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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. 5881

13 **ARLENE FRANCIS DELGADO**
633 Mulvihill Ave.
Redlands, CA 92374

ACCUSATION

14 **Pharmacy Technician Registration No.**
15 **TCH 143801**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about December 5, 2014, the Board of Pharmacy issued Pharmacy Technician
23 Registration No. TCH 143801 to Arlene Francis Delgado ("Respondent"). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought
25 herein and will expire on May 31, 2018, unless renewed.

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1 **JURISDICTION**

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

5 4. Section 4011 of the Code provides that "[t]he board shall administer and enforce this
6 chapter [Pharmacy Law, (Business and Professions Code, Sec 4000 et seq.)] and the Uniform
7 Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and
8 Safety Code)."

9 5. Section 4300, subdivision (a), of the Code states, in pertinent part, that "[e]very
10 license issued may be suspended or revoked."

11 6. Section 4300.1 of the Code states:

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

17 **STATUTORY AND REGULATORY PROVISIONS**

18 7. Section 4301 of the Code states, in pertinent part:

19 "The board shall take action against any holder of a license who is guilty of unprofessional
20 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

21 Unprofessional conduct shall include, but is not limited to, any of the following:

22 ...

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

25

26 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
27 violation of or conspiring to violate any provision or term of this chapter or of the applicable
28 federal and state laws and regulations governing pharmacy, including regulations established by

1 the board or by any other state or federal regulatory agency.

2 "(p) Actions or conduct that would have warranted denial of a license. . . ."

3 8. Section 4060 of the Code states, in pertinent part:

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
6 doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
7 nurse-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 9. Health and Safety Code section 11378 states, in pertinent part:

19 "Except as otherwise provided in Article 7 (commencing with Section 4211) of Chapter 9
20 of Division 2 of the Business and Professions Code, every person who possesses for sale any
21 controlled substance which is (1) classified in Schedule III, IV, or V and which is not a narcotic
22 drug, except subdivision (g) of Section 11056, (2) specified in subdivision (d) of Section 11054,
23 except paragraphs (13), (14), (15), (20), (21), (22), and (23) of subdivision (d), (3) specified in
24 paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of
25 subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f), except paragraph
26 (3) of subdivision (e) and subparagraphs (A) and (B) of paragraph (2) of subdivision (f), of
27 Section 11055, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of
28 the Penal Code."

1 **COST RECOVERY**

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

6 **CONTROLLED SUBSTANCE / DANGEROUS DRUG**

7 11. Marijuana is a Schedule I controlled substances under State and federal law. (Health
8 and Safety Code section 11054, subdivisions (d)(13) and (20); 21 U.S.C. § 812.) Marijuana is
9 also a dangerous drug pursuant to Code section 4022.

10 12. Methamphetamine is a Schedule II controlled substance as designated by Health and
11 Safety Code section 11055, subdivision (d)(2), and a dangerous drug pursuant to Code section
12 4022.

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(Unlawful Possession of a Controlled Substance)**

15 13. Respondent is subject to disciplinary action under Code section 4301, subdivision (j),
16 on the grounds of unprofessional conduct, for violating Code sections 4060 and Health and Safety
17 Code section 11378, in that Respondent unlawfully possessed controlled substances, as follows:

18 a. On or about November 5, 2015, San Bernardino Police Department officers stopped
19 Respondent's vehicle for a traffic violation. Upon contact, Respondent was nervous and visibly
20 shaking. When an officer asked Respondent if she had any illegal narcotics inside her vehicle,
21 Respondent gave the officer a marijuana blunt cigarette and stated that was all she had. A search
22 of Respondent's vehicle revealed two clear bags containing approximately 7 grams of
23 methamphetamine, and an open 24 ounce beer.

24 **SECOND CAUSE FOR DISCIPLINE**

25 **(Violate Pharmacy Law / Acts Warranting Denial of Licensure)**

26 14. Respondent is subject to disciplinary action under Code section 4301, subdivisions
27 (o) and (p), in that Respondent violated state law and regulations governing pharmacy, and
28 committed acts of unprofessional conduct that would have warranted a denial of a license.

1 Complainant refers to and by this reference incorporates that allegations set for above in
2 paragraph 14, inclusive, as though set forth fully.

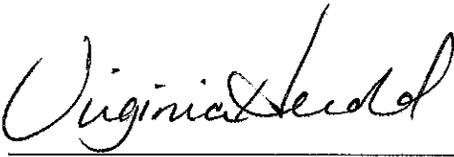
3 PRAYER

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

- 6 1. Revoking or suspending Pharmacy Technician Registration No. TCH 143801, issued
7 to Arlene Francis Delgado;
- 8 2. Ordering Arlene Francis Delgado to pay the Board the reasonable costs of the
9 investigation and enforcement of this case, pursuant to Code section 125.3; and,
- 10 3. Taking such other and further action as deemed necessary and proper.

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DATED: 11/14/16



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

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