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

12 In the Matter of the Accusation Against:

Case No. 4503

13 **RODNEY NAJAR BETANCOURT**
4667 W. 118th St.
Hawthorne, CA 90250

A C C U S A T I O N

14 Pharmacy Technician Registration No. TCH
112469

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Virginia K. Herold (Complainant) brings this Accusation solely in her official
19 capacity as the Executive Officer of the California State Board of Pharmacy.

20 2. On or about June 1, 2011, the Board of Pharmacy issued Pharmacy Technician
21 Registration No. TCH 112469 to Rodney Najar Betancourt (Respondent). The Pharmacy
22 Technician Registration was in full force and effect at all times relevant to the charges brought
23 herein and will expire on January 31, 2013, unless 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 **STATUTORY PROVISIONS**

5 4. Section 118, subdivision (b) provides that the expiration of a license shall not deprive
6 the Board of jurisdiction to proceed with a disciplinary action during the period within which the
7 license may be renewed, restored, reissued or reinstated.

8 5. Section 490 states, in pertinent part:

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

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

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

23 6. Section 4300 provides that every license issued by the Board is subject to discipline,
24 including suspension or revocation.

25 7. Section 4301 states, in pertinent part:

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

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"(f) The commission of any act involving moral turpitude, dishonesty, fraud, 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.

"(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 substantially related to the qualifications, functions, and duties of a licensee under this 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.

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

1 **REGULATORY PROVISIONS**

2 8. California Code of Regulations, title 16, section 1770 states, in pertinent part:

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

9 **COST RECOVERY**

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

14 **CONTROLLED SUBSTANCE/DANGEROUS DRUG**

15 10. "Marijuana," is a schedule I controlled substance as defined in Health and Safety
16 Code section 11054, subdivision (d)(13), and is categorized a dangerous drug pursuant to section
17 4022.

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(Conviction of a Substantially Related Crime)**

20 11. Respondent is subject to disciplinary action under sections 4300, 4301, subdivision
21 (l), and 490, in conjunction with California Code of Regulations, title 16, section 1770, in that
22 Respondent was convicted of a crime substantially related to the qualifications, functions, and
23 duties of a pharmacy technician.

24 a. On or about July 17, 2012, after pleading nolo contendere, Respondent was convicted
25 of one felony count of violating Health and Safety code section 11359 [Possession of Marijuana
26 for Sale] in the criminal proceeding entitled *The People of the State of California vs. Rodney*
27 *Najar Betancourt* (Super. Ct. Los Angeles County, 2012, No. YA084088). The Court placed
28 Respondent on three (3) years probation and ordered Respondent to complete 20 days of Cal

1 Trans work program.

2 b. The circumstances surrounding the conviction are that on or about April 18, 2012,
3 Respondent was arrested for possession of Marijuana and admitted to police officers that the
4 Marijuana was his and he intended to sell the Marijuana.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Drug Related Conviction)**

7 12. Respondent is subject to disciplinary action under sections 4300 and 4301,
8 subdivision (j), on the grounds of unprofessional conduct, in that on or about July 17, 2012,
9 Respondent was convicted of a crime involving a controlled substance/dangerous drug.
10 Complainant refers to, and by this reference incorporates, the allegations set forth above in
11 paragraph 11, subparagraphs a and b, inclusive, as though set forth fully.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Act Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

14 13. Respondent is subject to disciplinary action under sections 4300 and 4301,
15 subdivision (f), on the grounds of unprofessional conduct, in that Respondent committed an act
16 involving moral turpitude, dishonesty, fraud, deceit, or corruption with the intent to substantially
17 benefit himself, or substantially injure another. Complainant refers to, and by this reference
18 incorporates, the allegations set forth above in paragraphs 11-12, inclusive, as though set forth
19 fully.

20 **FOURTH CAUSE FOR DISCIPLINE**

21 **(Unprofessional Conduct / Violation of Pharmacy Practice Act)**

22 14. Respondent is subject to disciplinary action under sections 4300 and 4301,
23 subdivision(s) (a) and / or (o), in that Respondent committed and an act of unprofessional conduct
24 and/or violated the Pharmacy Practice Act. Complainant refers to, and by this reference
25 incorporates, the allegations set forth above in paragraphs 11-13, inclusive, as though set forth
26 fully.

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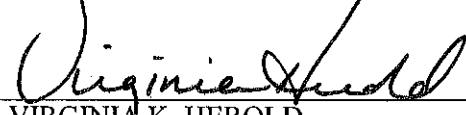
PRAYER

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 112469, issued to Rodney Najar Betancourt;
2. Ordering Rodney Najar Betancourt to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED:

4/19/13



VIRGINIA K. HEROLD
Executive Officer
California State Board of Pharmacy
State of California
Complainant

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