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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. 4608

12 **RICARDO ORNELAS**
13 **a.k.a., RICARDO ORNELAS BARAJAS**
2907 Illinois Avenue
14 South Gate, CA 90280

A C C U S A T I O N

15 Pharmacy Technician Registration
No. TCH 108852

16 Respondent.

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 July 13, 2011, the Board of Pharmacy (Board) issued Pharmacy
22 Technician Registration No. TCH 108852 to Ricardo Ornelas, also known as Ricardo Ornelas
23 Barajas (Respondent). The Pharmacy Technician Registration was in full force and effect at all
24 times relevant to the charges brought herein, which expired on May 31, 2013, and has not been
25 renewed.

26 **JURISDICTION**

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

1 6. Section 4300 states, in pertinent part, that every license issued by the Board is subject
2 to discipline, including suspension or revocation.

3 7. Section 4300.1 states:

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

9 8. Section 4301 states, in pertinent part:

10 “The board shall take action against any holder of a license who is guilty of unprofessional
11 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

12 Unprofessional conduct shall include, but is not limited to, any of the following:

13

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

17

18 “(h) The administering to oneself, of any controlled substance, or the use of any
19 dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or
20 injurious to oneself, to a person holding a license under this chapter, or to any other person
21 or to the public, or to the extent that the use impairs the ability of the person to conduct with
22 safety to the public the practice authorized by the license.

23

24 “(j) The violation of any of the statutes of this state, of any other state, or of the United
25 States regulating controlled substances and dangerous drugs.

26

27 “(l) The conviction of a crime substantially related to the qualifications, functions, and
28 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13

1 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
2 substances or of a violation of the statutes of this state regulating controlled substances or
3 dangerous drugs shall be conclusive evidence of unprofessional conduct. . . A plea or verdict of
4 guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the
5 meaning of this provision.

6

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

11 **REGULATORY PROVISIONS**

12 9. California Code of Regulations, title 16, section 1770, states, in pertinent part:

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

19 **COST RECOVERY**

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

24 11. **CONTROLLED SUBSTANCE**

25 "Methamphetamine," is a Schedule II controlled substance, as designated by Health and
26 Safety Code section 11055, subdivision (d)(2), and is categorized as a dangerous drug, pursuant to
27 section 4022.

1 **FIRST CAUSE FOR DISCIPLINE**

2 ***(Convictions of Substantially Related Crimes)***

3 12. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and
4 490, in conjunction with California Code of Regulations, title 16, section 1770, in that,
5 Respondent was convicted of crimes substantially related to the qualifications, functions or duties
6 of a pharmacy technician, as follows:

7 a. On or about June 21, 2010, after pleading nolo contendere, Respondent was convicted
8 of one misdemeanor count of violating Penal Code section 594, subdivision (a) [vandalism under
9 \$400 damage/destroy] in the criminal proceeding entitled *The People of the State of California v.*
10 *Ricardo Ornelas Barajas* (Super. Ct. Los Angeles County, 2010, No. 0WW00396). The Court
11 placed Respondent on 3 years probation, with terms and conditions. The circumstances
12 surrounding the conviction are that on or about October 31, 2009, Respondent unlawfully and
13 maliciously damaged and destroyed real and personal property; to wit: a 2001 Mitsubishi
14 belonging to another person.

15 b. On or about October 27, 2011, pursuant to a plea agreement, after pleading guilty,
16 Respondent was convicted of one misdemeanor count of violating Health and Safety Code section
17 11377, subdivision (a) [possession of a controlled substance - Methamphetamine] in the criminal
18 proceeding entitled *The People of the State of California v. Ricardo Ornelas* (Super. Ct. Los
19 Angeles County, 2011, No. 1DY05582). The Court deferred pronouncement of sentence for 18
20 months pending Respondent's completion of a drug diversion program. On or about July 9, 2012,
21 Respondent failed to appear for progress report. The Court revoked probation, terminated
22 deferred entry of judgment, and reinstated criminal proceedings. The Court sentenced
23 Respondent to serve 8 days in Los Angeles County Jail and placed him on 36 months probation,
24 with terms and conditions. The circumstances surrounding the conviction are that on or about
25 October 25, 2011, during a traffic enforcement stop by the Los Angeles County Sheriff's
26 Department, Respondent, a passenger in the vehicle of another was contacted. A records check of
27 Respondent revealed that he had an outstanding warrant, in the amount of \$30,000.00 out of
28 Whittier Superior Court (Warrant #WHOWW0039601). Respondent was subsequently arrested

1 for the warrant. During the booking procedure, a search of Respondent's wallet revealed a small
2 plastic baggie from one of the credit card slots of his wallet that contained a white crystalline
3 substance resembling Methamphetamine. Respondent stated, "That's my meth." In addition,
4 Respondent admitted that he has a drug problem. Respondent was subsequently charged with
5 violating Health and Safety Code section 11377, subdivision (a) [possession of a controlled
6 substance – Methamphetamine].

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Acts Involving Dishonesty, Fraud or Deceit)**

9 13. Respondent is subject to disciplinary action under section 4301, subdivision (f), in
10 that on or about October 31, 2009, Respondent committed acts involving dishonesty, fraud, or
11 deceit. Complainant refers to, and by this reference incorporates, the allegations set forth above in
12 paragraph 12, subparagraph (a), as though set forth fully.

13 **THIRD CAUSE FOR DISCIPLINE**

14 **(Possession of a Controlled Substance)**

15 14. Respondent is subject to disciplinary action under section 4301, subdivisions (j)
16 and (o), for violating section 4060, in that Respondent was found to be in possession of a
17 controlled substance, as follows:

18 a. On or about October 25, 2011, Respondent was found to be in possession of a
19 controlled substance. Complainant refers to, and by this reference incorporates, the allegations set
20 forth above in paragraph 12, subparagraph (b), as though set forth fully.

21 b. On or about May 22, 2012, during an investigation of a suspicious person in South
22 Gate, California, by the South Gate Police Department, Respondent was contacted. Respondent
23 was observed walking down Stanford Ave., when the officer attempted to approach him. Upon
24 seeing the officer, Respondent fled quickly to the rear of 9322 Stanford Ave. and was detained
25 moments later for investigation. A search of the surrounding area revealed a clear glass pipe
26 commonly used to smoke Methamphetamine approximately 5 feet away from Respondent with
27 burnt marks down the side and a white residue inside of it. Based on Respondent being the only
28 person present at that time of detaining and his initial response upon seeing the officer, the officer

1 was led to believe that Respondent was trying to evade the officer. Respondent was subsequently
2 arrested for violating Health and Safety Code section 11364, subdivision (a) [possession of a
3 controlled substance paraphernalia]. While in route to the police station, Respondent admitted
4 that he smoked Methamphetamine a couple of days ago. In addition, Respondent admitted that he
5 was stopped by law enforcement a couple of days ago and was caught with a Methamphetamine
6 pipe on his person, similar to the one found near him today. After the booking process, an
7 examination of the glass pipe revealed approximately .3 grams of a crystal-like substance, later
8 identified as Methamphetamine. Respondent was subsequently charged for violating Health and
9 Safety Code section 11377, subdivision (a) [possession of a controlled substance].

10 **FOURTH CAUSE FOR DISCIPLINE**

11 **(Use/Under the Influence of a Controlled Substance)**

12 15. Respondent is subject to disciplinary action under section 4301, subdivisions (h)
13 and (j), in that Respondent used and/or was under the influence of a controlled substance, as
14 follows:

15 a. On or about October 25, 2011, Respondent, by his own admission, admitted that
16 he used a controlled substance and has a drug problem. Complainant refers to, and by this
17 reference incorporates, the allegations set forth above in paragraph 12, subparagraph (b), as
18 though set forth fully.

19 b. On or about May 22, 2012, Respondent, by his own admission, admitted that he
20 used a controlled substance. Complainant refers to, and by this reference incorporates, the
21 allegations set forth above in paragraph 14, subparagraph (b), as though set forth fully.

22 **DISCIPLINARY CONSIDERATIONS**

23 16. In order to determine the degree of discipline, if any to be imposed on Respondent,
24 Complainant alleges that on or about October 25, 2001, Respondent was convicted of one
25 misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving while
26 having 0.08% or more, by weight of alcohol, in his blood] and one misdemeanor count of Vehicle
27 Code section 12500, subdivision (a) [driving without a valid driver's license] in the criminal
28 proceeding entitled *The People of the State of California v. Ricardo Ornelas* (Super. Ct. Los

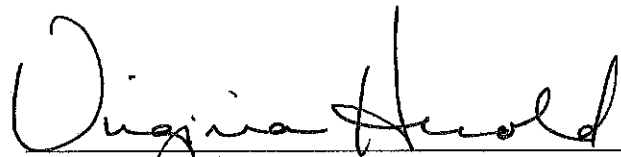
1 Angeles County, 2001, No. 1SG01903). The Court placed Respondent on probation and ordered
2 him to pay fines and restitution. The circumstances surrounding the conviction are that on or
3 about September 14, 2001, during an investigation of a traffic collision by the South Gate Police
4 Department, Respondent was contacted. While speaking to Respondent, the officer detected an
5 odor of an alcoholic beverage emitting from within the vehicle and his person. Respondent was
6 observed to have bloodshot watery eyes, slurred speech, and poor balance and coordination. In
7 addition, the officer observed an empty "Bud Light" bottle on the front passenger floor board.
8 When asked if he had been drinking, Respondent stated, "Yes, 4 or 5." During the booking
9 procedure, Respondent submitted to a breath test that resulted in a breath alcohol content level of
10 0.12% on the first and second reading.

11 **PRAYER**

12 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
13 and that following the hearing, the Board of Pharmacy issue a decision:

- 14 1. Revoking or suspending Pharmacy Technician Registration Number TCH 108852,
15 issued to Ricardo Ornelas, also known as Ricardo Ornelas Barajas;
16 2. Ordering Ricardo Ornelas to pay the Board of Pharmacy the reasonable costs of the
17 investigation and enforcement of this case, pursuant to Business and Professions Code section
18 125.3; and
19 3. Taking such other and further action as deemed necessary and proper.

20
21
22
23 DATED: 2/18/14



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

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