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8	BEFORE THE BOARD OF PHARMACY		
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
10			
11	In the Matter of the Accusation Against:	Case No. 4365	
12	MARY S. FERNANDEZ 3577 Kelsey Knolls	ACCUSATION	
13	Santa Rosa, CA 95403		
14	Pharmacy Technician License No. TCH 29486		
15	Respondent.		
16			
17	Complainant alleges:	•	
18	PART	IES	
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, 1999, the Board of	2. On or about May 28, 1999, the Board of Pharmacy issued Pharmacy Technician	
22	License Number TCH 29486 to Mary S. Fernandez	z (Respondent). The Pharmacy Technician	
23	License was in full force and effect at all times rele	evant to the charges brought herein and will	
24	expire on November 30, 2012, unless renewed.		
25	JURISDIC	CTION	
26	3. This Accusation is brought before the	Board of Pharmacy (Board), Department of	
<sup>'</sup> 27	Consumer Affairs, under the authority of the follow	wing laws. All section references are to the	
28	Business and Professions Code unless otherwise indicated.		
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		Accusation	

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1	4. Section 4300 of the Code states:
2	"(a) Every license issued may be suspended or revoked.
3	"(b) The board shall discipline the holder of any license issued by the board, whose default
4	has been entered or whose case has been heard by the board and found guilty, by any of the
5	following methods:
6	"(1) Suspending judgment.
7	"(2) Placing him or her upon probation.
8	"(3) Suspending his or her right to practice for a period not exceeding one year.
9	"(4) Revoking his or her license.
10	"(5) Taking any other action in relation to disciplining him or her as the board in its
11	discretion may deem proper.
12	99 • • •
13	"(e) The proceedings under this article shall be conducted in accordance with Chapter 5
14	(commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board
15	shall have all the powers granted therein. The action shall be final, except that the propriety of
16	the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of
17	Civil Procedure."
18	5. Section 4301 of the Code states:
19	"The board shall take action against any holder of a license who is guilty of unprofessional
20	conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
21	Unprofessional conduct shall include, but is not limited to, any of the following:
22	
23	"(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
24	corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
25	whether the act is a felony or misdemeanor or not.
26	••••
27	"(h) The administering to oneself, of any controlled substance, or the use of any dangerous
28	drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
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	Accusation

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oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

- "(j) The violation of any of the statutes of this state, or any other state, or of the United States regulating controlled substances and dangerous drugs.
- "(1) The conviction of a crime substantially related to the qualifications, functions, and 8 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 9 (commencing with Section 801) of Title 21 of the United States Code regulating controlled 10 substances or of a violation of the statutes of this state regulating controlled substances or 11 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the 12 record of conviction shall be conclusive evidence only of the fact that the conviction occurred. 13 The board may inquire into the circumstances surrounding the commission of the crime, in order 14 to fix the degree of discipline or, in the case of a conviction not involving controlled substances 15 or dangerous drugs, to determine if the conviction is of an offense substantially related to the 16 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or 17 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning 18 of this provision. The board may take action when the time for appeal has elapsed, or the 19 judgment of conviction has been affirmed on appeal or when an order granting probation is made 20suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of 21 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not 22 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or 23 indictment. 24
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"(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
violation of or conspiring to violate any provision or term of this chapter or of the applicable

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federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.

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6. 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.

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California Code of Regulations, title 16, section 1770, states:

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

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8. Section 4022 of the Code states:

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

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

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

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

9. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
controlled substance, except that furnished upon a valid prescription/drug order.

10. Health and Safety Code section 11377, in pertinent part, makes it unlawful to possess
any controlled substancei n Schedule II, subdivision (d), without a prescription.

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1	11. Section 125.3 of the Code states, in pertinent part, that the Board may request the
2	administrative law judge to direct a licentiate found to have committed a violation or violations of
3	the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
4	enforcement of the case.
5	12. Section 118, subdivision (b), of the Code provides that the expiration of a license
6	shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period
7	within which the license may be renewed, restored, reissued or reinstated.
8	DRUGS
9	13. Methamphetamine is a Schedule II controlled substance as designated by Health and
10	Safety Code section 11055(d)(2) and a dangerous drug as designated by Business and Professions
11	Code section 4022. It is a stimulant drug.
12	FACTUAL BACKGROUND
13	14. On a date prior to February 18, 2010, Respondent became subject to a protective
14	order which prohibited her from coming within 100 feet of K.C.'s home.
15	a. On or about November 8, 2009, Respondent went to the home of B.C. to drop off
16	Respondent's daughter. An argument ensued, and Respondent pushed and hit B.C.
17	several times.
18	b. On or about February 18, 2010, Respondent told K.C. that Respondent would kill K.C.
19	if K.C. told anyone that Respondent had been to her house. At that time, a restraining
20	order was in place prohibiting Respondent from coming within 100 feet of K.C.'s home.
21	c. On or about March 22, 2010, Respondent was seen within 100 feet of K.C.'s home, in
22	violation of a restraining order.
23	d. On or about May 12, 2010, Respondent yelled at J.C., a person protected by the above-
24	listed protective order, "Jill you and your daughter will not live to see the 18th!" A
25	preliminary hearing on charges against Respondent of making criminal threats and
26	violating a protective order was scheduled for May 18, 2010 in the Sonoma County
27	Superior Court. Respondent further yelled at J.C. "Oh, you're on crutches! You'll be
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	Accusation

1	real easy to get now! You're not going to live through this!" Respondent got into her
2	car, and as she sped off, she yelled "You're a dead bitch!"
3	e. On or about August 20, 2010, Respondent was again seen within 100 feet of K.C.'s
4	home, in violation of a court order.
5	FIRST CAUSE FOR DISCIPLINE
6	(CRIMINAL CONVICTION)
7	15. Respondent is subject to disciplinary action under sections 4301(l), 4301(o), and/or
8	490, and California Code of Regulations, title 16, section 1770, in that on or about April 8, 2011,
9	in a criminal proceeding entitled The People of the State of California v. Mary Sonoma
10	Fernandez in Sonoma County Superior Court, Case Number SCR-578861, Respondent was
11	convicted of violating Penal Code section 422 (making criminal threats), a felony. Respondent
12	was sentenced to serve four months jail time, 36 months formal probation, and ordered to pay
13	fines and fees in the amount of \$1,802.00. The circumstances of the conviction are that
14	Respondent violated a protective order several times, as described above in paragraph 14.
15	SECOND CAUSE FOR DISCIPLINE
16	(USE OF CONTROLLED SUBSTANCE)
17	16. Respondent is subject to disciplinary action under section 4301(h), in that on or about
18	March 1, 2010, her urine sample tested positive for methamphetamine and amphetamine (a
19	metabolite of methamphetamine).
20	THIRD CAUSE FOR DISCIPLINE
21	(USE OF CONTROLLED SUBSTANCE)
22	17. Respondent is subject to disciplinary action under sections 4301(j), 4301(o), 4060,
23	and Health and Safety Code section 11377, in that on or about March 1, 2010, her urine sample
24	tested positive for methamphetamine and amphetamine (a metabolite of methamphetamine).
25	FOURTH CAUSE FOR DISCIPLINE
26	(UNPROFESSIONAL CONDUCT)
27	18. Respondent is subject to disciplinary action under sections 4301(f) and/or 4301(o) in
28	that she acted unprofessionally, and/or committed acts involving moral turpitude. The
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1	circumstances are described above in paragraph 14.	
2	PRAYER	
3	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,	
4	and that following the hearing, the Board of Pharmacy issue a decision:	
5	1. Revoking or suspending Pharmacy Technician Registration Number TCH 29486,	
6	issued to Mary S. Fernandez;	
7	2. Ordering Mary S. Fernandez to pay the Board of Pharmacy the reasonable costs of	
8	the investigation and enforcement of this case, pursuant to Business and Professions Code section	
9	125.3;	
10	111	
11	3. Taking such other and further action as deemed necessary and proper.	
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13	DATED: 11/2/12 ()initiated	
14	VIRGINIA HEROLD Executive Officer	
15	Board of Pharmacy Department of Consumer Affairs	
16	State of California Complainant	
17	Comprendent	
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	7 Accusation	