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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. 4820

12 **BRANDON ABILLE FULLINARA**  
13 **17173 Big Oak Lane**  
14 **Yorba Linda, CA 92886**

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

15 **Pharmacy Technician Registration**  
16 **No. TCH 94185**

17 Respondent.

18  
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about November 9, 2009, the Board of Pharmacy issued Pharmacy Technician  
24 Registration Number TCH 94185 to Brandon Abille Fullinara (Respondent). The Pharmacy  
25 Technician Registration was in full force and effect at all times relevant to the charges brought  
26 herein and will expire on July 31, 2015, unless renewed.

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1 **JURISDICTION**

2 3. This Accusation is brought before the Board of Pharmacy (Board), Department of  
3 Consumer Affairs, under the authority of the following laws. All section references are to the  
4 Business and Professions Code unless otherwise indicated.

5 4. Section 4300, subdivision (a) of the Code states "Every license issued may be  
6 suspended or revoked."

7 5. Section 4300.1 of the Code states:

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

11 **STATUTORY PROVISIONS**

12 6. 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 is  
16 not limited to, any of the following:

16 . . . .

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

18 . . . .

19 (o) Violating or attempting to violate, directly or indirectly, or assisting in  
20 or abetting the violation of or conspiring to violate any provision or term of this  
21 chapter or of the applicable federal and state laws and regulations governing  
22 pharmacy, including regulations established by the board or by any other state or  
23 federal regulatory agency.

24 7. Section 4022 of the Code states

25 "Dangerous drug" or "dangerous device" means any drug or device unsafe  
26 for self-use in humans or animals, and includes the following:

27 (a) Any drug that bears the legend: "Caution: federal law prohibits  
28 dispensing without prescription," "Rx only," or words of similar import.

(b) Any device that bears the statement: "Caution: federal law restricts this  
device to sale by or on the order of a \_\_\_\_\_," "Rx only," or words of similar  
import, the blank to be filled in with the designation of the practitioner licensed to use  
or order use of the device.

1 (c) Any other drug or device that by federal or state law can be lawfully  
dispensed only on prescription or furnished pursuant to Section 4006.

2 8. Section 4060 of the Code provides in pertinent part, that no person shall possess any  
3 controlled substance, except that furnished to a person upon the prescription of a physician,  
4 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor.

5 9. California Code of Regulations, title 16, section 1770, states:

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

#### 10 COST RECOVERY

11 10. Section 125.3 of the Code provides, 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, with failure of the licentiate to comply subjecting the license to not being  
15 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
16 included in a stipulated settlement.

#### 17 DRUGS

18 11. Methylenedioxy amphetamine, commonly known as Ecstasy (MDMA), is a  
19 Schedule I controlled substance as designated by Health and Safety Code section 11554(d)(6) and  
20 is a dangerous drug pursuant to Business and Professions Code section 4022.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct – Illegal Possession of a Controlled Substance – Ecstasy –**  
3 **on January 31, 2013)**

4 12. Respondent is subject to disciplinary action under section 4301, subdivisions (j) and  
5 (o) of the Code on the grounds of unprofessional conduct, in that he illegally possessed the  
6 controlled substance and dangerous drug Ecstasy (MDMA) without a prescription in violation of  
7 section 4060 of the Code and Health and Safety Code section 11377(a). The circumstances are as  
8 follows:

9 13. On January 31, 2013, at approximately 12:00 a.m., Fullerton Police Department  
10 Officers observed a black Mazda traveling eastbound on Yorba Linda Boulevard west of Sapphire  
11 Road in Fullerton, California, and observed the vehicle straddling the traffic lane which caused  
12 another vehicle to abruptly change lanes to avoid a traffic collision. Officers initiated a traffic stop  
13 and made contact with the driver (Respondent). Officers smelled a faint odor of an alcoholic  
14 beverage emitting from inside the vehicle and noticed Respondent's eyes were bloodshot, red and  
15 watery. Respondent denied to officers that he drank alcohol that evening.

16 14. Officers directed Respondent to exit the vehicle. Respondent complied to a consent  
17 search of his person. Respondent told officers that there was a Gatorade bottle inside the vehicle  
18 that contained a mixture of Gatorade and alcohol. Respondent told officers that there had been a  
19 couple of "shady guys" in his vehicle earlier in the day and that the "shady guys" may have left  
20 "something" inside the vehicle and defined the "something" as "ecstasy pills in the glove box."

21 15. Officers conducted a search of Respondent's vehicle and located a Bank of America  
22 envelope in the vehicle's glove compartment which contained a clear plastic bag that held 155  
23 small circular yellow pills which officers identified through their training and experience as  
24 "Ecstasy." Officers continued searching the vehicle and located a clear plastic bag containing 100  
25 clear plastic baggies which indicated to officers that the baggies, combined with the ecstasy pills,  
26 were indicative of possession with the intent to sell.

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1 16. Respondent admitted to officers that the ecstasy pills were his and that he had  
 2 purchased them for a friend. Respondent claimed to be the 'middle man' in the transaction and  
 3 that he received \$1,500 from an unknown individual to purchase 155 Ecstasy pills from another  
 4 unknown individual. Respondent was arrested for possession of controlled substances, possession  
 5 for sale of controlled substances, and transportation for sale of controlled substances and booked  
 6 at the Orange County Jail.

7 17. On or about June 7, 2013; in a criminal proceeding entitled *People of the State of*  
 8 *California vs. Brandon Abille Fulinara*, in the Superior Court of California, County of Orange,  
 9 North Justice Center, in Case No. 13NF0710, Respondent pled guilty to violating Health and  
 10 Safety Code section 11377(a) (possession of a controlled substance), to wit: MDMA, a felony. As  
 11 a result of a plea bargain, counts for violating Health and Safety Code section 11378 (possession  
 12 for sale of a controlled substance), and 11379(a) (sale or transportation of a controlled substance),  
 13 felonies, were dismissed. The Court deferred entry of judgment for 18 months and placed  
 14 Respondent on drug diversion pursuant to Penal Code section 1000.

15 PRAYER

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

- 18 1. Revoking or suspending Pharmacy Technician Registration Number TCH 94185  
 19 issued to Brandon Abille Fullinara;
- 20 2. Ordering Brandon Abille Fulinara to pay the Board of Pharmacy the reasonable costs  
 21 of the investigation and enforcement of this case, pursuant to Business and Professions Code  
 22 section 125.3;

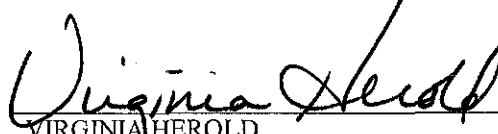
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3. Taking such other and further action as deemed necessary and proper.

DATED: \_\_\_\_\_

10/21/13



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

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