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8	BEFORE THE		
9	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS		
10	STATE OF C	CALIFORNIA	
11			
12	In the Matter of the Accusation Against:	Case No. 5076	
13	YVONNE CHRISTIAN SERNA P.O. Box 354		
14	Sultana, CA 93666	ACCUSATION	
15	Pharmacy Technician Registration No. TCH 122431		
16	Respondent.		
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. 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.1. On or		
22	about July 12, 2012, the Board of Pharmacy issued Pharmacy Technician Registration Number		
23	TCH 122431 to Yvonne Christian Serna (Respondent). The Pharmacy Technician Registration		
24	was in full force and effect at all times relevant t	o the charges brought herein and will expire on	
25	April 30, 2016, unless renewed.		
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ļ	4	Accusation	

1	JURISDICTION	
2	2. 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	3. Section 4300 of the Code states:	
6	"(a) Every license issued may be suspended or revoked.	
7 8	"(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and 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 in its discretion may deem proper.	
15	"(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy, including, but not limited to, the following:	
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19	"(1) Medical or psychiatric evaluation.	
20	"(2) Continuing medical or psychiatric treatment.	
20	"(3) Restriction of type or circumstances of practice.	
22	"(4) Continuing participation in a board-approved rehabilitation program.	
23	"(5) Abstention from the use of alcohol or drugs.	
23	"(6) Random fluid testing for alcohol or drugs.	
24	"(7) Compliance with laws and regulations governing the practice of pharmacy.	
26	"(d) The board may initiate disciplinary proceedings to revoke or suspend	
27	any probationary certificate of licensure for any violation of the terms and conditions of probation. Upon satisfactory completion of probation, the board shall convert the probationary certificate to a regular certificate, free of conditions.	
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	Accusation	

1 2 3	"(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure."
	<u>STATUTES</u>
4	4. Section 4301 of the Code states:
5	"The board shall take action against any holder of a license who is guilty
6 7	of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:
8	"(f) The commission of any act involving moral turpitude, dishonesty,
9	fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.
10	"(j) The violation of any of the statutes of this state, or any other state, or of the United States regulating controlled substances and dangerous drugs.
11	"(1) The conviction of a crime substantially related to the qualifications,
12	functions, and duties of a licensee under this chapter. The record of conviction of a
13	violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence
14	of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may
15	inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled
16	substances or dangerous drugs, to determine if the conviction is of an offense
17	substantially related to the qualifications, functions, and duties of a 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
18	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
19	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
20	guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.
21	"(o) Violating or attempting to violate, directly or indirectly, or assisting
22	in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing
23	pharmacy, including regulations established by the board or by any other state or federal regulatory agency.
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25	"(p) Actions or conduct that would have warranted denial of a license.
26	5. Section 125.3 of the Code states, in pertinent part, that the Board may request the
27	administrative law judge to direct a licentiate found to have committed a violation or violations of
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	Accusation

1	the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2	enforcement of the case.
3	6. Section 4060 of the Code states:
4	"No person shall possess any controlled substance, except that furnished
5	to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant
6	to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to
7	Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of subdivision (c) of Section 4052.
8 ·	(A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler,
9	pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the
10	supplier or producer.
11	"Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own
12	stock of dangerous drugs and devices."
13	7. Section 118 of the Code states:
14	(a) The withdrawal of an application for a license after it has been filed with a board in the department shall not, unless the board has consented in writing to
15	such withdrawal, deprive the board of its authority to institute or continue a proceeding against the applicant for the denial of the license upon any ground
16	provided by law or to enter an order denying the license upon any such ground.
17	"(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or
18	cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may
19	be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground
20	provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.
21	"(c) As used in this section, 'board' includes an individual who is authorized by any provision of this code to issue, suspend, or revoke a license, and
22	'license' includes 'certificate,' 'registration,' and 'permit."
23	DRUGS
24	8. Methamphetamine is a Schedule II controlled substance as designated by Health and
25	Safety Code section 11055(d)(2) and a dangerous drug as designated by Business and Professions
26	Code section 4022. It is a stimulant drug.
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1 FIRST CAUSE FOR DISCIPLINE (Criminal Conviction) 2 9. Respondent is subject to discipline under Code section 4301 (f) and (l), in that 3 4 Respondent was convicted of a crime that is substantially related to the qualifications, functions, and duties of a pharmacy technician, as follows: On or about April 3, 2012, in the case of *People* 5 6 v. Yvonne Christian Serna (Tulare County Superior Court, Case No. TCM258686), Respondent 7 was convicted on her nolo plea to a violation of Penal Code section 484 (a) (petty theft). The circumstances were that respondent took items from a Walmart store which was valued at 8 9 approximately \$65. SECOND CAUSE FOR DISCIPLINE 10 (Possession of a controlled substance for sale) 11 10. Respondent is subject to discipline under Code section 4301 (f) and (j), in that during 12 service of a warrant at Respondent's residence, a Tulare County Sheriff found a digital scale with 13 white residue, two plastic bags containing a crystal white substance, and a WD-40 can with a 14 false bottom containing package material and white residue. A presumptive test was performed 15 on the crystal white substance in the plastic bag which tested positive for methamphetamine. The 16 items were found in a bedroom. 17 PRAYER 18 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, 19 and that following the hearing, the Board of Pharmacy issue a decision: 20 Revoking or suspending Pharmacy Technician Registration Number TCH-122431, 211. issued to Yvonne Christian Serna.: 22 Ordering Yvonne Christian Serna to pay the Board of Pharmacy the reasonable costs 2. 23 of the investigation and enforcement of this case, pursuant to Business and Professions Code 24 section 125.3; 25 26 H27 11 11 28° 5

Accusation

Taking such other and further action as deemed necessary and proper. 3. 9/14/14 DATED: VIRGINIA HEROLD Executive Officer Board of Pharmacy Department of Consumer Affairs State of California Complainant SA2014114525 11325725.doc Accusation