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

11 In the Matter of the Accusation Against:

Case No. 5995

12 **CHRISTOPHER MATTHEW SMITH**  
13 1400 W. Grand Ave., Suite F  
Grover Beach, CA 93433

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

14 Designated Representative Certificate  
15 No. EXC 22825

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 July 10, 2014, the Board issued Designated Representative Certificate  
23 Number EXC 22825 to Christopher Matthew Smith (Respondent). The Designated  
24 Representative Certificate expired on July 1, 2016, and has not been renewed. The Board  
25 cancelled the certificate on January 6, 2017.

26 **JURISDICTION**

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

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

3 5. Section 4300.1 states, in pertinent part:

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

9 **STATUTORY PROVISIONS**

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

13 7. Section 4060 states:

14 "A person shall not possess any controlled substance, except that furnished to a person  
15 upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic  
16 doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified  
17 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a  
18 physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5,  
19 or a pharmacist pursuant to Section 4052.1, 4052.2, or 4052.6. This section does not apply to the  
20 possession of any controlled substance by a manufacturer, wholesaler, third-party logistics  
21 provider, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian,  
22 naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, if in stock  
23 in containers correctly labeled with the name and address of the supplier or producer.

24 This section does not authorize a certified nurse-midwife, a nurse practitioner, a physician  
25 assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices."

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1           8.     Section 4301 states, in pertinent part:

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

5           . . . .

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

9           . . . .

10          “(h)     The administering to oneself, of any controlled substance, or the use of any  
11 dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or  
12 injurious to oneself, to a person holding a license under this chapter, or to any other person or to  
13 the public, or to the extent that the use impairs the ability of the person to conduct with safety to  
14 the public the practice authorized by the license.

15          . . . .

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

18          . . . .

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

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

8 **REGULATORY PROVISIONS**

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

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

16 **COST RECOVERY**

17 10. Section 125.3 provides, in pertinent part, that the Board may request the  
18 administrative law judge to direct a licentiate found to have committed a violation or violations of  
19 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
20 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being  
21 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
22 included in a stipulated settlement.

23 11. **CONTROLLED SUBSTANCE/DANGEROUS DRUG**

24 "Methamphetamine," is a schedule II controlled substance as defined in Health and Safety  
25 Code section 11055, subdivision (c)(14), and is categorized a dangerous drug pursuant to section  
26 4022.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Conviction of a Substantially Related Crime)**

3 12. Respondent is subject to disciplinary action under section 4301, subdivision (I), in  
4 conjunction with, California Code of Regulations, title 16, section 1770, on the grounds of  
5 unprofessional conduct, in that Respondent was convicted of a crime substantially related to the  
6 qualifications, functions, and duties of a designated representative, as follows:

7 a. On or about August 1, 2016, after pleading nolo contendere, Respondent was  
8 convicted of one felony count of violating Penal Code section 459 [second degree commercial  
9 burglary] and one felony count of violating Penal Code section 22010 [possession of a nunchaku]  
10 in the criminal proceeding entitled *The People of the State of California v. Christopher Matthew*  
11 *Smith* (Super. Ct. San Luis Obispo County, 2016, No. 16F-06083-B). The Court sentenced  
12 Respondent to serve 77 days in jail and placed him on 3 years formal probation, with terms and  
13 conditions. The circumstances surrounding the conviction are that on or about June 24, 2016, San  
14 Luis Obispo County Sheriff's deputies were dispatched to a trespass in progress. When they  
15 arrived at the residence, several individuals were detained including Respondent. Respondent  
16 ~~was found to be in possession of a nunchaku and a throwing knife.~~ While interviewing  
17 Respondent, he indicated that he had gone to the residence looking for an individual who had  
18 made threats to him earlier that day.

19 b. On or about June 15, 2016, after pleading guilty, the court placed Respondent on  
20 three years Deferred Entry of Judgment for violating Health and Safety Code section 11377,  
21 subdivision (a) [possession of a controlled substance] in the criminal proceeding entitled *The*  
22 *People of the State of California v. Christopher Matthew Smith* (Super. Ct. San Luis Obispo  
23 County, 2016, No. 16M-04269). On or about August 1, 2016, criminal proceedings were  
24 reinstated, and Respondent was convicted of one misdemeanor count of violating Health and  
25 Safety Code section 11377, subdivision (a). The Court sentenced Respondent to serve 77 days in  
26 jail. The circumstances surrounding the conviction are that on or about April 15, 2016, San Luis  
27 Obispo County Sheriff's deputies initiated a traffic enforcement stop after observing the vehicle  
28 Respondent was driving only had one working headlight. During a search of Respondent's

1 person, deputies found a black cloth bag in his left front pants pocket containing two  
2 methamphetamine smoking pipes and several clear zip lock baggies, including one that contained  
3 a clear crystalline substance resembling methamphetamine. Respondent admitted to deputies that  
4 the clear crystalline substance was methamphetamine and that he had recently smoked  
5 methamphetamine.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Acts Involving Moral turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

8 13. Respondent is subject to disciplinary action under section 4301, subdivision (f), in  
9 that on or about June 24, 2016, Respondent committed acts involving moral turpitude, dishonesty,  
10 fraud, deceit, or corruption with the intent to substantially benefit himself, or substantially injure  
11 another. Complainant refers to, and by reference incorporates, the allegations set forth above in  
12 paragraph 12, subparagraph (a), as though set forth fully.

13 **THIRD CAUSE FOR DISCIPLINE**

14 **(Use/Under the Influence of a Controlled Substance and/or Dangerous Drug)**

15 14. Respondent is subject to disciplinary action under section 4301, subdivision (h), on  
16 the grounds of unprofessional conduct, in that, on or about April 15, 2016, Respondent by his  
17 own admission, used and / or was under the influence of methamphetamine, a controlled  
18 substance and/or dangerous drug. Complainant refers to, and by this reference incorporates, the  
19 allegations set forth above in paragraph 12, subparagraph (b), as though fully set forth herein.

20 **FOURTH CAUSE FOR DISCIPLINE**

21 **(Illegal Possession of a Controlled Substance/Dangerous Drug)**

22 15. Respondent is subject to disciplinary action under section 4301, subdivision (j) for  
23 violating section 4060, on the grounds of unprofessional conduct, in that Respondent was found  
24 to be in possession of a controlled substance/dangerous drug. Complainant refers to, and by  
25 reference incorporates, the allegations set forth above in paragraph 12, subparagraph (b), as  
26 though fully set forth herein.

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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 Designated Representative Certificate No. EXC 22825, issued to Christopher Matthew Smith;
2. Ordering Christopher Matthew Smith to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: 2/1/17

*Virginia Herold*

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

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