 of the Code states:

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

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

14 (k) The conviction of more than one misdemeanor or any felony involving the
15 use, consumption, or self-administration of any dangerous drug or alcoholic beverage,
16 or any combination of those substances.

17 (l) The conviction of a crime substantially related to the qualifications,
18 functions, and duties of a licensee under this chapter. The record of conviction of a
19 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
20 States Code regulating controlled substances or of a violation of the statutes of this
21 state regulating controlled substances or dangerous drugs shall be conclusive
22 evidence of unprofessional conduct. In all other cases, the record of conviction shall
23 be conclusive evidence only of the fact that the conviction occurred. The board may
24 inquire into the circumstances surrounding the commission of the crime, in order to
25 fix the degree of discipline or, in the case of a conviction not involving controlled
26 substances or dangerous drugs, to determine if the conviction is of an offense
27 substantially related to the qualifications, functions, and duties of a licensee under this
28 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.

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1 **REGULATORY PROVISIONS**

2 11. California Code of Regulations, title 16, section 1769, states:

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

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

9 (2) Total criminal record.

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

11 (4) Whether the licensee has complied with all terms of parole, probation,
12 restitution or any other sanctions lawfully imposed against the licensee.

13 (5) Evidence, if any, of rehabilitation submitted by the licensee.

14 12. California Code of Regulations, title 16, section 1770, states:

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

22 **COSTS**

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

27 **DRUGS**

28 14. Cocaine is a Schedule II controlled substance as designated by Health and Safety
Code section 11055, subdivision (b)(6), and is a dangerous drug pursuant to Business &
Professions Code section 4022.

15. Heroin is a Schedule I controlled substance as designated by Health and Safety Code
section 11054, subdivision (c)(11).

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(July 20, 2011 Criminal Conviction for Possession of**

3 **More Than 1 Kilo of Cocaine for Sale on October 28, 2010)**

4 16. Respondent has subjected her registration to discipline under sections 490 and 4301,
5 subdivision (l) of the Code in that she was convicted of a crime that is substantially related to the
6 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

7 a. On or about July 20, 2011, in a criminal proceeding entitled *People of the State*
8 *of California v. Vianet Yahaiza Aldana, et al.*, in San Diego County Superior Court, case number
9 SCD233090, Respondent was convicted on her plea of guilty to violating Health and Safety Code
10 section 11351, possession for sale of a designated controlled substance, to wit, cocaine, a felony.
11 The conviction was enhanced in that Respondent possessed more than one kilo of cocaine for
12 sale, pursuant to Health and Safety Code section 11370.4, subdivision (a)(1). The court
13 dismissed an additional felony count of transporting more than one kilo of cocaine (Health & Saf.
14 Code, § 11352/11370.4(a)(1)) pursuant to the plea agreement.

15 b. As a result of the conviction, on or about August 17, 2011, Respondent was
16 sentenced to state prison for the middle term of one year, to run consecutive to the terms imposed
17 in case numbers SCD233081, SCD233160, SCD232085, and SCD232984, described below.
18 Respondent was further ordered to pay fees, fines, and restitution.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(July 20, 2011 Criminal Conviction for Possession of**

21 **More Than 1 Kilo of Cocaine for Sale on December 7, 2010)**

22 17. Respondent has subjected her registration to discipline under sections 490 and 4301,
23 subdivision (l) of the Code in that she was convicted of a crime that is substantially related to the
24 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

25 a. On or about July 20, 2011, in a criminal proceeding entitled *People of the State*
26 *of California v. Vianet Yahaiza Aldana, et al.*, in San Diego County Superior Court, case number
27 SCD233160, Respondent was convicted on her plea of guilty to violating Health and Safety Code
28 section 11351, possession for sale of a designated controlled substance, to wit, cocaine. The

1 conviction was enhanced in that Respondent possessed more than one kilo of cocaine for sale,
2 pursuant to Health and Safety Code section 11370.4, subdivision (a)(1). The court dismissed an
3 additional felony count of transporting more than one kilo of heroin (Health & Saf. Code, §
4 11352/11370.4(a)(1)) pursuant to the plea agreement.

5 b. As a result of the conviction, on or about August 17, 2011, Respondent was
6 sentenced to state prison for the middle term of one year, to run consecutive to the terms imposed
7 in case numbers SCD233081, SCD233090, SCD232085, and SCD232984, described herein.
8 Respondent was further ordered to pay fees, fines, and restitution.

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(July 20, 2011 Criminal Conviction for Possession of**

11 **More Than 1 Kilo of Cocaine for Sale on February 12, 2011)**

12 18. Respondent has subjected her registration to discipline under sections 490 and 4301,
13 subdivision (l) of the Code in that she was convicted of a crime that is substantially related to the
14 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

15 a. On or about July 20, 2011, in a criminal proceeding entitled *People of the State*
16 *of California v. Vianet Yahaiza Aldana, et al.*, in San Diego County Superior Court, case number
17 SCD233081, Respondent was convicted on her plea of guilty to violating Health and Safety Code
18 section 11351, possession for sale of a designated controlled substance, to wit, cocaine, a felony.
19 The conviction was enhanced in that Respondent possessed more than one kilo of cocaine for
20 sale, pursuant to Health and Safety Code section 11370.4, subdivision (a)(1), a felony. The court
21 dismissed an additional felony count of transporting more than one kilo of cocaine (Health & Saf.
22 Code, § 11352/11370.4(a)(1)) pursuant to the plea agreement.

23 b. As a result of the conviction, on or about August 17, 2011, Respondent was
24 sentenced to state prison for the middle term of one year, to run consecutive to the terms imposed
25 in case numbers SCD233085, SCD233090, SCD232984, and SCD233160, described herein.
26 Respondent was further ordered to pay fees, fines, and restitution.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(July 20, 2011 Criminal Conviction for Possession of**

3 **More Than 1 Kilo of Cocaine for Sale on February 20, 2011)**

4 19. Respondent has subjected her registration to discipline under sections 490 and 4301,
5 subdivision (l) of the Code in that she was convicted of a crime that is substantially related to the
6 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

7 a. On or about July 20, 2011, in a criminal proceeding entitled *People of the State*
8 *of California v. Vianet Yahaiza Aldana, et al.*, in San Diego County Superior Court, case number
9 SCD233085, Respondent was convicted on her plea of guilty to violating Health and Safety Code
10 section 11351, possession for sale of a designated controlled substance, to wit, cocaine. The
11 conviction was enhanced in that Respondent possessed more than one kilo of cocaine for sale,
12 pursuant to Health and Safety Code section 11370.4, subdivision (a)(1). The court dismissed an
13 additional felony count of transporting more than one kilo of cocaine (Health & Saf. Code, §
14 11352/11370.4(a)(1)) pursuant to the plea agreement.

15 b. As a result of the conviction, on or about August 17, 2011, Respondent was
16 sentenced to state prison for the middle term of one year, to run consecutive to the terms imposed
17 in case numbers SCD233081, SCD233090, SCD232984, and SCD233160, described herein.
18 Respondent was further ordered to pay fees, fines, and restitution.

19 **FIFTH CAUSE FOR DISCIPLINE**

20 **(July 20, 2011 Criminal Conviction for Possession of**

21 **More Than 1 Kilo of Heroin for Sale on March 15, 2011)**

22 20. Respondent has subjected her registration to discipline under sections 490 and 4301,
23 subdivision (l) of the Code in that she was convicted of a crime that is substantially related to the
24 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

25 a. On or about July 20, 2011, in a criminal proceeding entitled *People of the State*
26 *of California v. Vianet Yahaiza Aldana, et al.*, in San Diego County Superior Court, case number
27 SCD232984, Respondent was convicted on her plea of guilty to violating Health and Safety Code
28 section 11351, possession for sale of a designated controlled substance, to wit, heroin. The

1 conviction was enhanced in that Respondent possessed more than one kilo of heroin for sale,
2 pursuant to Health and Safety Code section 11370.4, subdivision (a)(1). The court dismissed an
3 additional felony count of transporting more than one kilo of heroin (Health & Saf. Code, §
4 11352/11370.4(a)(1)) pursuant to the plea agreement.

5 b. As a result of the conviction, on or about August 17, 2011, Respondent was
6 sentenced to state prison for the middle term of three years on the principal count, and three years
7 on the enhancement, for a total term of six years, with credit for 18 days, to run consecutive to the
8 terms imposed in case numbers SCD233081, SCD233090, SCD232085, and SCD233160,
9 described herein. Respondent was further ordered to pay fees, fines, and restitution.

10 **SIXTH CAUSE FOR DISCIPLINE**

11 **(August 17, 2011 Criminal Conviction for Vandalism on August 10, 2011)**

12 21. Respondent has subjected her registration to discipline under sections 490 and 4301,
13 subdivision (l) of the Code in that she was convicted of a crime that is substantially related to the
14 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

15 a. On or about August 17, 2011, in a criminal proceeding entitled *People of the*
16 *State of California v. Vianet Yahaiza Aldana*, in San Diego County Superior Court, case number
17 C313615DV, Respondent was convicted on her plea of guilty to violating Penal Code section
18 594, subdivision (a)(b)(2)(A), domestic violence-related vandalism under \$400, a misdemeanor.

19 b. As a result of the conviction, on or about August 17, 2011, Respondent was
20 sentenced to 365 days in the custody of the sheriff, with credit for 14 days, to be served
21 concurrently with case number SCD232984.

22 c. The facts and circumstances that led to the conviction are that in or around the
23 early morning of August 10, 2011, while Respondent was out on bail awaiting sentencing in the
24 cases described in paragraphs 16-20, above, Respondent got into an argument with her live-in
25 boyfriend of 4 months. The fight moved from their apartment to the parking lot. Respondent's
26 boyfriend attempted to drive away in his truck. Respondent threw a heavy glass mug at her
27 boyfriend, shattering the rear window of his truck. The El Cajon Police Department arrested
28 Respondent near the apartment complex, and she was charged with assault with a deadly weapon.

1 **SEVENTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct – Violation of State Laws Regulating Controlled Substances)**

3 22. Respondent has subjected her registration to disciplinary action under section 4301,
4 subdivision (j) of the Code for unprofessional conduct in that on or about October 28, 2010,
5 December 7, 2010, February 12, 2011, February 20, 2011, and March 15, 2011, as described in
6 paragraphs 16-20, above, Respondent violated state laws when she possessed controlled
7 substances for sale.

8 **EIGHTH CAUSE FOR DISCIPLINE**

9 **(Conviction of Multiple Drug-Related Felonies)**

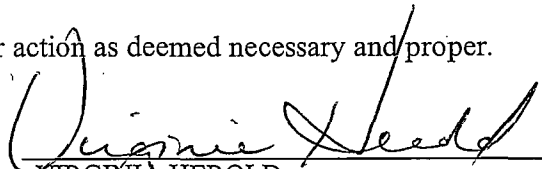
10 23. Respondent has subjected her registration to disciplinary action under section 4301,
11 subdivision (k) of the Code in that on or about July 20, 2011, as described in paragraphs 16-20,
12 above, Respondent was convicted and sentenced to a total of 10 years in state prison in five
13 separate felony criminal cases of violating Health and Safety Code section 11351, possession of
14 controlled substances, in excess of one kilo, for sale.

15 **PRAYER**

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

- 18 1. Revoking or suspending Pharmacy Technician Registration Number TCH 74867,
19 issued to Vianet Y. Aldana-Chacon, also known as Vianet Yahaiza Aldana;
- 20 2. Ordering Vianet Y. Aldana-Chacon to pay the Board of Pharmacy the reasonable
21 costs of the investigation and enforcement of this case, pursuant to Business and Professions
22 Code section 125.3;
- 23 3. Taking such other and further action as deemed necessary and proper.

24 DATED: 5/28/12

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

SD2012703155