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

11  
12 In the Matter of the Accusation Against:

Case No. 5956

13 **JERALD L. NICKELSON**  
14 **4142 Adams Avenue #201**  
**San Diego, CA 92116**

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

15 **Pharmacist License No. RPH 42174**

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 (Board), Department of Consumer Affairs.

22 2. On or about August 29, 1988, the Board issued Pharmacist License Number RPH  
23 42174 to Jerald L. Nickelson (Respondent). The Pharmacist License expired on July 31, 2016,  
24 and has not been 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 9. Section 4301 of the Code states:

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

6 ...

7 (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit,  
8 or corruption, whether the act is committed in the course of relations as a licensee or  
9 otherwise, and whether the act is a felony or misdemeanor or not.

10 ...

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

13 ...

14 (l) The conviction of a crime substantially related to the qualifications, functions,  
15 and duties of a licensee under this chapter. The record of conviction of a violation of  
16 Chapter 13 (commencing with Section 801) of Title 21 of the United States Code  
17 regulating controlled substances or of a violation of the statutes of this state regulating  
18 controlled substances or dangerous drugs shall be conclusive evidence of unprofessional  
19 conduct. In all other cases, the record of conviction shall be conclusive evidence only of  
20 the fact that the conviction occurred. The board may inquire into the circumstances  
21 surrounding the commission of the crime, in order to fix the degree of discipline or, in  
22 the case of a conviction not involving controlled substances or dangerous drugs, to  
23 determine if the conviction is of an offense substantially related to the qualifications,  
24 functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a  
25 conviction following a plea of nolo contendere is deemed to be a conviction within the  
26 meaning of this provision. The board may take action when the time for appeal has  
27 elapsed, or the judgment of conviction has been affirmed on appeal or when an order  
28 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. . . .

## 21 REGULATORY PROVISIONS

22 10. California Code of Regulations, title 16, section 1769, states:

23 ...

24 (b) When considering the suspension or revocation of a facility or a personal  
25 License on the ground that the licensee or the registrant has been convicted of a crime,  
26 the board, in evaluating the rehabilitation of such person and his present eligibility for a  
27 license will consider the following criteria:

28 (1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

- 1 (3) The time that has elapsed since commission of the act(s) or offense(s).
- 2 (4) Whether the licensee has complied with all terms of parole, probation,  
3 restitution or any other sanctions lawfully imposed against the licensee.
- 4 (5) Evidence, if any, of rehabilitation submitted by the licensee.

5 11. 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  
8 Code, a crime or act shall be considered substantially related to the qualifications,  
9 functions or duties of a licensee or registrant if to a substantial degree it evidences  
present or potential unfitness of a licensee or registrant to perform the functions  
authorized by his license or registration in a manner consistent with the public health,  
safety, or welfare.

10 **COSTS**

11 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
12 administrative law judge to direct a licentiate found to have committed a violation or violations of  
13 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
14 enforcement of the case, with failure of the licentiate to comply subjecting the license to not  
15 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs  
16 may be included in a stipulated settlement.

17 **DRUG**

18 13. Methamphetamine is a Schedule II controlled substance as designated by Health and  
19 Safety Code section 11055, subdivision (d)(2), and is a dangerous drug pursuant to Business and  
20 Professions Code section 4022.

21 **FIRST CAUSE FOR DISCIPLINE**

22 **(June 15, 2016 Criminal Convictions for Transporting a Controlled Substance for Sale**  
23 **& Possession of a Controlled Substance on February 26, 2016)**

24 14. Respondent has subjected his license to discipline under sections 490 and 4301,  
25 subdivision (l) of the Code in that he was convicted of crimes that are substantially related to the  
26 qualifications, duties, and functions of a pharmacist. The circumstances are as follows:

- 27 a. On or about June 15, 2016, in a criminal proceeding entitled *People of the State*  
28 *of California v. Jerald Lee Nickelson*, in San Diego County Superior Court, case number

1 SCS285546, Respondent was convicted on his plea of guilty to violating Health and Safety Code  
2 section 11379, subdivision (a), transporting a controlled substance for sale, a felony; and Health  
3 and Safety Code section 11377, subdivision (a), possession of a controlled substance, a  
4 misdemeanor.

5 b. As a result of the convictions, Respondent was sentenced to serve 180 days in  
6 jail, with pre-custody credit for four days. He was granted formal probation for three years, and  
7 was ordered to pay fees and fines, and submit to firearms restrictions.

8 c. The facts that led to the convictions are that on the afternoon of February 26,  
9 2016, Respondent was entering the United States from Mexico through the pedestrian port of  
10 entry in San Ysidro, California. A Customs and Border Security Officer sent Respondent to a  
11 secondary inspection area where Respondent gave a Homeland Security Investigations Special  
12 Agent (SA) permission to search his belongings. The SA seized approximately 11.8 grams of a  
13 crystal-like substance which subsequently tested positive for methamphetamine, which had been  
14 secreted inside an allergy pill bottle. Respondent was arrested at his San Diego apartment on  
15 March 16, 2016.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Commission of Acts Involving Dishonesty, Fraud, Deceit or Corruption)**

18 15. Respondent has subjected his license to discipline under section 4301, subdivision (f)  
19 of the Code in that his conduct, as described in paragraph 15, above, involved dishonesty, fraud,  
20 deceit or corruption.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Violation of California Statutes Regulating Controlled Substances)**

23 16. Respondent has subjected his license to discipline under section 4301, subdivision (j)  
24 of the Code in that on or about February 26, 2016, he knowingly violated Health and Safety Code  
25 section 11379, subdivision (a), Health and Safety Code section 11377, subdivision (a), as  
26 described in paragraph 14, above.

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28 ///

1 **PRAYER**

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

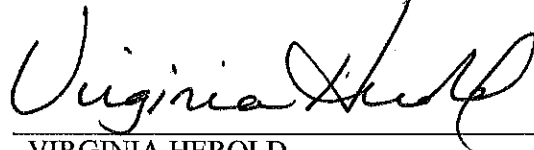
4 1. Revoking or suspending Pharmacist License Number RPH 42174, issued to Jerald L.  
5 Nickelson;

6 2. Ordering Jerald L. Nickelson to pay the Board of Pharmacy the reasonable costs of  
7 the investigation and enforcement of this case, pursuant to Business and Professions Code section  
8 125.3; and,

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

10  
11 DATED: \_\_\_\_\_

8/29/16



12 VIRGINIA HEROLD  
13 Executive Officer  
14 Board of Pharmacy  
15 Department of Consumer Affairs  
16 State of California  
17 *Complainant*

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