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

11 In the Matter of the Accusation Against:

Case No. 4511

12 **DEVON MICHAEL FULLER**  
13 3103 Dalton Avenue  
14 Los Angeles, CA 90018

**A C C U S A T I O N**

15 Pharmacy Technician License No. TCH  
16 103794

Respondent.

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19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about August 16, 2010, the Board of Pharmacy ("Board") issued Pharmacy  
24 Technician License Number TCH 103794 to Devon Michael Fuller ("Respondent"). The  
25 Pharmacy Technician License was in full force and effect at all times relevant to the charges  
26 brought herein and will expire on September 30, 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.

4 **STATUTORY PROVISIONS**

5 4. Business and Professions Code section 118, subdivision (b),<sup>1</sup> provides that the  
6 suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of  
7 jurisdiction to proceed with a disciplinary action during the period within which the license may  
8 be renewed, restored, reissued or reinstated.

9 5. Section 490 states, in pertinent part:

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

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

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

24 6. Section 4300 permits the Board to take disciplinary action by suspending or revoking  
25 any license issued by the Board.

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28 <sup>1</sup> All further statutory references are to the Business and Professions Code unless  
otherwise indicated.

1           7.     Section 4300.1 states, "The expiration, cancellation, forfeiture, or suspension of a  
2 board-issued license by operation of law or by order or decision of the board or a court of law, the  
3 placement of a license on a retired status, or the voluntary surrender of a license by a licensee  
4 shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or  
5 action or disciplinary proceeding against, the licensee or to render a decision suspending or  
6 revoking the license."

7           8.     Section 4301 states, in pertinent part:

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

11           ...

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

15           ...

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

18           ...

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

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

8 ...

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

13 9. Section 493 states:

14 "Notwithstanding any other provision of law, in a proceeding conducted by a board within  
15 the department pursuant to law to deny an application for a license or to suspend or revoke a  
16 license or otherwise take disciplinary action against a person who holds a license, upon the  
17 ground that the applicant or the licensee has been convicted of a crime substantially related to the  
18 qualifications, functions, and duties of the licensee in question, the record of conviction of the  
19 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,  
20 and the board may inquire into the circumstances surrounding the commission of the crime in  
21 order to fix the degree of discipline or to determine if the conviction is substantially related to the  
22 qualifications, functions, and duties of the licensee in question.

23 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and  
24 'registration.'"

#### 25 REGULATORY PROVISIONS

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

27 "For the purpose of denial, suspension, or revocation of a personal or facility license  
28 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a

1 crime or act shall be considered substantially related to the qualifications, functions or duties of a  
2 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a  
3 licensee or registrant to perform the functions authorized by his license or registration in a manner  
4 consistent with the public health, safety, or welfare."

5 **CONTROLLED SUBSTANCE**

6 11. Marijuana is a Schedule I controlled substance as designated by Section 4021 and  
7 Health and Safety Code section 11054, subdivision (d)(13).

8 **COST RECOVERY**

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

12 **FIRST CAUSE FOR DISCIPLINE**

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

14 13. Respondent is subject to disciplinary action under Section 490 and Section 4301,  
15 subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, in that  
16 Respondent was convicted of crimes substantially related to the qualifications, functions, or  
17 duties of a pharmacy technician.

18 14. On June 24, 2011, in a criminal proceeding entitled *People v. Devon Fuller, et al.*  
19 (Super. Ct. San Bernardino County, 2012, No. FSB1102605), the San Bernardino County District  
20 Attorney filed an amended criminal complaint charging Respondent with the following: Count  
21 One, Possession of Marijuana for Sale, a felony violation of Health and Safety Code section  
22 11359, with an allegation that the offense was committed for the benefit of, at the direction of, or  
23 in association with a criminal street gang, in violation of Penal Code section 186.22, subdivision  
24 (b)(1)(A); Count Two, Possession of an Assault Weapon to wit: Assault Rifle, a felony violation  
25 of Penal Code section 12280, subdivision (b), with an allegation of Penal Code section 186.22,  
26 subdivision (b)(1)(A); Count Three, Street Terrorism, a felony violation of Penal Code section  
27 186.22, subdivision (a); Count Four, Possession of an Assault Weapon, a felony violation of  
28 Penal Code section 12280, subdivision (b).

1           a.     On January 12, 2012, Respondent entered a guilty plea in case no. FSB1102605  
2 and was convicted of Count Two, Possession of an Assault Weapon, in violation of Penal Code  
3 section 12280, subdivision (b). Pursuant to a plea bargain, the remaining counts and the  
4 allegation of Penal Code section 186.22, subdivision (b)(1)(A), as to Count Two were dismissed.  
5 The Court ordered Respondent to serve two days in San Bernardino County Jail with two days  
6 credit for time served, leaving a net of zero days. The Court also placed Respondent on three  
7 years formal probation with drug and gang terms and conditions of probation.

8           b.     The circumstances of the offense are as follows: On or about June 6, 2011 at  
9 approximately 7:15 p.m., Officers from the San Bernardino Police Department Gang Unit were  
10 on duty and in a patrol vehicle when they made a traffic stop of Respondent's vehicle.  
11 Respondent was the driver and sole occupant of the vehicle. When the officers approached the  
12 vehicle, the officers detected a strong odor of marijuana from inside the vehicle. Respondent  
13 admitted that he was in possession of a little bit of "weed," but stated that he had a medical  
14 marijuana card. Respondent was unable to show a valid marijuana card to the officers, however,  
15 and the marijuana was contained in a small, *unlabeled* purple plastic pill container. In addition,  
16 the officers ran a check on the vehicle's license plate and the vehicle came back as a rental car  
17 from Oklahoma. One of the officers recalled the vehicle from a prior arrest he had made of  
18 Respondent's brother who had four pounds of marijuana in the vehicle and was arrested for  
19 possession of marijuana for sales and transportation of marijuana.

20           The Officers asked Respondent to exit the vehicle, and Respondent became  
21 belligerent. When the officer advised Respondent that he was being arrested for a violation of  
22 Vehicle Code section 23222, subdivision (b) [Driver in Possession of Marijuana Less than One  
23 Ounce], Respondent became more aggressive and attempted to reach for his cell phone to call his  
24 attorney. Further, while Respondent was in custody, Respondent's cell phone rang and he  
25 received text messages individuals who appeared to be attempting to buy marijuana. In addition,  
26 when the officer asked Respondent where he lived, Respondent provided a false address. Based  
27 on the officers' observations during the arrest of Respondent and the fact that Respondent  
28 provided a false address, they formed the opinion that Respondent was selling marijuana.

1 San Bernardino Police Officers subsequently conducted a search of Respondent's  
2 home in Highland, California. During the search of Respondent's home, San Bernardino Police  
3 Officers recovered approximately 90 pounds of marijuana, two assault weapons, three handguns,  
4 a shotgun, ammunition, magazines, packing material, digital scales, a currency counter, and  
5 \$28,123 cash. Based on the evidence recovered by the officers, Respondent was arrested for  
6 violations of Health and Safety Code section 11359 [Possession of Marijuana for Sales], Penal  
7 Code section 12280, subdivision (b) [Possession of an Assault Rifle], and Penal Code section  
8 186.22, subdivision (a) [Gang Enhancement]. Respondent was subsequently charged as stated in  
9 paragraph 13, above.

10 15. On November 29, 2012, Respondent was found in violation of probation in case no.  
11 FSB1102605 in *People v. Devon Fuller* (Super Ct. San Bernardino County, 2012, No.  
12 FSB1205140). The Court revoked and terminated Respondent's probation and sentenced  
13 Respondent to one year and four months in County Prison with 34 days credit for time served.

14 16. On November 29, 2012, in *People v. Devon Fuller* (Super Ct. San Bernardino  
15 County, 2012, No. FSB1205140), Respondent entered a plea of guilty and was convicted of  
16 Count Two, Possession of a Controlled Substance for Sale, a felony violation of Health and  
17 Safety Code section 11378. Count One, Transportation of a Controlled Substance, a felony  
18 violation of Health and Safety Code section 11379, subdivision (a), was dismissed in light of the  
19 plea. The Court sentenced Respondent to one year and four months in County Prison with 30  
20 days credit for time served, the sentence to run concurrent to any other sentence.

21 **SECOND CAUSE FOR DISCIPLINE**

22 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

23 17. Respondent is subject to disciplinary action under Section 4301, subdivision (f), in  
24 that Respondent committed an act involving moral turpitude, dishonesty, fraud, deceit, or  
25 corruption. Complainant refers to, and by this reference incorporates, the allegations set forth  
26 above in paragraphs 13 through 15, inclusive, as though set forth fully herein.

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**THIRD CAUSE FOR DISCIPLINE**

**(Violation of State Statutes Regulating Controlled Substances)**

18. Respondent is subject to disciplinary action under Section 4301, subdivision (j), in that Respondent violated a California statute regulating controlled substances. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 10 and 13 through 15, inclusive, as though set forth fully herein.

**FOURTH CAUSE FOR DISCIPLINE**

**(Violation of State Laws and Regulations Governing Pharmacy)**

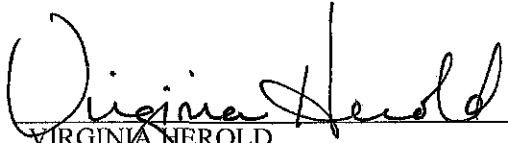
19. Respondent is subject to disciplinary action under Section 4301, subdivision (o), in that Respondent committed an act or several acts in violation of the state laws and regulations governing pharmacy, including regulations established by the Board or by any other state or federal regulatory agency. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 13 through 17, inclusive, as though set forth fully herein.

**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 License Number TCH 103794, issued to Devon Michael Fuller
- 2. Ordering Devon Michael Fuller to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 3. Taking such other and further action as deemed necessary and proper.

DATED: 9/6/13

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