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

11 In the Matter of the Accusation Against:
12 **CALEB JERALD DANIEL**
13 **187 Palm Avenue, #31**
Marina, CA 93933
14 **Pharmacy Technician Registration No. TCH**
15 **93659**
16 Respondent.

Case No. 4402

A C C U S A T I O N

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 August 25, 2009, the Board of Pharmacy issued Pharmacy Technician
22 Registration Number TCH 93659 to Caleb Jerald Daniel (Respondent). The Pharmacy
23 Technician Registration was in full force and effect at all times relevant to the charges brought in
24 this Accusation and will expire on February 28, 2013, unless renewed.

25 JURISDICTION

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

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

14 9. Section 490 of the Code provides, in pertinent part, that the Board may suspend or
15 revoke a license when it finds that the licensee has been convicted of a crime substantially related
16 to the qualifications, functions or duties of the license.

17 10. California Code of Regulations, title 16, section 1770, states:

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

24 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

25 11. Section 4021 of the Code states:

26 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
27 11053) of Division 10 of the Health and Safety Code.”

28 12. Section 4022 of the Code states, in pertinent part:

1 almost overwhelmed by the odor of burnt marijuana coming from the car. Officer 1 then
2 requested additional officers to respond and assist with the enforcement stop.

3 16. Officer 1 identified Respondent as the driver of the vehicle based upon his California
4 driver's license. There were two passengers in the vehicle. Officer 1 asked Respondent if there
5 was any marijuana in the vehicle, and Respondent stated that there was, but that he had a cannabis
6 club card. Officer 1 asked Respondent to produce the marijuana and the cannabis club card.
7 Respondent produced a large pickle jar from the floorboard beneath his seat. The jar contained a
8 green, leafy vegetable substance that Officer 1 recognized as marijuana. Respondent then
9 produced a physician's recommendation for medical marijuana, however he could not produce a
10 cannabis club card. Respondent stated that the marijuana he surrendered to Officer 1 was all of
11 the marijuana in the vehicle.

12 17. Officer 1 instructed Respondent and his two passengers to exit the vehicle so that he
13 could search for additional contraband within the vehicle. During his search, Officer 1 found two
14 additional glass jars in a backpack on the driver's side floorboard, one of which contained a
15 green, leafy substance that Officer 1 recognized as marijuana. The other jar was empty. Officer
16 1 also located loose marijuana under the driver's seat, and marijuana and cigar paper in a brown
17 paper bag on the left rear floor board. Officer 1 searched the trunk and found suspected
18 marijuana in a clear plastic bag with the words "Poison Berry Kush" written in black marker.
19 Finally, Officer 1 found a digital scale that was disguised as an iPhone, with green, leafy residue
20 on it.

21 18. While Officer 1 was searching Respondent's vehicle, another MPD Officer, Officer 2,
22 questioned Respondent. Officer 2 asked Respondent if he had a cellular phone in his possession,
23 and Respondent stated that he did. Respondent unlocked the phone at Officer 2's request, and
24 Officer 2 searched through the text messages. Officer 2 read various text messages which led him
25 to believe that Respondent was selling marijuana. Respondent admitted that he did not have a
26 medical marijuana card and that he only possessed a recommendation letter, however he denied
27 selling marijuana. Respondent stated that he allowed his friends to use his phone, and they must
28 have sent the text messages that Officer 2 questioned him about.

