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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:

Case No. 4403

12 **JESSE SANDOVAL**
13 13715 Shablow
Sylmar, CA 91342

A C C U S A T I O N

14 Pharmacy Technician Registration No. TCH
15 32059

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about January 12, 2000, the Board issued Pharmacy Technician Registration
23 No. TCH 32059 to Jesse Sandoval (Respondent). The Pharmacy Technician Registration was in
24 full force and effect at all times relevant to the charges brought herein and expired on June 30,
25 2013, and has not been renewed.

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1 **JURISDICTION**

2 3. This Accusation is brought before the Board, under the authority of the following
3 laws. All section references are to the Business and Professions Code unless otherwise indicated.

4 4. Section 4300.1 states:

5 The expiration, cancellation, forfeiture, or suspension of a board-issued license by
6 operation of law or by order or decision of the board or a court of law, the placement
7 of a license on a retired status, or the voluntary surrender of a license by a licensee
8 shall not deprive the board of jurisdiction to commence or proceed with any
9 investigation of, or action or disciplinary proceeding against, the licensee or to render
10 a decision suspending or revoking the license.

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

15 **STATUTORY PROVISIONS**

16 6. Section 492 states:

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

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

7. Section 4022 states:

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

(a) Any drug that bears the legend: “Caution: federal law prohibits dispensing
without 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.

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

3 8. Section 4060 states:

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

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

19 9. Section 4300, subdivision (a), states that "[e]very license issued may be suspended or
20 revoked."

21 10. Section 4301 states, in pertinent part:

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

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27 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
28 deceit, or corruption, whether the act is committed in the course of relations as a
licensee or otherwise, and whether the act is a felony or misdemeanor or not.

.....

(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.

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

1 substantially related to the qualifications, functions, and duties of a licensee under this
2 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
3 contendere is deemed to be a conviction within the meaning of this provision. The
4 board may take action when the time for appeal has elapsed, or the judgment of
5 conviction has been affirmed on appeal or when an order granting probation is made
6 suspending the imposition of sentence, irrespective of a subsequent order under
7 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
8 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
9 dismissing the accusation, information, or indictment.

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11 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
12 abetting the violation of or conspiring to violate any provision or term of this chapter
13 or of the applicable federal and state laws and regulations governing pharmacy,
14 including regulations established by the board or by any other state or federal
15 regulatory agency.

16 REGULATORY PROVISIONS

17 11. 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
20 Professions Code, a crime or act shall be considered substantially related to the
21 qualifications, functions or duties of a licensee or registrant if to a substantial degree
22 it evidences present or potential unfitness of a licensee or registrant to perform the
23 functions authorized by his license or registration in a manner consistent with the
24 public health, safety, or welfare.

25 DRUG STATUTES

26 12. Health and Safety Code section 11170 states that "[n]o person shall prescribe,
27 administer, or furnish a controlled substance for himself."

28 13. Health and Safety Code section 11173, subdivision (a), states that "[n]o person shall
obtain or attempt to obtain controlled substances, or procure or attempt to procure the
administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,
or subterfuge; or (2) by the concealment of a material fact."

14. Health and Safety Code section 11350, subdivision (a), states:

Except as otherwise provided in this division, every person who possesses (1) any
controlled substance specified in subdivision (b) or (c), or paragraph (1) of
subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of
subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section
11055, or specified in subdivision (h) of Section 11056, or (2) any controlled
substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon
the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to
practice in this state, shall be punished by imprisonment in the state prison.

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1 15. Health and Safety Code section 11377, subdivision (a), states:

2 Except as authorized by law and as otherwise provided in subdivision (b) or Section
3 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of
4 the Business and Professions Code, every person who possess any controlled
5 substance which is (1) classified in Schedule III, IV, or V, and which is not a narcotic
6 drug, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14),
7 (15), and (20) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of
8 Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section
9 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the
10 prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in
11 this state, shall be punished by imprisonment in a county jail for a period of not more
12 than one year or in the state prison.

13 **COST RECOVERY**

14 16. Section 125.3 states, in pertinent part, that the Board may request the administrative
15 law judge to direct a licentiate found to have committed a violation or violations of the licensing
16 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
17 case.

18 **CONTROLLED SUBSTANCE/DANGEROUS DRUG**

19 17. **Cocaine**, and any cocaine base, is a narcotic drug according to Health and Safety
20 Code section 11019(e). It is a Schedule I controlled substance, as designated in Health and Safety
21 Code section 11054(f)(1), and a Schedule II controlled substance, as designated in Health Safety
22 Code section 11055(b)(6). It is categorized as a dangerous drug according to Business and
23 Professions Code section 4022.

24 **FIRST CAUSE FOR DISCIPLINE**

25 **(Unlawful Possession of a Controlled Substance)**

26 18. Respondent is subject to disciplinary action under sections 4300 and 4301,
27 subdivision (o), on the grounds of unprofessional conduct, in that on July 21, 2011, Respondent
28 was found to be in possession of a controlled substance and dangerous drug, without a valid
prescription as follows:

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1 a. On or about July 21, 2011, Los Angeles Police Department Officers, while on duty,
2 were driving through a residential area in the city of Pacoima, California, and observed
3 Respondent, a pedestrian, talking to a driver in a vehicle which was stopped in the middle of the
4 street. When Respondent observed the officer, he made a comment to the driver and the vehicle
5 drove away. The officers exited their police vehicle and attempted to make contact with the
6 Respondent. The Respondent ignored the officer's commands and continued to jog away from
7 the officers. The officers finally caught up with the Respondent as he was going into a residence.
8 The officers handcuffed the Respondent because he ignored their commands and conducted a
9 consented search of Respondent. During the search of Respondent's person, the officers removed
10 his wallet from his left front pants pocket and as the officers placed the wallet on the ground, the
11 officers observed a clear plastic baggie fall to the ground from his wallet containing powder
12 "Cocaine." The Respondent admitted to the officers that it was, "Cocaine" and that he "just
13 wanted to party tonight." The officers continued their search of Respondent and also recovered
14 another clear plastic baggie from his left front pants pocket containing powder "Cocaine." The
15 Respondent was subsequently arrested for violating Health and Safety Code section 11350,
16 subdivision (a).

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Violating Drug Statutes)**

19 19. Respondent is subject to disciplinary action under sections 4300 and 4301,
20 subdivision (j), on the grounds of unprofessional conduct, for violating provisions of the Health
21 and Safety Code as follows:

22 a. Section 11377, subdivision (a), by possessing a controlled substance without a valid
23 prescription.

24 Complainant refers to, and by this reference incorporates, the allegations set forth above in
25 paragraph 17, subparagraph (a), inclusive, as though set forth fully.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit and / or Corruption)**

3 20. Respondent is subject to disciplinary action under sections 4300 and 4301,
4 subdivision (f), on the grounds of unprofessional conduct, in that Respondent committed an act
5 involving moral turpitude, dishonesty, fraud, deceit, and / or corruption when he was found to be
6 possession of a controlled substance without a valid prescription on July 21, 2011. Complainant
7 refers to, and by this reference incorporates, the allegations set forth above in paragraph 17,
8 subparagraph (a), inclusive, as though set forth fully.

9 **FOURTH CAUSE FOR DISCIPLINE**

10 **(Violation of Pharmacy Act)**

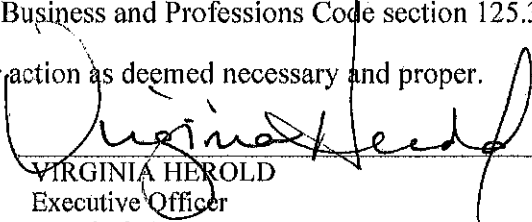
11 21. Respondent is subject to disciplinary action under section 4301, subdivision (o), on
12 the grounds of unprofessional conduct, in that Respondent was found to be in possession of a
13 controlled substance without a valid prescription on July 21, 2011, in violation of the Pharmacy
14 Act. Complainant refers to, and by this reference incorporates, the allegations set forth above in
15 paragraphs 17 through 19, inclusive, as though set forth fully.

16 **PRAYER**

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

- 19 1. Revoking or suspending Pharmacy Technician Registration No. TCH 32059, issued
20 to Jesse Sandoval;
- 21 2. Ordering Jesse Sandoval to pay the Board the reasonable costs of the investigation
22 and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
- 23 3. Taking such other and further action as deemed necessary and proper.

24 DATED: 7/12/13


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

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