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

11 In the Matter of the Accusation Against:

Case No. 5128

12 **MANUEL BARAJAS, JR.**  
13 7850 Raviller Dr.  
Downey, CA 90240

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

14 Pharmacy Technician Registration No. TCH 61269

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

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

20 2. On or about March 7, 2005, the Board issued Pharmacy Technician Registration  
21 No. TCH 61269 to Manuel Barajas, Jr. (Respondent). The Pharmacy Technician Registration was  
22 in full force and effect at all times relevant to the charges brought herein and will expire on  
23 May 31, 2014, unless renewed.

24 **JURISDICTION**

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

27 **STATUTORY PROVISIONS**

28 4. Section 118, subdivision (b), provides that the suspension, expiration, surrender or

1 cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary  
2 action during the period within which the license may be renewed, restored, reissued or reinstated.

3 5. Section 490 provides that a board may suspend or revoke a license on the ground that  
4 the licensee has been convicted of a crime substantially related to the qualifications, functions, or  
5 duties of the business or profession for which the license was issued.

6 6. Section 492 states:

7 "Notwithstanding any other provision of law, successful completion of any diversion  
8 program under the Penal Code, or successful completion of an alcohol and drug problem  
9 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of  
10 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2  
11 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that  
12 division, from taking disciplinary action against a licensee or from denying a license for  
13 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a  
14 record pertaining to an arrest.

15 "This section shall not be construed to apply to any drug diversion program operated by any  
16 agency established under Division 2 (commencing with Section 500) of this code, or any initiative  
17 act referred to in that division."

18 7. Section 4060 states:

19 "No person shall possess any controlled substance, except that furnished to a person upon  
20 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor  
21 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified  
22 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a  
23 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,  
24 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of  
25 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply  
26 to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,  
27 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified  
28 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly

1 labeled with the name and address of the supplier or producer.

2 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a physician  
3 assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and  
4 devices."

5 8. Section 4300, subdivision (a), states that "[e]very license issued may be suspended or  
6 revoked."

7 9. Section 4301 states, in pertinent part:

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

11 . . . .

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

14 **REGULATORY PROVISION**

15 10. California Code of Regulations, title 16, section 1770, states:

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

22 **COST RECOVERY**

23 11. Section 125.3 that the Board may request the administrative law judge to direct a  
24 licensee found to have committed a violation or violations of the licensing act to pay a sum not to  
25 exceed the reasonable costs of the investigation and enforcement of the case.

26 **CONTROLLED SUBSTANCE / DANGEROUS DRUG**

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

1 section 4022.

2 **CAUSE FOR DISCIPLINE**

3 **(Possession of a Controlled Substance - Methamphetamine)**

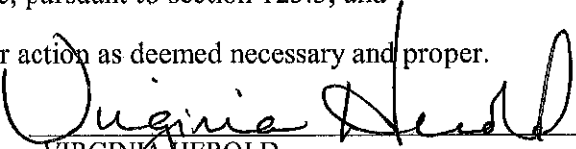
4 13. Respondent is subject to disciplinary action under sections 4060 and 4301, subdivision  
5 (j), in that on or about September 6, 2013, Respondent was found to be in possession of  
6 methamphetamine. The circumstances are that on that day, Los Angeles County Sheriff's  
7 Deputies encountered Respondent asleep in his vehicle with the driver's side door open while in  
8 the parking lot of the "Good Night Inn" motel. Located on the dash board of the vehicle was a  
9 baggie of methamphetamine that Respondent advised had been given to him for his personal use  
10 and which he consumes through the use of a straw. Respondent was subsequently arrested and  
11 charged with violating Health and Safety Code section 11377(a) [possession of a controlled  
12 substance], in a criminal proceeding entitled *The People of the State of California v. Manuel*  
13 *Barajas* (Super. Ct. L.A. County, Case No. 3DY05180). Respondent pled guilty and was placed  
14 in a deferred entry of judgment program for 18 months.

15 **PRAYER**

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

- 18 1. Revoking or suspending Pharmacy Technician Registration No. TCH 61269, issued to  
19 Manuel Barajas, Jr.;
- 20 2. Ordering Manuel Barajas, Jr. to pay the Board the reasonable costs of the  
21 investigation and enforcement of this case, pursuant to section 125.3; and
- 22 3. Taking such other and further action as deemed necessary and proper.

23 DATED: 5/3/14

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

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