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

10 In the Matter of the Accusation Against:

Case No. 4304

11 **GUILLERMO MESTA**
12 648 1-2 South Ford Blvd
Los Angeles, CA 90022

A C C U S A T I O N

13 Pharmacy Technician Registration
14 No. TCH 56625

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 May 28, 2004, the Board of Pharmacy ("Board") issued Pharmacy
22 Technician Registration No. TCH 56625 to Guillermo Mesta ("Respondent"). The Pharmacy
23 Technician Registration was in full force and effect at all times relevant to the charges brought
24 herein and will expire on June 30, 2016, 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. Section 118, subdivision (b) of the Code provides, in pertinent part, that the
2 expiration of a license shall not deprive the Board jurisdiction to proceed with a disciplinary
3 action during the period within which the license may be renewed, restored, reissued or
4 reinstated.

5 5. Section 4011 of the Code provides:

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

9 6. Section 4300 of the Code states, in pertinent part, that every license issued by the
10 Board is subject to discipline, including suspension or revocation.

11 STATUTORY PROVISIONS

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

16 8. Section 4301 of the Code states:

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

20

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

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

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2 "(l) The conviction of a crime substantially related to the qualifications, functions, and
3 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
4 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
5 substances or of a violation of the statutes of this state regulating controlled substances or
6 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
7 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
8 The board may inquire into the circumstances surrounding the commission of the crime, in order
9 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
10 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
11 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
12 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
13 of this provision. The board may take action when the time for appeal has elapsed, or the
14 judgment of conviction has been affirmed on appeal or when an order granting probation is made
15 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
16 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
17 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
18 indictment.

19

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

24 9. 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 10. Section 4022 of the Code states
28

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

3 "(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without
4 prescription," "Rx only," or words of similar import.

5 "(b) Any device that bears the statement: "Caution: federal law restricts this device to sale
6 by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled
7 in with the designation of the practitioner licensed to use or order use of the device.

8 "(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
9 prescription or furnished pursuant to Section 4006."

10 11. Section 4060 of the Code states:

11 "No person shall possess any controlled substance, except that furnished to a person upon
12 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
13 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
14 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
15 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
16 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
17 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
18 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
19 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
20 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
21 labeled with the name and address of the supplier or producer.

22 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a
23 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and
24 devices."

25 12. Section 490 of the Code states:

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

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

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

13 "(d) The Legislature hereby finds and declares that the application of this section has been
14 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal. App.
15 4th 554, and that the holding in that case has placed a significant number of statutes and
16 regulations in question, resulting in potential harm to the consumers of California from licensees
17 who have been convicted of crimes. Therefore, the Legislature finds and declares that this section
18 establishes an independent basis for a board to impose discipline upon a licensee, and that the
19 amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session do not
20 constitute a change to, but rather are declaratory of, existing law."

21 13. Section 492 of the Code states:

22 "Notwithstanding any other provision of law, successful completion of any diversion
23 program under the Penal Code, or successful completion of an alcohol and drug problem
24 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of
25 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2
26 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that
27 division, from taking disciplinary action against a licensee or from denying a license for
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1 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a
2 record pertaining to an arrest.

3 This section shall not be construed to apply to any drug diversion program operated by any
4 agency established under Division 2 (commencing with Section 500) of this code, or any
5 initiative act referred to in that division."

6 **REGULATORY PROVISIONS**

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

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

14 **CONTROLLED SUBSTANCES AND DANGEROUS DRUGS**

15 15. Marijuana is listed as a Schedule I controlled substance per Health and Safety Code
16 section 11054(d) (13).

17 **COST RECOVERY**

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

22 **FIRST CAUSE FOR DISCIPLINE**

23 **(Violation of a Statute Involving Controlled Substances and Dangerous Drugs)**

24 17. Respondent has subjected his pharmacy technician registration to discipline under
25 Code section 492, Code section 4301(j) and (o), in accordance with Code section 4060, and
26 California Code of Regulations, Title 16, section 1770 for unprofessional conduct because
27 Respondent committed an act in violation of a statute of this state, of any other state, or of the
28 United States regulating controlled substances and dangerous drugs.

1 a. On February 11, 2011, at approximately midnight, sheriff deputies from the East
2 Los Angeles station conducted a door knock on a home located at 24000 Wetherhead Dr.,
3 Alhambra, California. When an occupant of the home, M.Z., opened the door, the deputies
4 immediately smelled the strong odor of marijuana emitting from inside of the home. M.Z.
5 admitted to having marijuana in the home. At that point, Respondent, also came to the door to
6 speak to the deputies. Respondent, also, admitted to living at that location. The deputies
7 conducted a search of the home and found eight (8) marijuana plants in the garage. They also
8 recovered an unloaded handgun from the top of a makeshift shed. They found another rifle in
9 M.Z.'s room. In the attic, they found an assault rifle, a backpack containing 30 round and ten
10 round capacity magazines, and numerous live ammunition. When deputies spoke to Respondent,
11 Respondent stated he did not know about the guns or ammo. Respondent told deputies the
12 marijuana belonged to M.Z., but admitted that he helped M.Z. maintain the marijuana plants.

13 b. On or about February 11, 2011, the Los Angeles County District Attorney's office
14 charged Respondent with violating Health and Safety Code section 11357(c) [possession of more
15 than 28.5 grams of marijuana], in the criminal proceeding entitled *The People of the State of*
16 *California v. Guillermo Mesta* (Super. Ct. Los Angeles, 2011, No. 1AH01039.) The court
17 ordered Respondent to complete a 6 months deferred entry of judgment drug program.
18 Respondent successfully completed the deferred entry of judgment program on September 13,
19 2012. The court dismissed the criminal case on September 13, 2012.

20 DISCIPLINARY CONSIDERATIONS

21 18. In order to determine the degree of discipline, if any to be imposed on Respondent,
22 Complainant alleges the following:

23 a. On or about October 16, 2001, after pleading nolo contendere, Respondent was
24 convicted of one misdemeanor count of violating Penal Code section 12020, subdivision (a)(1)
25 [possession/manufacturing/selling dangerous weapons/etc.] in the criminal proceeding entitled
26 *The People of the State of California v. Guillermo Mesta* (Super. Ct. Los Angeles County, 2001,
27 No. 1AL02784). The Court sentenced Respondent to serve 4 days in Los Angeles County Jail
28 and placed him on 2 years probation, with terms and conditions. The circumstances surrounding

1 the conviction are that on or about October 13, 2001, Respondent was found to be in possession,
2 manufacturing, and selling dangerous weapons.

3 b. On or about November 9, 2001, after pleading nolo contendere, Respondent was
4 convicted of one misdemeanor count of violating Penal Code section 242-243, subdivision (e)
5 [battery] in the criminal proceeding entitled *The People of the State of California v. Guillermo*
6 *Mesta* (Super. Ct. Los Angeles County, 2001, No. 1CR13522). The Court sentenced Respondent
7 to serve 60 days in Los Angeles County Jail and placed him on 36 months probation, with terms
8 and conditions.

9 c. On or about July 30, 2004, after pleading nolo contendere, Respondent was convicted
10 of one misdemeanor count of violating Vehicle Code section 23103 pursuant to Vehicle Code
11 section 23103.5 [wet reckless] in the criminal proceeding entitled *The People of the State of*
12 *California v. Guillermo Mesta* (Super. Ct. Los Angeles County, 2004, No. 4AL02542). The
13 Court placed Respondent on 2 years probation, with terms and conditions.

14 d. On or about June 22, 2005, Respondent was convicted of one misdemeanor count of
15 violating Vehicle Code section 14601.1, subdivision (a) [driving while driving privilege is
16 suspended or revoked for reckless driving] in the criminal proceeding entitled *The People of the*
17 *State of California v. Guillermo Mesta* (Super. Ct. Los Angeles County, 2005, No. 4ALH06347).
18 The Court placed Respondent on 24 months probation and ordered him to pay fines and
19 restitution.

20 e. On or about February 11, 2010, the Board issued Citation and Fine No. CI 2008
21 37196 to Respondent for violating sections 4301, subdivisions (h) of the Code [unprofessional
22 conduct – administering to oneself, of any controlled substance, or the use of any dangerous drug
23 or of alcoholic beverages] and 4301, subdivision (l) of the Code [unprofessional conduct –
24 conviction of a crime substantially related to the practice of pharmacy], resulting in the issuance
25 of a \$400.00 fine. Respondent has complied with the Citation.

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PRAYER

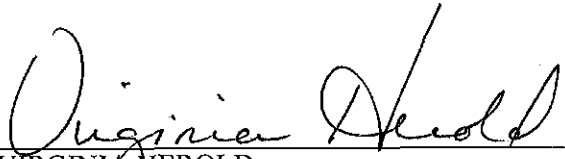
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Revoking or suspending Pharmacy Technician Registration No. TCH 56625, issued to Guillermo Mesta;

2. Ordering Guillermo Mesta to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3 of the Code; and

3. Taking such other and further action as deemed necessary and proper.

DATED: 9/24/14


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

LA2012506774
5/21/14