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

11 In the Matter of the Accusation Against:

Case No. 4787

12 **CHRISTINE MARIE AUSTIN**
13 **28798 Murrieta Road**
14 **Menifee, CA 92586**

ACCUSATION

15 **Pharmacy Technician Registration No. TCH 116122**

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 (Board), Department of Consumer Affairs.

21 2. On or about February 24, 2012, the Board issued Pharmacy Technician Registration
22 Number TCH 116122 to Christine Marie Austin (Respondent). The Pharmacy Technician
23 Registration was in full force and effect at all times relevant to the charges brought herein and
24 will expire on December 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 4. Section 4300 of the Code states:

5 (a) Every license issued may be suspended or revoked.

6 (b) The board shall discipline the holder of any license issued by the board,
7 whose default has been entered or whose case has been heard by the board and
8 found guilty, by any of the following methods:

9 (1) Suspending judgment.

10 (2) Placing him or her upon probation.

11 (3) Suspending his or her right to practice for a period not exceeding one
12 year.

13 (4) Revoking his or her license.

14 (5) Taking any other action in relation to disciplining him or her as the board
15 in its discretion may deem proper.

16 ...

17 (e) The proceedings under this article shall be conducted in accordance with
18 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the
19 Government Code, and the board shall have all the powers granted therein. The
20 action shall be final, except that the propriety of the action is subject to review by
21 the superior court pursuant to Section 1094.5 of the Code of Civil Procedure.

22 5. Section 4300.1 of the Code states:

23 The expiration, cancellation, forfeiture, or suspension of a board-issued
24 license by operation of law or by order or decision of the board or a court of law,
25 the placement of a license on a retired status, or the voluntary surrender of a
26 license by a licensee shall not deprive the board of jurisdiction to commence or
27 proceed with any investigation of, or action or disciplinary proceeding against, the
28 licensee or to render a decision suspending or revoking the license.

29 **STATUTORY AUTHORITIES**

30 6. Section 490 of the Code provides, in pertinent part, that a board may suspend or
31 revoke a license on the ground that the licensee has been convicted of a crime substantially related
32 to the qualifications, functions, or duties of the business or profession for which the license was
33 issued.

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1 7. Section 493 of the Code states:

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

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

12 8. Section 4301 of the Code states:

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

16 ...

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

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1 **REGULATIONS**

2 9. California Code of Regulations (CCR), title 16, section 1770, states:

3 For the purpose of denial, suspension, or revocation of a personal or facility
4 license pursuant to Division 1.5 (commencing with Section 475) of the Business
5 and Professions Code, a crime or act shall be considered substantially related to the
6 qualifications, functions or duties of a licensee or registrant if to a substantial
7 degree it evidences present or potential unfitness of a licensee or registrant to

8 perform the functions authorized by his license or registration in a manner
9 consistent with the public health, safety, or welfare.

10 **COSTS**

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

15 **DRUG**

16 11. Methamphetamine is a Schedule II controlled substance as designated by Health and
17 Safety Code section 11055(d)(2), and is a dangerous drug pursuant to Business and Professions
18 Code section 4022.

19 12. Marijuana a Schedule I controlled substance pursuant to Health and Safety Code
20 section 11054, subdivision (d).

21 **FIRST CAUSE FOR DISCIPLINE**

22 **(Criminal Convictions on September 18, 2013 – Shoplifting, and Possession of Drug
23 Paraphernalia)**

24 13. Respondent is subject to disciplinary action under section Code section 4301,
25 subdivision (l) in that she was convicted of crimes substantially related to the practice of a
26 pharmacy technician. The circumstances are as follows:

27 14. On or about September 18, 2013, in Superior Court, County of Riverside entitled
28 *People of the State of California v. Christine Marie Austin* (Case No. SWM1305033),
Respondent was convicted based on her plea of guilty to: (1) violation of Penal Code section 459,

1 a misdemeanor, (shoplifting); and (2) violation of Health and Safety Code section 11364.1, a
2 misdemeanor, (possession of drug paraphernalia).

3 15. The circumstances underlying the convictions are as follows: on June 30, 2013 at
4 about 9:00 a.m., a Riverside County Sheriff's deputy responded to the Wal-Mart in San Jacinto
5 for a reported shoplifting incident. The loss prevention officer for Wal-Mart had Respondent in
6 custody at the time of the deputy's arrival. The loss prevention officer had observed Respondent
7 and another unidentified male placing items into Respondent's purse, and under their clothing.
8 When confronted, the male ran outside the store and into the parking lot. Respondent complied
9 with the loss prevention officer's request to come to her office where she detained Respondent
10 until the deputy arrived. Wal-Mart merchandise was recovered from Respondent's person and
11 purse. The deputy placed Respondent under arrest, and during a pat down search of Respondent
12 and her purse located a small glass pipe containing a crystalized substance, later found to be
13 Methamphetamine.

14 16. On July 31, 2013, the Riverside Superior Court in Case No. SWM1305033 issued a
15 Misdemeanor Complaint and Notice to Appear compelling Respondent to personally appear for
16 arraignment at 9:00 a.m. on September 4, 2013. On September 4, 2013, Respondent failed to
17 appear for arraignment, and a warrant was issued for her arrest.

18 17. On September 13, 2013, Respondent was arrested bearing a counterfeit driver's
19 license, as detailed in paragraph 21 below.

20 18. As the result of her convictions, Respondent was sentenced by the court: to summary
21 probation for 36 months beginning September 18, 2013; to serve 60 days of confinement with 48
22 days to be served in the Work Release Program and credit for 6 days of time served; to pay a fine
23 and penalty assessment of \$600.00; to pay booking fees of \$434.00; to pay a restitution fine of
24 \$140.00; to pay a probation revocation restitution fine of \$140.00; to submit to immediate search
25 of her person/auto/home/premises/garage/storage areas, with or without cause, by a probation
26 officer or law enforcement to search for stolen property and/or paraphernalia; and to have no
27 direct or indirect contact with Wal-Mart and the identity theft victim who name and address
28 Respondent used in the counterfeit driver's license as detailed in paragraph 21, below.

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SECOND CAUSE FOR DISCIPLINE
(Criminal Convictions on September 18, 2013 –Possession
of a Counterfeit California Driver’s License)

19. Respondent is subject to disciplinary action under section Code section 4301, subdivision (l) in that she was convicted of crime substantially related to the practice of a pharmacy technician. The circumstances are as follows:

20. On or about September 18, 2013, in Superior Court, County of Riverside entitled *People of the State of California v. Christine Marie Austin* (Case No. SWM1306138) Respondent was convicted based on her plea of guilty to violation of Penal Code section 472, a misdemeanor, (possession of a counterfeit California driver’s license).

21. The circumstances underlying the convictions are as follows: on September 13, 2013, at 7:11 p.m., a Riverside County Sheriff’s deputy conducted a pedestrian check of a female, later identified as Respondent, at the intersection of Seventh Street and Estudillo Avenue, in San Jacinto. Respondent told the officer that she lost her identification card. She identified herself by name to the deputy, and gave her correct date of birth to him. Respondent also told the deputy that she may have outstanding warrants for her arrest. The deputy conducted a records check and confirmed that Respondent had an outstanding misdemeanor warrant in Case No. SWM1305033, referenced above. When asked if she had anything illegal in her purse, Respondent told the deputy she had Marijuana in her purse, and gave the deputy her consent to search it. Respondent’s purse contained several bags of Marijuana, and a California driver’s license with Respondent’s photo and date of birth, but a different name. An investigation revealed that the name appearing on the driver’s license card belongs to a woman from Murrieta, California who recently became the victim of identity theft with an ongoing investigation at the Canyon Lake Police Department. The driver’s license number on the card belongs to a man from Delano, California.

22. As the result of her convictions, Respondent was sentenced by the court: to summary probation for 36 months beginning September 18, 2013; to serve 60 days of confinement with 48 days to be served in the Work Release Program and credit for 6 days of time served; to pay a fine

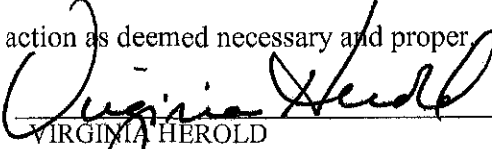
1 and penalty assessment of \$600.00; to pay booking fees of \$434.00; to pay a restitution fine of
2 \$140.00; to pay a probation revocation restitution fine of \$140.00; to submit to immediate search
3 of her person/auto/home/premises/garage/storage areas, with or without cause, by a probation
4 officer or law enforcement to search for stolen property and/or paraphernalia; and to have no
5 direct or indirect contact with Wal-Mart and the identity theft victim.

6 **PRAYER**

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

- 9 1. Revoking or suspending Pharmacy Technician Registration Number TCH 116122,
10 issued to Christine Marie Austin;
- 11 2. Ordering Christine Marie Austin to pay the Board of Pharmacy the reasonable costs of
12 the investigation and enforcement of this case, pursuant to Business and Professions Code section
13 125.3;
- 14 3. Taking such other and further action as deemed necessary and proper

15 DATED: 3/12/14


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

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