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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. 5990

12 **DERRICK ANTHONY OLIVAS**  
17433 Saticoy Street  
13 Northridge, CA 91325

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

14 Pharmacy Technician Registration No. TCH  
15 112788

Respondent.

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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 (Board).

22 2. On or about May 10, 2011, the Board issued Pharmacy Technician Registration  
23 No. TCH 112788 to Derrick Anthony Olivas (Respondent). The Pharmacy Technician  
24 Registration expired on December 31, 2016, 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 unless otherwise indicated.  
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**STATUTORY PROVISIONS**

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2       4.    Section 118, subdivision (b), provides that the suspension, expiration, surrender or  
3 cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary  
4 action during the period within which the license may be renewed, restored, reissued or  
5 reinstated.

6       5.    Section 4300, subdivision (a), states that "[e]very license issued may be suspended or  
7 revoked."

8       6.    Section 4060 states:

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

20        ..."

21       7.    Section 4301 states, in pertinent part:

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

25        ...

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

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8. Section 4022 states:

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

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

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

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

9. Health and Safety Code section 11364 states, in pertinent part:

"(a) It is unlawful to possess an opium pipe or any device, contrivance, instrument, or paraphernalia used for unlawfully injecting or smoking (1) a controlled substance specified in subdivision (b), (c), or (e) or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, specified in subdivision (b) or (c) of Section 11055, or specified in paragraph (2) of subdivision (d) of Section 11055, or (2) a controlled substance that is a narcotic drug classified in Schedule III, IV, or V.

..."

**REGULATORY PROVISION**

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

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

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FEDERAL STATUTES

11. Title 21, United States Code Section 844 states:

“(a) It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by this subchapter or subchapter II. It shall be unlawful for any person knowingly or intentionally to possess any list I chemical obtained pursuant to or under authority of a registration issued to that person under section 823 of this title or section 958 of this title if that registration has been revoked or suspended, if that registration has expired, or if the registrant has ceased to do business in the manner contemplated by his registration. It shall be unlawful for any person to knowingly or intentionally purchase at retail during a 30 day period more than 9 grams of ephedrine base, pseudoephedrine base, or phenylpropanolamine base in a scheduled listed chemical product, except that, of such 9 grams, not more than 7.5 grams may be imported by means of shipping through any private or commercial carrier or the Postal Service. Any person who violates this subsection may be sentenced to a term of imprisonment of not more than 1 year, and shall be fined a minimum of \$1,000, or both, except that if he commits such offense after a prior conviction under this subchapter or subchapter II, or a prior conviction for any drug, narcotic, or chemical offense chargeable under the law of any State, has become final, he shall be sentenced to a term of imprisonment for not less than 15 days but not more than 2 years, and shall be fined a minimum of \$2,500, except, further, that if he commits such offense after two or more prior convictions under this subchapter or subchapter II, or two or more prior convictions for any drug, narcotic, or chemical offense chargeable under the law of any State, or a combination of two or more such offenses have become final, he shall be sentenced to a term of imprisonment for not less than 90 days but not more than 3 years, and shall be fined a minimum of \$5,000. Notwithstanding any penalty provided in this subsection, any person convicted under this subsection for the possession of flunitrazepam shall be imprisoned for not more than 3 years, shall be fined as otherwise provided in this section, or both. The imposition or execution of a minimum sentence required to be imposed under this subsection shall not be suspended or

1 deferred. Further, upon conviction, a person who violates this subsection shall be fined the  
2 reasonable costs of the investigation and prosecution of the offense, including the costs of  
3 prosecution of an offense as defined in sections 1918 and 1920 of title 28, except that this  
4 sentence shall not apply and a fine under this section need not be imposed if the court determines  
5 under the provision of title 18 that the defendant lacks the ability to pay.

6 ...

7 (c) As used in this section, the term "drug, narcotic, or chemical offense" means any  
8 offense which proscribes the possession, distribution, manufacture, cultivation, sale, transfer, or  
9 the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell or transfer any  
10 substance the possession of which is prohibited under this subchapter."

#### 11 COST RECOVERY

12 12. Section 125.3 that the Board may request the administrative law judge to direct a  
13 licensee found to have committed a violation or violations of the licensing act to pay a sum not  
14 to exceed the reasonable costs of the investigation and enforcement of the case.

#### 15 CONTROLLED SUBSTANCE / DANGEROUS DRUG

16 13. Marijuana is a hallucinogenic Schedule I controlled substance under State and federal  
17 law (Health & Saf. Code § 11054 subd. (d)(13); and 21 U.S.C. § 812.), and a dangerous drug  
18 pursuant to section 4022.

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

#### 22 FIRST CAUSE FOR DISCIPLINE

##### 23 (Violation of Drug Statutes)

24 15. Respondent is subject to disciplinary action under sections 4300 and 4301,  
25 subdivision (j), and 4060, and Health and Safety Code Sections 11364 and 11055, and 21 United  
26 States Code Section 844, on the grounds of unprofessional conduct, in that on or about December  
27 7, 2015, Respondent violated statutes of this state, or any other state, or of the United States  
28 regulating controlled substances and dangerous drugs. The circumstances are that, on or about

1 December 7, 2015, Respondent was found in possession of methamphetamine, without a valid  
2 prescription, and was arrested. During the arrest, Respondent was also found in possession of a  
3 fresh methamphetamine pipe and a plant material containing marijuana. Respondent also  
4 admitted to smoking marijuana everyday.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Unprofessional Conduct)**

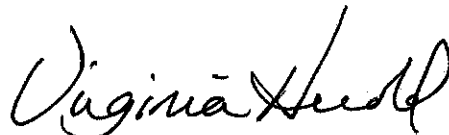
7 16. Respondent is subject to disciplinary action under sections 4300, 4301, on the  
8 grounds of unprofessional conduct. Complainant refers to and by this reference incorporates the  
9 allegations set forth above in paragraph 14, as though set forth fully.

10 **PRAYER**

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

- 13 1. Revoking or suspending Pharmacy Technician Registration No. TCH 112788, issued  
14 to Derrick Anthony Olivas;
- 15 2. Ordering Derrick Anthony Olivas to pay the Board of Pharmacy the reasonable costs  
16 of the investigation and enforcement of this case, pursuant to Business and Professions Code  
17 section 125.3; and,
- 18 3. Taking such other and further action as deemed necessary and proper.

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20  
21 DATED: 9/22/17



22 VIRGINIA HEROLD  
23 Executive Officer  
24 Board of Pharmacy  
25 Department of Consumer Affairs  
26 State of California  
27 *Complainant*

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