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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. 4638

13 **VANESSA MURIEL SPAGNOLO**  
PO BOX 400913  
Hesperia, CA 92340

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

14 **Pharmacy Technician Registration**  
15 **No. TCH 56160**

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 May 28, 2004, the Board issued Pharmacy Technician Registration No.  
23 TCH 56160 to Vanessa Spagnolo (Respondent). The Pharmacy Technician Registration was in  
24 full force and effect at all times relevant to the charges brought herein and will expire on July 31,  
25 2015, unless 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 STATUTORY PROVISIONS

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

5 5. Section 490 states, in pertinent part:

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

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

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

20 6. Section 4300 provides in pertinent part, that every license issued by the Board is  
21 subject to discipline, including suspension or revocation.

22 7. Section 4300.1 provides in pertinent part, "[T]he expiration, cancellation, forfeiture,  
23 or suspension of a board-issued license by operation of law or by order or decision of the board or  
24 a court of law, the placement of a license on a retired status, or the voluntary surrender of a  
25 license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any  
26 investigation of, or action or disciplinary proceeding against, the licensee or to render a decision  
27 suspending or revoking the license."

28 //

1           8.     Section 4301 states, in pertinent part:

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

5           . . . .

6           "(h) The administering to oneself, of any controlled substance, or the use of any dangerous  
7 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to  
8 oneself, to a person holding a license under this chapter, or to any other person or to the public, or  
9 to the extent that the use impairs the ability of the person to conduct with safety to the public the  
10 practice authorized by the license.

11          . . . .

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

14          (k) The conviction of more than one misdemeanor or any felony involving the use,  
15 consumption, or self-administration of any dangerous drugs or alcoholic beverage, or any  
16 combination of those substances.

17          "(l) The conviction of a crime substantially related to the qualifications, functions, and  
18 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
19 (commencing with Section 801) of Title 21 of the United States Code regulating controlled  
20 substances or of a violation of the statutes of this state regulating controlled substances or

21 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the  
22 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.  
23 The board may inquire into the circumstances surrounding the commission of the crime, in order  
24 to fix the degree of discipline or, in the case of a conviction not involving controlled substances  
25 or dangerous drugs, to determine if the conviction is of an offense substantially related to the  
26 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or  
27 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning  
28 of this provision. The board may take action when the time for appeal has elapsed, or the

1 judgment of conviction has been affirmed on appeal or when an order granting probation is made  
2 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of  
3 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
4 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
5 indictment."

#### 6 REGULATORY PROVISIONS

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

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

#### 14 CONTROLLED SUBSTANCES AND DANGEROUS DRUGS

15 10. Methamphetamine is listed as a Schedule II controlled substance per Health and  
16 Safety Code section 11054(d) (2).

#### 17 COST RECOVERY

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

#### 22 FIRST CAUSE FOR DISCIPLINE

##### 23 (Conviction of Substantially Related Crimes)

24 12. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and  
25 490, in conjunction with California Code of Regulations, title 16, section 1770, in that  
26 Respondent has been convicted of a crime substantially related to the qualifications, functions or  
27 duties of a pharmacy technician, as follows:  
28

1 a. On or about August 16, 2013, after pleading nolo contendere, Respondent was  
2 convicted of one felony count of violating Penal Code section 29800, subdivision (a) [possession  
3 of a firearm by a felon with priors] in the criminal proceeding entitled *The People of the State of*  
4 *California v. Vanessa Muriel Spagnolo* (Super. Ct. San Bernardino County, 2013,  
5 No. FVI1301465). The Court sentenced Respondent to serve 16 months in prison.

6 b. The circumstances surrounding the conviction are that on or about May 22, 2013, the  
7 Apple Valley Gang Enforcement Detail got a call that a suspect was seen at an internet café  
8 carrying a gun. When deputies arrived at the location, they stopped a car driven by "J.J."  
9 Respondent was in the passenger seat. When the deputies did a search of the car, they found a gun  
10 partially hidden under the front seat floor board. Respondent told one of the deputies that the gun  
11 was hers and "J.J." had nothing to do with it. When the deputy, told her that he did not believe  
12 her, and had reason to believe the gun belonged to "J.J." Respondent denied it. The deputy told  
13 her that he believed "J.J." handed the gun to Respondent when "J.J." knew he was going to get  
14 caught by the deputies. Respondent stated, "I can't be a rat." Respondent stated she could not  
15 "rat" because "J.J." would follow up on her and find paperwork on her that she provided the  
16 information. The deputies had also found a glass pipe in Respondent's purse. Respondent  
17 admitted it was hers. Respondent stated she used methamphetamine the night before. She stated  
18 she uses approximately \$10 to \$20 worth of methamphetamine a day. When she used  
19 methamphetamine, she preferred to smoke it.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Conviction of Substantially Related Crimes)**

22 13. Respondent is subject to disciplinary action under sections 4301, subdivisions (j) and  
23 (l) and 490, in conjunction with California Code of Regulations, title 16, section 1770, in that  
24 Respondent has been convicted of a crime substantially related to the qualifications, functions or  
25 duties of a pharmacy technician, as follows:

26 a. On or about November 5, 2012, after pleading nolo contendere to one felony count of  
27 violating Health and Safety Code section 11377(a) [possession of a controlled substance],  
28 Respondent was placed into the deferred entry of judgment program in the criminal proceeding

1 entitled *The People of the State of California v. Vanessa Muriel Spagnolo* (Super. Ct. San  
2 Bernardino County, 2013, No. FVI1200759). On August 16, 2013, the court found Respondent  
3 had violated her probation by picking up another felony charge [see paragraph 12 above]. The  
4 Court convicted and sentenced Respondent to serve 16 months in prison concurrent to case no.  
5 FVI1301465.

6 b. The circumstances surrounding the conviction are that on or about January 20, 2012,  
7 the High Desert Crime Team conducted a parole compliance check on Respondent's home. In her  
8 home they found a pipe that contained usable amount of methamphetamine. Respondent admitted  
9 the pipe and the contents belonged to her. She stated that she had gotten rid of everything because  
10 she did not use methamphetamine anymore.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Conviction of Substantially Related Crimes)**

13 14. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and  
14 490, in conjunction with California Code of Regulations, title 16, section 1770, in that  
15 Respondent has been convicted of a crime substantially related to the qualifications, functions or  
16 duties of a pharmacy technician, as follows:

17 a. On or about March 12, 2008, after pleading nolo contendere to one misdemeanor  
18 count of violating Penal Code section 415(2) [causing loud noise], Respondent was ordered to  
19 pay fines in the criminal proceeding entitled *The People of the State of California v. Vanessa*  
20 *Muriel Spagnolo* (Super. Ct. San Bernardino County, 2013, No. MVI800413).

21 b. The circumstances surrounding the conviction are that on or about November 13,  
22 2007, Respondent went to her ex-boyfriend's home. She saw her ex-boyfriend and another female  
23 having sex. Respondent tried to get into the house through an open window by pushing out the  
24 screen. The occupants prevented Respondent from entering the home. Respondent, her ex-  
25 boyfriend, and his new girlfriend began arguing loudly in front of the home. When police arrived,  
26 they saw that Respondent was extremely angry, belligerent, had bloodshot and watery eyes,  
27 slurred speech, and emitted an odor of alcohol. Respondent admitted that she had drank three  
28

1 beers earlier. Respondent told the officer if he let her go, she would return to her ex-boyfriend's  
2 home again to continue the altercation.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Conviction Involving the Use of Dangerous Drugs)**

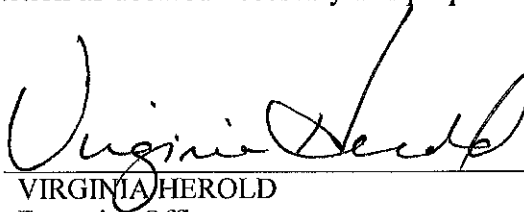
5 15. Respondent is subject to disciplinary action under section 4301, subdivision (k), in  
6 that on or about January 20, 2012 Respondent was convicted of a crime involving the use of  
7 dangerous drugs. Complainant refers to, and by this reference incorporates allegations set forth in  
8 paragraph 13, as though set forth fully.

9 **PRAYER**

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

- 12 1. Revoking or suspending Pharmacy Technician Registration No. TCH 56160, issued  
13 to Vanessa Muriel Spagnolo;
- 14 2. Ordering Vanessa Muriel Spagnolo to pay the Board the reasonable costs of the  
15 investigation and enforcement of this case, pursuant to section 125.3; and
- 16 3. Taking such other and further action as deemed necessary and proper.

17  
18 DATED: 9/11/14



19 VIRGINIA HEROLD  
20 Executive Officer  
Board of Pharmacy  
21 Department of Consumer Affairs  
State of California  
22 Complainant

23  
24 kv 6/3/14  
25  
26  
27  
28