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

12 In the Matter of the Accusation Against:

Case No. 5180

13 **SERGIO HERIBERTO SAAVEDRA**  
13100 S. Main St.  
Los Angeles, CA 90061

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

14 Pharmacy Technician Registration  
15 No. TCH 110392

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, Department of Consumer Affairs.

21 2. On or about March 11, 2011, the Board of Pharmacy (Board) issued Pharmacy  
22 Technician Registration No. TCH 110392 to Sergio Heriberto Saavedra (Respondent). The  
23 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges  
24 brought herein and will expire on September 30, 2014, unless renewed.

25 **JURISDICTION**

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

1 **STATUTORY PROVISIONS**

2 4. Section 490 states, in pertinent part:

3 "(a) In addition to any other action that a board is permitted to take against a licensee, a  
4 board may suspend or revoke a license on the ground that the licensee has been convicted of a  
5 crime, if the crime is substantially related to the qualifications, functions, or duties of the business  
6 or profession for which the license was issued."

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

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

17 5. Section 492 states, in pertinent part:

18 "Notwithstanding any other provision of law, successful completion of any diversion  
19 program under the Penal Code, or successful completion of an alcohol and drug problem  
20 assessment program under Article 5 (commencing with Section 23249.50) of Chapter  
21 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2  
22 (commencing with Section 500) of this code, or any initiative act referred to in that division, from  
23 taking disciplinary action against a licensee or from denying a license for professional  
24 misconduct, notwithstanding that evidence of that misconduct may be recorded in a record  
25 pertaining to an arrest."

26 6. Section 493 states:

27 "Notwithstanding any other provision of law, in a proceeding conducted by a board within  
28 the department pursuant to law to deny an application for a license or to suspend or revoke a

1 license or otherwise take disciplinary action against a person who holds a license, upon the  
2 ground that the applicant or the licensee has been convicted of a crime substantially related to the  
3 qualifications, functions, and duties of the licensee in question, the record of conviction of the  
4 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,  
5 and the board may inquire into the circumstances surrounding the commission of the crime in  
6 order to fix the degree of discipline or to determine if the conviction is substantially related to the  
7 qualifications, functions, and duties of the licensee in question. As used in this section, "license"  
8 includes "certificate," "permit," "authority," and "registration."

9 7. Section 4060 provides in pertinent part, that no person shall possess any controlled  
10 substance, except that furnished to a person upon the prescription of a physician, dentist,  
11 podiatrist, optometrist, veterinarian, or other authorized prescriber.

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

14 9. Section 4300.1 states:

15 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by  
16 operation of law or by order or decision of the board or a court of law, the placement of a license  
17 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board  
18 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary  
19 proceeding against, the licensee or to render a decision suspending or revoking the license."

20 10. Section 4301 states:

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

24 . . . .

25 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous  
26 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to  
27 oneself, to a person holding a license under this chapter, or to any other person or to the public, or  
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1 to the extent that the use impairs the ability of the person to conduct with safety to the public the  
2 practice authorized by the license.

3 . . . .

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

6 . . . .

7 "(l) The conviction of a crime substantially related to the qualifications, functions, and  
8 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
9 (commencing with Section 801) of Title 21 of the United States Code regulating controlled  
10 substances or of a violation of the statutes of this state regulating controlled substances or  
11 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the  
12 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.  
13 The board may inquire into the circumstances surrounding the commission of the crime, in order  
14 to fix the degree of discipline or, in the case of a conviction not involving controlled substances  
15 or dangerous drugs, to determine if the conviction is of an offense substantially related to the  
16 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or  
17 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning  
18 of this provision. The board may take action when the time for appeal has elapsed, or the  
19 judgment of conviction has been affirmed on appeal or when an order granting probation is made  
20 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of  
21 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
22 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
23 indictment."

24 **REGULATORY PROVISIONS**

25 11. California Code of Regulations, title 16, section 1770 states, in pertinent part:

26 "For the purpose of denial, suspension, or revocation of a personal or facility license  
27 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a  
28 crime or act shall be considered substantially related to the qualifications, functions or duties of a

1 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a  
2 licensee or registrant to perform the functions authorized by his license or registration in a manner  
3 consistent with the public health, safety, or welfare."

4 **COST RECOVERY**

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

9 13. **CONTROLLED SUBSTANCE**

10 a. "Marijuana," is a Schedule I controlled substance as designated by Health and Safety  
11 Code section 11054, subdivision (d)(13) and is categorized as a dangerous drug pursuant to  
12 section 4022.

13 b. "Methamphetamine," is a Schedule II controlled substance as designated by Health  
14 and Safety Code section 11055, subdivision (d)(2) and is categorized as a dangerous drug  
15 pursuant to section 4022.

16 **FIRST CAUSE FOR DISCIPLINE**

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

18 14. Respondent is subject to disciplinary action under Code sections 4301, subdivision (l)  
19 and 490, in conjunction with California Code of Regulations, title 16, section 1770, in that  
20 Respondent has been convicted of a crime substantially related to the qualifications, functions or  
21 duties of a pharmacy technician. On or about February 4, 2014, pursuant to a plea of *nolo*  
22 *contendere*, Respondent was convicted of one misdemeanor count of violating Penal Code section  
23 602, subdivision (k) [trespass: injure property] in the criminal proceeding entitled *The People of*  
24 *the State of California v. Sergio Heriberto Saavedra* (Super. Ct. L.A. County, 2013, No.  
25 3CA19635). The Court deferred pronouncement of sentence for 24 months pending  
26 Respondent's completion of a drug diversion program. The circumstances surrounding the  
27 conviction are that on or about October 18, 2013, an officer of the Sheriff's Department observed  
28 Respondent on his skateboard failing to stop at a red light and a "don't walk" sign at a crosswalk.

1 While speaking to Respondent, the officer detected a strong odor of Marijuana emitting from his  
2 person. During a search of Respondent's person, the officer noticed a bulge in Respondent's  
3 pocket. When questioned, Respondent stated, "It's just a little weed and crystal." The officer  
4 located two plastic baggies in Respondent's front right coin pocket. One bag contained  
5 Marijuana and the other contained a white crystalline substance resembling Methamphetamine.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Use/Under the Influence of a Controlled Substance)**

8 15. Respondent is subject to disciplinary action under Code section 4301, subdivision (h),  
9 in that on or about October 18, 2013, Respondent used and/or was under the influence of a  
10 controlled substance to the extent or in a manner as to be dangerous or injurious to himself or to  
11 the public. Complainant refers to, and by this reference incorporates, the allegations set forth  
12 above in paragraph 14, as though set forth fully.

13 **THIRD CAUSE FOR DISCIPLINE**

14 **(Obtained or Possessed a Controlled Substance)**

15 16. Respondent is subject to disciplinary action under Code section 4301, subdivision (j),  
16 as defined in section 4060, in that on or about October 18, 2013, Respondent obtained or  
17 possessed controlled substances in violation of Health and Safety Code sections 11357 and  
18 11377. Complainant refers to, and by this reference incorporates, the allegations set forth above  
19 in paragraph 14, as though set forth fully.

20 **PRAYER**

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

23 1. Revoking or suspending Pharmacy Technician Registration No. TCH 110392, issued  
24 to Sergio Heriberto Saavedra;

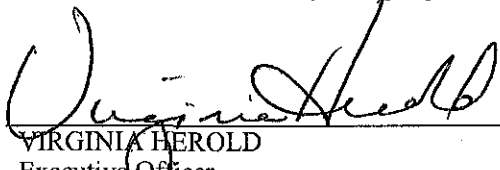
25 2. Ordering Sergio Heriberto Saavedra to pay the Board of Pharmacy the reasonable  
26 costs of the investigation and enforcement of this case, pursuant to Business and Professions  
27 Code section 125.3; and

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

DATED: 11/14/14



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

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