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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. 5374

12 **DANIEL DEJESUS MEJIA**
16245 Lakewood Blvd., #8
13 **Bellflower, CA 90706**

A C C U S A T I O N

14 **Pharmacy Technician Registration No. TCH**
15 **109456**

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 December 29, 2010, the Board of Pharmacy issued Pharmacye
22 Technician Registration Number TCH 109456 to Daniel DeJesus Mejia (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 March 31, 2016, unless renewed.

25 **JURISDICTION**

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

1 4. Section 22 of the Code states:

2 "(a) 'Board' as used in any provisions of this Code, refers to the board in which the
3 administration of the provision is vested, and unless otherwise expressly provided, shall include
4 'bureau,' 'commission,' 'committee,' 'department,' 'division,' 'examining committee,' 'program,' and
5 'agency.'

6 5. Section 118, subdivision (b), of the Code provides that the
7 suspension/expiration/surrender/cancellation of a license shall not deprive the Board/ Registrar/
8 Director of jurisdiction to proceed with a disciplinary action during the period within which the
9 license may be renewed, restored, reissued or reinstated.

10 6. Section 150 of the Code states: "The department is under the control of a civil
11 executive officer who is known as the Director of Consumer Affairs."

12 7. Section 477 of the Code states:

13 As used in this division:

14 "(a) 'Board' includes 'bureau,' 'commission,' 'committee,' 'department,' 'division,'
15 'examining committee,' 'program,' and 'agency.'

16 "(b) 'License' includes certificate, registration or other means to engage in a
17 business or profession regulated by this code."

18 8. Section 480 of the Code states in pertinent part:

19 "(a) A board may deny a license regulated by this code on the grounds that the applicant
20 has one of the following:

21 "(1) Been convicted of a crime. A conviction within the meaning of this section means a
22 plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a
23 board is permitted to take following the establishment of a conviction may be taken when the
24 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when
25 an order granting probation is made suspending the imposition of sentence, irrespective of a
26 subsequent order under the provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

27 * * *

28 "(B) The board may deny a license pursuant to this subdivision only if the crime or act is

1 substantially related to the qualifications, functions, or duties of the business or profession for
2 which application is made.

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

7 10. Section 493 of the Code states:

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

17 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
18 'registration.'"

19 11. Section 4022 provides in pertinent part that: "Dangerous drug" or "dangerous
20 device" means any drug or device unsafe for self-use in humans or animals, and includes the
21 following:

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

24
25 * * *

26 (c) Any other drug or device that by federal or state law can be lawfully dispensed only on
27 prescription or furnished pursuant to Section 4006, 4022.5. (a) "Designated representative" means
28 an individual to whom a license has been granted pursuant to Section 4053. A pharmacist

1 fulfilling the duties of Section 4053 shall not be required to obtain a license as a designated
2 representative.”

3 12. Section 4060 of the Code states:

4 "No person shall possess any controlled substance, except that furnished to a person upon
5 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
6 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse
7 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
8 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
9 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
10 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
11 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
12 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
13 nurse midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
14 labeled with the name and address of the supplier or producer.

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

18 13. Section 4300 of the Code states:

19 "(a) Every license issued may be suspended or revoked.

20 "(b) The board shall discipline the holder of any license issued by the board, whose default
21 has been entered or whose case has been heard by the board and found guilty, by any of the
22 following methods:

23 "(1) Suspending judgment.

24 "(2) Placing him or her upon probation.

25 "(3) Suspending his or her right to practice for a period not exceeding one year.

26 "(4) Revoking his or her license.

27 "(5) Taking any other action in relation to disciplining him or her as the board in its
28 discretion may deem proper.

1 * * *

2 "(e) The proceedings under this article shall be conducted in accordance with Chapter 5
3 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board
4 shall have all the powers granted therein. The action shall be final, except that the propriety of
5 the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of
6 Civil Procedure."

7 14. Section 4300.1 of the Code states:

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

13 15. Section 4301 of the Code states:

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

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

19 * * *

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

1 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
2 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
3 of this provision. The board may take action when the time for appeal has elapsed, or the
4 judgment of conviction has been affirmed on appeal or when an order granting probation is made
5 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
6 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
7 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
8 indictment.

9 * * *

10 “(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
11 violation of or conspiring to violate any provision or term of this chapter or of the applicable
12 federal and state laws and regulations governing pharmacy, including regulations established by
13 the board or by any other state or federal regulatory agency.”

14 “(p) Actions or conduct that would have warranted denial of a license.”

15 “(p) Actions or conduct that would have warranted denial of a license.

16 16. Health and Safety Code sec. 11154, subd. (a) provides: “Except in the regular
17 practice of his or her profession, no person shall knowingly prescribe, administer, dispense, or
18 furnish a controlled substance to or for any person or animal which is not under his or her
19 treatment for a pathology or condition other than addiction to a controlled substance, except as
20 provided in this division.”

21 17. Health and Safety Code sec. 11171 provides that: “No person shall prescribe,
22 administer, or furnish a controlled substance except under the conditions and in the manner
23 provided by this division.

24 18. Health and Safety Code sec. 11357, subd (c) provides in pertinent part: “Except as
25 authorized by law, every person who possesses more than 28.5 grams of marijuana, other than
26 concentrated cannabis, shall be punished by imprisonment in a county jail for a period of not
27 more than six months or by a fine of not more than five hundred dollars (\$500), or by both such
28 fine and imprisonment.”

1 19. Section 125.3 of the Code states, in pertinent part, that the Board may request the
2 administrative law judge to direct a licentiate found to have committed a violation or violations of
3 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
4 enforcement of the case.

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

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

12 CONTROLLED SUBSTANCE

13 21. Marijuana is a hallucinogenic Schedule I controlled substance as defined in Health
14 and Safety Code section 11054(d)(13) and a dangerous drug according to Business and
15 Professions Code section 4022.

16 FIRST CAUSE FOR DISCIPLINE

17 (Unprofessional Conduct, Possession of Marijuana for Sale)

18 22. Respondent is subject to disciplinary action under sections 4300 and 4301,
19 subdivision j, in conjunction with section 4060 and Health and Safety Code sections 11154,
20 subd. (a) and 11171, in that on or about July 17, 2014, Respondent possessed a substantial
21 quantity of marijuana for sale. The circumstances are as follows:

22 23. On or about on July 17, 2014, Los Angeles County Deputy Sheriffs responded to a
23 call regarding a suspect selling narcotics in front of the property located at 8653 Mayne St.,
24 Bellflower, CA. Upon arrival deputies observed the Respondent that matched the description of
25 the suspect and two other males sitting on the curb in front of the location. Upon approaching the
26 Respondent, deputies immediately smelled the strong odor of marijuana and observed the
27 Respondent place a cigarette under his legs. All subjected were detained pending a narcotics
28 investigation.

1 24. Deputies recovered the cigarette and observed it contained a green leafy substance.
2 (hand rolled cigarette containing marijuana). Upon searching the vehicle to recover the owner's
3 identification, deputies located a black bag on the backseat. Inside the bag deputies recovered a
4 large plastic container containing a green leafy substance and a small plastic bindle containing a
5 green leafy substance (38.196 grams marijuana), a digital scale, and packaging materials.
6 Respondent admitted that the bag belonged to him and deputies recovered \$66 in U.S. currency in
7 various denominations.

8 25. Respondent was placed under arrest and a witness positively identified him as the
9 person observed conducting a hand-to-hand narcotics transaction. Respondent admitted that all
10 of the marijuana and the digital scale belonged to him.

11 SECOND CAUSE FOR DISCIPLINE

12 (Unprofessional Conduct, Conviction of Possession of More than an Ounce of Marijuana)

13 26. Respondent is subject to disciplinary action under sections 480, subd. (a)(1) and
14 4301, subd. (l) in conjunction with California Code of Regulations, title 16, section 1770 in that
15 on or about August 21, 2014, in the matter *People v. Daniel De Jesus Mejia*, Los Angeles
16 County Superior Court, case no. VA136078, Respondent pled *nolo contendere* and was
17 convicted of violation of an amended count two, Health and Safety Code Section 11357(c)-
18 Possession of More than an Ounce of Marijuana, a felony. The court granted a 36-month formal
19 probation period under terms and conditions including, but not limited to: obey all laws and
20 orders of the court; register as a convicted narcotics offender; serve 10 days in jail (credit for 5
21 days); not own, use or possess any dangerous weapon; and pay court fees and fines. The
22 circumstance of the conviction are as alleged in the preceding paragraphs 23 through 25 that are
23 incorporated by this reference as though fully set forth.

24 THIRD CAUSE FOR DISCIPLINE

25 (Unprofessional Conduct, Attempted Sale of Marijuana)

26 27. Respondent is subject to disciplinary action under sections 4300 and 4301,
27 subdivision (o), in conjunction with Health and Safety Code sections 11154, subd. (a) and 11171,
28 in that on or about July 17, 2014, Respondent attempted to sell marijuana The circumstance of

1 the conviction are as alleged in the preceding paragraphs 23 through 25 that are incorporated by
2 this reference as though fully set forth.

3 FOURTH CAUSE FOR DISCIPLINE

4 (Unprofessional Conduct, Conduct that Would Have Warranted License Denial)

5 28. Respondent is subject to disciplinary action under sections 4300 and 4301,
6 subdivision (p), in that Respondent's conviction as alleged in the preceding paragraph 26, that is
7 incorporated by this reference as though fully set forth, would have warranted denial of a license
8 as a pharmacy technician.

9 DISCIPLINE CONSIDERATIONS

10 29. To determine the degree of discipline, if any, to be imposed on Respondent,
11 Complainant alleges that on or about October 10, 2012, in a prior action, the Board of Pharmacy
12 issued Citation Number CI 2011 52897 for violation of Code sec. 4301, subd. (h)
13 [Unprofessional Conduct -Administering to oneself, of any controlled substance, or the use of any
14 dangerous drug or of alcoholic beverages] with an administrative penalty of \$50.00; and Code
15 sec. 4301, subd. (i) {Unprofessional Conduct- Conviction of a crime substantially related to the
16 practice pharmacy] with an administrative penalty of \$50.00. The citation has become final and
17 nonappealable. The circumstances of the citation are as follows:

18 30. Code section 4301(h) authorizes the Board to take action against a licensee for their
19 use of an alcoholic beverage to the extent or in a manner as to be dangerous or injurious to
20 oneself or others. Specifically, on June 09, 2012, Respondent was arrested for violating Vehicle
21 Code (VC) sections 23152(a) - Driving Under the Influence (DUI) of a Drug or Alcohol and
22 23152(b)- DUI/0.08 percent, a misdemeanor. Business and Professions Code section 4301(i)
23 authorizes the Board to take action against a licensee for the conviction of a crime substantially
24 related to the qualifications, functions, and duties of a licensee. Specifically, on July 18, 2012,
25 Respondent was convicted of a misdemeanor violation of VC section 23152(b)- DUI/0.08
26 percent. The Citation is now final and is incorporated by reference as if fully set forth.

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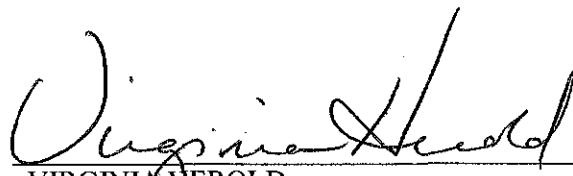
PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 109456, issued to Daniel DeJesus Mejia
2. Ordering Daniel DeJesus Mejia to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: _____

6/13/15



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

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