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

10 In the Matter of the Accusation Against:
11 **MELISSA ANN ORTEGA**
12 827 Paseo Tosamar
13 Camarillo, CA 93012
14 Original Pharmacy Technician Registration No.
TCH 142714
15 Respondent.

Case No. 5715

ACCUSATION

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21 Complainant alleges:

22 **PARTIES**

- 23 1. Virginia Herold ("Complainant") brings this Accusation solely in her official capacity
24 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 25 2. On or about September 17, 2014, the Board of Pharmacy issued Original Pharmacy
26 Technician Registration Number TCH 142714 to Melissa Ann Ortega ("Respondent"). The
27 Pharmacy Technician License was in full force and effect at all times relevant to the charges
28 brought herein and will expire on June 30, 2016, unless renewed.

1 **JURISDICTION**

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

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

6 5. Section 4300.1 states:

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

12 **STATUTORY PROVISIONS**

13 6. Section 4022 states

14 "Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in
15 humans or animals, and includes the following:

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

18 "(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by
19 or on the order of a _____," "Rx only," or words of similar import, the blank to be filled in
20 with the designation of the practitioner licensed to use or order use of the device.

21 "(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
22 prescription or furnished pursuant to Section 4006."

23 7. Section 4060 states, in pertinent part:

24 "No person shall possess any controlled substance, except that furnished to a person upon
25 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
26 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
27 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
28 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,

1 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
2 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply
3 to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
4 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
5 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
6 labeled with the name and address of the supplier or producer.

7 8. Section 4301 states:

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 **REGULATORY PROVISION**

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

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

19 **COST RECOVERY**

20 10. Section 125.3 states, in pertinent part, that the Board may request the administrative
21 law judge to direct a licentiate found to have committed a violation or violations of the licensing
22 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
23 case.

24 **CONTROLLED SUBSTANCES AND DANGEROUS DRUGS**

25 11. Marijuana is a hallucinogenic Schedule I controlled substance as defined in Health and
26 Safety Code section 11054, subdivision (d)(13), and a dangerous drug pursuant to Business and
27 Professions Code section 4022.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct)**

3 12. Respondent is subject to discipline under section 4301, on the grounds of general
4 unprofessional conduct, as follows:

5 a. On or about June 14, 2015, an officer from the Port Hueneme Police Department
6 approached a parked vehicle, smelling a strong odor of burnt marijuana. The officer noticed that
7 the vehicle's driver window was open approximately four inches and the interior of the vehicle was
8 filled with smoke. The officer illuminated the vehicle with his flashlight and observed a male, A.N.
9 in the driver's seat, Respondent in the rear driver's side seat and an infant in the rear passenger
10 side of the vehicle. The officer asked whose child the infant was, and Respondent stated it was her
11 daughter with A.N. The officer asked if they regularly smoked marijuana in the presence of their
12 child and Respondent replied that she was doing nothing wrong. A.N. stated that he was not
13 blowing marijuana in the child's face, so everything was ok, and he had the window open a few
14 inches so he was not "hot boxing." During the investigation, the child was evaluated by the
15 paramedics, who found that the child was very lethargic and took quite a while to wake up. Also
16 on the floorboard directly in front of the child was a six pack of beer bottles which were almost
17 empty but cold to the touch.

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(Possession of a Controlled Substance)**

20 13. Respondent is subject to disciplinary action under section 4060 for possessing
21 marijuana, a schedule I controlled substance, without a prescription. The circumstances are that
22 on or about June 14, 2015, Respondent was found smoking marijuana in her car while her child
23 was present. Complainant refers to, and by this reference incorporates, the allegations set forth
24 above in paragraph 12, subparagraph (a) inclusive, as though set forth fully.

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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 Original Pharmacy Technician Registration Number TCH 142714, issued to Melissa Ann Ortega;
2. Ordering Melissa Ann Ortega 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; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: _____

4/6/16

Virginia Herold

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

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