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

11 In the Matter of the Accusation Against:

Case No. 5159

12 **CARLOS JEROME JACKSON**

A C C U S A T I O N

13 690 Cerritos Ave.
14 Long Beach, CA 90813

15 Pharmacy Technician Registration
16 No. TCH 123007

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 August 23, 2012, the Board of Pharmacy (Board) issued Pharmacy
24 Technician Registration No. TCH 123007 to Carlos Jerome Jackson (Respondent). The Pharmacy
25 Technician Registration expired on January 31, 2014, was cancelled and has not been renewed.

26 **JURISDICTION**

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

1 **STATUTORY PROVISIONS**

2 4. Section 118, subdivision (b) provides that the suspension, expiration, surrender, or
3 cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary
4 action during the period 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
7 against a licensee, a board may suspend or revoke a license on the ground that the
8 licensee has been convicted of a crime, if the crime is substantially related to the
9 qualifications, functions, or duties of the business or profession for which the license
10 was issued.

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

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

23 6. Section 493 states:

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

7. Section 4060 provides in pertinent part that:

No person shall possess any controlled substance, except that furnished to
a person upon prescription of a physician, dentist, podiatrist, optometrist, veterinarian,
or naturopathic doctor pursuant to Section 3640.7 . . . or a pharmacist pursuant to
either Section 4052.1 or 4052.2. This section shall not apply to the possession of any
controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician,
podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-
midwife, nurse practitioner, or physician assistant, if in stock in containers correctly
labeled with the name and address of the supplier or producer.

1 8. Section 4300 provides, in pertinent part, that every license issued by the Board is
2 subject to discipline, including suspension or revocation.

3 9. Section 4300.1 states:

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

10 10. Section 4301 states:

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

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

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19 (l) The conviction of a crime substantially related to the qualifications,
20 functions, and duties of a licensee under this chapter. The record of conviction of a
21 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
22 States Code regulating controlled substances or of a violation of the statutes of this
23 state regulating controlled substances or dangerous drugs shall be conclusive evidence
24 of unprofessional conduct. In all other cases, the record of conviction shall be
25 conclusive evidence only of the fact that the conviction occurred. The board may
26 inquire into the circumstances surrounding the commission of the crime, in order to fix
27 the degree of discipline or, in the case of a conviction not involving controlled
28 substances or dangerous drugs, to determine if the conviction is of an offense
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
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 11. Health and Safety Code section 11360, subdivision (a), provides that:

2 (a) Except as otherwise provided by this section or as authorized by law,
3 every person who transports, imports into this state, sells, furnishes, administers, or
4 gives away, or offers to transport, import into this state, sell, furnish, administer, or
5 give away, or attempts to import into this state or transport any marijuana shall be
6 punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal
7 Code for a period of two, three or four years.

8 **REGULATORY PROVISIONS**

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

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

17 **COST RECOVERY**

18 13. 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 **CONTROLLED SUBSTANCE**

23 14. "Marijuana," is a Schedule I controlled substance as designated by Health and Safety
24 Code section 11054, subdivision (d)(13) and is categorized as a dangerous drug pursuant to
25 Section 4022.

26 **FIRST CAUSE FOR DISCIPLINE**

27 **(Conviction of a Substantially Related Crime)**

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

a. On or about December 3, 2013, after pleading nolo contendere, Respondent was
convicted of one misdemeanor count of violating Health and Safety Code section 11360,

1 subdivision (a) [selling or furnishing Marijuana] in the criminal proceeding entitled *The People of*
2 *the State of California v. Carlos Jerome Jackson* (Super. Ct. L.A. County, 2013, No. NA097549).
3 The Court sentenced Respondent to serve 16 days in the Los Angeles County Jail, placed him on
4 36 months formal probation, ordered him to register as a convicted narcotics offender and
5 complete a drug rehabilitation and treatment program, among other terms and conditions. On July
6 22, 2014, Respondent admitted to violating his probation in open court and his probation was
7 modified in that he was ordered to enroll in Cal Trans. The circumstances surrounding the
8 conviction are that, on or about November 20, 2013, officers from the Long Beach Police
9 Department (LBPD) were investigating a complaint that drugs were being sold in the Albertson's
10 shopping center located at Fifth Street and 450 Long Beach Blvd in Long Beach. With the
11 assistance of a police assistant (PA) for the LBPD, the PA contacted Respondent and a male
12 associate at Long Beach Blvd., near Togo's restaurant, to attempt to purchase drugs from them.
13 The PA asked Respondent if "he had a good 40". Respondent said "of what?" The PA stated "of
14 Kush"¹. Respondent replied that he did, and agreed to sell the PA \$40 worth of Marijuana.
15 Respondent gave the PA a telephone number, for future drug deals. Respondent gave the PA an
16 orange pill bottle with a green leafy substance inside, and the PA gave Respondent \$40. The
17 police located a cell phone on Respondent's person which had the same telephone number as the
18 number which had been provided by Respondent during the drug sale to the PA. Respondent was
19 subsequently arrested and charged with violating Health & Safety Code section 11360, subdivision
20 (a).

21 **SECOND CAUSE FOR DISCIPLINE**

22 **(Illegally Obtained or Possessed a Controlled Substance)**

23 16. Respondent is subject to disciplinary action under Section 4301, subdivision (j), as
24 defined in Section 4060, in that on or about November 20, 2013, Respondent obtained or
25 possessed a controlled substance, to wit: Marijuana. Complainant refers to, and by this reference
26 incorporates, the allegations set forth above in Paragraph 15, as though set forth fully.

27 ¹ "Kush" refers to a subset of strains of Cannabis indica plants (Marijuana) which may have
28 originated in the mountains of Hindu Kush.

1 **DISCIPLINARY CONSIDERATIONS**

2 17. In order to determine the degree of discipline, if any to be imposed on Respondent,
3 Complainant alleges the following:

4 a. On or about October 25, 2010, after pleading nolo contendere, Respondent was
5 convicted of one misdemeanor count of violating Health and Safety Code section 11357,
6 subdivision (b) [possession of Marijuana less than 28.5 grams] in the criminal proceeding entitled
7 *The People of the State of California v. Carlos Jerome Jackson* (Super. Ct. L.A. County, 2010,
8 No. Z28059). The court sentenced Respondent to serve three days in the Los Angeles County
9 Jail. On or about July 24, 2012, the Court dismissed the case pursuant to Penal Code section
10 1203.4. The circumstances surrounding the conviction are that, on or about February 2, 2009,
11 during an investigation by the Long Beach Police Department, police officers observed
12 Respondent sitting at the top of a staircase at a hotel, rolling out a portion of Marijuana in a
13 \$20.00 bill. During a search of his person, to which he consented, an officer located a small plastic
14 bag containing a green leafy substance that appeared to be Marijuana. Respondent was cited with
15 a violation of Health & Safety Code section 11357, subdivision (b) [possession of Marijuana], and
16 released at the scene.

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 1. Revoking or suspending Pharmacy Technician Registration No. TCH 123007, issued
21 to Carlos Jerome Jackson;

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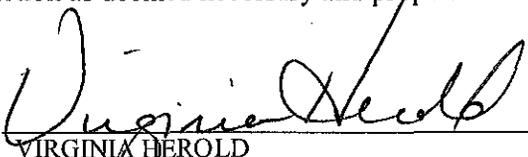
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1 2. Ordering Carlos Jerome Jackson to pay the Board of Pharmacy the reasonable costs of
2 the investigation and enforcement of this case, pursuant to Business and Professions Code section
3 125.3; and

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

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6 DATED: 9/11/14



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

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