

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

In the Matter of the First Amended Accusation  
Against:

MANAL MOHAMMAD SALEH

Pharmacy Technician Registration No.  
TCH 99773,

Respondent.

Case No. 5036

OAH No. 2014060657

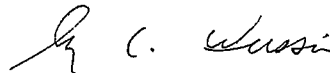
**DECISION AND ORDER**

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on May 29, 2015.

It is so ORDERED on April 29, 2015.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
STAN C. WEISSER  
Board President

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

In the Matter of the First Amended  
Accusation Against:

MANAL MOHAMMAD SALEH

Pharmacy Technician Registration  
No. TCH 99773,

Respondent.

Case No. 5036

OAH No. 2014060657

**PROPOSED DECISION**

Glynda B. Gomez, Administrative Law Judge (ALJ), Office of Administrative Hearings, heard this matter on March 30, 2015, in Los Angeles, California.

Deputy Attorney General Michael Brown represented Complainant. Respondent Manal Mohammad Saleh (Respondent) was present and represented herself. The matter was submitted on March 30, 2015.

**FACTUAL FINDINGS**

1. Virginia Herold made and filed the First Amended Accusation in her official capacity as Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, State of California on March 13, 2015.<sup>1</sup>

2. On May 19, 2010, the Board issued Pharmacy Technician Registration No. TCH 99773 to Respondent. The registration expired on April 30, 2014 and has not been renewed. The Board maintains jurisdiction over this matter pursuant to Business and Professions Code section 4300.1.

3. On March 11, 2014, in the Superior Court of California, County of Los Angeles in Case No. 3WA13193, entitled the *People of the State of California v. Manal Mohammad Saleh*, Respondent was convicted on his plea of guilty to one count of violating

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<sup>1</sup> The original accusation in this matter was filed on May 13, 2014.

Health and Safety Code 11377, subdivision (a) (Possession of a Controlled Substance: Methamphetamine), a misdemeanor. Respondent was placed on deferred entry of judgment for 18 months on terms and conditions which included payment of \$395 in fines and restitution, participation in a drug education, treatment or rehabilitation program as directed by the court probation office, and periodic random-narcotic testing. Respondent was also ordered to serve one day in county jail and given credit for one day of time already served.

4. The facts and circumstances of the offense were that, on July 31, 2013, at approximately 3:00 a.m., officers were summoned to a Circle K Motel in Culver City where Respondent and a male acquaintance were staying. The male acquaintance had summoned the police to report that he believed Respondent had sexually assaulted him on several occasions while he was sleeping. In the process of investigating his complaint, police officers searched the motel room and Respondent's car. In the motel room, police officers found three zip lock bags each containing 1 gram of Methamphetamine and a zip lock bag containing some Xanax pills and a glass pipe. Police officers found an additional glass pipe in the console of Respondent's car. Respondent had several thousand dollars in cash in her purse.

5. Respondent admitted that her conviction is substantially related to the functions, duties and qualifications of a licensed pharmacy technician.

6. At hearing, Respondent testified that at the time of her arrest, she had been living in the motel with her male acquaintance. Respondent has Multiple Sclerosis and had experienced several miscarriages in the months before the incident. As a result she became depressed and was experiencing marital problems. She left her home to live in the motel. Respondent testified that on the morning of July 30, 2013, she came out of her motel room to discover that her car had a flat tire. She took a taxi to her job at CVS Pharmacy where she served as a pharmacy technician and asked her male acquaintance to have the flat tire fixed. After work, he picked her up in her vehicle and drove her back to the motel. She gave him a massage and he fell asleep. When he woke up, he called the police, and made allegations against her. Respondent testified that the cash found in her purse was money she had taken with her when she left home. Respondent testified that she was not aware of the Methamphetamine, Xanax or glass pipes until police officers discovered them. She denied that the drugs or paraphernalia belonged to her and asserted that they belonged to her male acquaintance. She also denied using Methamphetamine or Xanax.

7. Pharmacy Board Inspector Sarah Bayley testified on behalf of Complainant. Ms. Bailey has been a licensed pharmacist for approximately 16 years. She has experience working in a retail pharmacy and as a board inspector. It was established through Ms. Bayley's testimony that pharmacy technicians perform their duties with a minimum amount of supervision, have access to controlled substances, provide patient information, customer

service and assist in drug compounding and assembling prescriptions. Pharmacy technicians have substantial access to pharmacy inventory and good judgment is essential to the functions, duties and qualifications of a pharmacy technician.

8. Respondent has reconciled with her husband and is expecting the couple's first child in October of 2015. She currently works as an independent contractor driving elderly and disabled persons. Respondent hopes to renew her pharmacy technician registration and work as a pharmacy technician again in the future. She has worked as a pharmacy technician for CVS in both California and Connecticut. Respondent completed the court ordered deferred entry program including 18 group education sessions, 2 hours of individual instruction, 20 twelve-step meetings and random drug testing and paid all of the court ordered fines and restitution. Respondent's random drug tests have been negative thus far. Respondent testified that she learned from her experience, is ashamed and embarrassed and is much more cautious about her associates including recognizing signs of drug use or addiction in others and avoiding interactions with persons who abuse legal and illegal drugs. Respondent is in the process of getting her finances and life in general in order. She resigned from her position as a pharmacy technician with CVS because she was embarrassed by the allegations against her and did not want to explain the situation to her colleagues and supervisors. Respondent has completed one year of the court supervised term and will remain under court supervision until September of 2015 at which time the case will be dismissed if Respondent complies with all terms of her plea agreement.

9. Complainant submitted a certification of costs of prosecution in the amount of \$3,145.00. The costs of prosecution are reasonable within the meaning of Business and Professions Code Section 125.3.

### LEGAL CONCLUSIONS

1. The standard of proof which must be met to establish the charging allegations herein is "clear and convincing" evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) This means the burden rests with Complainant to offer proof that is clear, explicit and unequivocal--so clear as to leave no substantial doubt and sufficiently strong as to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478.)

2. Business and Professions Code section 490 provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

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3. Business and Professions Code section 492 provides, in pertinent part, that notwithstanding any other provision of law, successful completion of an alcohol and drug abuse assessment program shall not prohibit any agency established under Division 2 (Healing Arts) from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

4. Business and Professions Code section 4060 provides, in pertinent part, that no Board licensee shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor, or furnished pursuant to a drug order issued by a certified nurse-midwife, a physician assistant or a naturopathic doctor.

5. "Methamphetamine" is a Schedule II controlled substance as defined in Health and Safety Code section 11055, subdivision (d)(2), and is categorized as a dangerous drug pursuant to Health and Safety Code section 4022.

6. Business and Professions Code section 4300 provides, in pertinent part, that every license issued by the Board is subject to discipline, including suspension or revocation.

7. Business and Professions Code section 4301, provides, in pertinent part, that the Board shall take action against any holder of a license who is guilty of unprofessional conduct.

8. Business and Professions Code section 4301, subdivision (j), provides that the violation of any of the statutes of this state, or any other state or of the United States regulating controlled substances and dangerous drugs is unprofessional conduct.

9. Business and Professions Code section 4301, subdivision (l), provides that the conviction of a crime substantially related to the qualifications, functions and duties of a Board licensee is unprofessional conduct. The record of a conviction involving controlled substances or of a violation of the statutes of this state regulating controlled substances or a dangerous drugs shall be conclusive evidence of unprofessional conduct.

10. Business and Professions Code section 4301, subdivision (o), provides that violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy constitutes unprofessional conduct.

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11. California Code of Regulations, title 16, section 1770, provides that a crime or act shall be considered substantially related to the qualifications, functions or duties of a Board licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant consistent with the public health, safety, or welfare.

12. Grounds exist to discipline respondent's pharmacy technician registration under Business and Professions Code section 4301, subdivision (l), and section 490, in conjunction with California Code of Regulations, title 16, section 1770, for her conviction of a crime substantially related to the qualifications, functions and duties of a licensed pharmacy technician by reason of factual findings 3-7.

13. Grounds exist to discipline respondent's pharmacy technician registration under Business and Professions Code section 4301, subdivisions (j) and (o), for unprofessional conduct by reason of factual findings 3-7.

14. Business and Professions Code section 4001.1 provides that the Board has the responsibility to protect the public. As set forth in California Code of Regulations, title 16, section 1760, the Board has promulgated guidelines which set forth factors to be considered in determining whether the minimum, maximum, or an intermediate discipline is to be imposed in a given case. These guidelines provide that the following factors should be considered:

- (1) Actual or potential harm to the public;
- (2) Actual or potential harm to any consumer;
- (3) Prior disciplinary record, including level of compliance with disciplinary order(s);
- (4) Prior warning(s), including but not limited to citation(s) and fine(s), letter(s) of admonishment, and/or correction notice(s);
- (5) Number and/or variety of current violations;
- (6) Nature and severity of the act(s), offense(s) or crime(s) under consideration;
- (7) Aggravating evidence;
- (8) Mitigating evidence;
- (9) Rehabilitation evidence;
- (10) Compliance with terms of any criminal sentence or parole;

- (11) Overall criminal record;
- (12) If applicable, evidence of proceedings for case being set aside and dismissed pursuant to Section 1203.4 of the Penal Code;
- (13) Time passed since the act(s) or offense(s);
- (14) Whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct; and
- (15) Financial benefit to the respondent from the conduct

15. Applying the Board's Guidelines here:

- (1) Respondent did not commit any actual harm to the public, but there was a potential for such harm;
- (2) Respondent's conduct did not have any actual harm to any consumer, but there was a potential for such harm;
- (3) Respondent had not been the subject of discipline;
- (4) Respondent has not been the subject of any prior warnings;
- (5) Respondent was convicted on one violation;
- (6) Respondent's crime was serious and the circumstances surrounding the conviction were serious;
- (7) There were no aggravating factors;
- (8) There were no mitigating factors;
- (9) Respondent has moved on with her life, is complying with court orders, has reconciled with her husband and expressed regret;
- (10) Respondent is in compliance with court orders;
- (11) Respondent does not have any other convictions;

- (12) Respondent is in a deferred entry of judgment program;
- (13) The crime was relatively recent occurring less than two years ago;
- (14) There was no evidence that Respondent was being held accountable for the conduct of anyone else or that her conduct was anything other than intentional; and
- (15) There was no evidence of financial benefit to Respondent.

16. In its guidelines, the Board has established four categories of misconduct for which license discipline may be imposed. Each category has a range of recommended discipline. A category I violation is for a relatively minor offense with a minimum penalty of one year probation. A category IV violation is considered the most serious offense, which should result in revocation of a license. Respondent's conviction for possession of Methamphetamine is considered a category II offense because it involves possession of illegal drugs. The minimum suggested discipline for a category II offense is a revocation stayed with three years' probation. The maximum suggested discipline for a Category II offense is revocation.

17. In determining the degree of discipline, it is appropriate to consider Respondent's rehabilitation. Remorse for one's conduct and the acceptance of responsibility are the cornerstones of rehabilitation. Rehabilitation is a "state of mind" and the law looks with favor upon rewarding with the opportunity to serve one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) Mere remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991.) The evidentiary significance of misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.) Respondent has provided evidence of good behavior in the year since her conviction. However, the misconduct is relatively recent and her good conduct and time spent without further involvement with the criminal justice system has been while under court supervision. Since people have a strong incentive to obey the law while under the supervision of the criminal justice system, little weight is generally placed on the fact that an applicant or licensee has engaged in good behavior while on probation or parole. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.) In consideration of all of the facts and circumstances of this case, the interests of public protection require that Respondent's pharmacy technician registration be revoked. Respondent may petition for reinstatement at a later date when she has established a sustained period of rehabilitation.



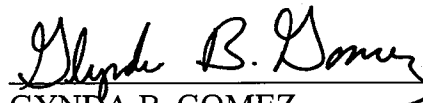
18. Complainant established that the Board has incurred reasonable costs in the amount of \$3,145 for its costs of in investigation and prosecution of this matter, by reason of factual finding 9. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Supreme Court rejected a constitutional challenge to a cost recovery provision similar to Business and Professions Code section 125.3. In so doing, however, the Court directed the administrative law judge and the agency to evaluate several factors to ensure that the cost recovery provision did not deter individuals from exercising their right to a hearing. Thus, the Board must not assess the full costs where it would unfairly penalize a Respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty. The Board must consider a respondent's subjective good faith belief in the merits of his or her position and whether that respondent has raised a colorable challenge. The Board must also consider a respondent's ability to pay. In light of these factors and the severity of the discipline imposed, it would be unduly punitive to require Respondent to pay the entire balance of the Board's costs at this time. Accordingly, Respondent will be required to pay \$3,145 in Board costs as a condition of reinstatement.

### ORDER

1. Pharmacy technician registration no. TCH 99773 issued to respondent Manal Mohammad Saleh is revoked.

2. As a condition precedent to reinstatement of her revoked technician license, Respondent shall reimburse the Board its costs of investigation and prosecution in the amount of \$3,145. Said amount shall be paid in full prior to the reinstatement of her revoked technician license, unless otherwise ordered by the Board.

DATED: April 8, 2015

  
\_\_\_\_\_  
GYNDA B. GOMEZ  
Administrative Law Judge  
Office of Administrative Hearings

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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 First Amended Accusation  
Against:  
12 **MANAL MOHAMMAD SALEH**  
13 **756 Center Pl., #B**  
14 **Manhattan Beach, CA 90266**  
15 **Pharmacy Technician Registration No. TCH**  
**99773**  
16 Respondent.

Case No. 5036

**FIRST AMENDED ACCUSATION**

18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about May 19, 2010, the Board of Pharmacy issued Pharmacy Technician  
24 Registration Number TCH 99773 to Manal M. Saleh (Respondent). The Pharmacy Technician  
25 Registration expired on April 30, 2014 and was cancelled on August 3, 2014.

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1 **JURISDICTION**

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

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

9 5. Section 4300 of the Code permits the Board to take disciplinary action to suspend or  
10 revoke a license issued by the Board.

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 PROVISIONS**

18 7. Section 490 states, in pertinent part:

19 "(a) In addition to any other action that a board is permitted to take against a licensee, a  
20 board may suspend or revoke a license on the ground that the licensee has been convicted of a  
21 crime, if the crime is substantially related to the qualifications, functions, or duties of the business  
22 or profession for which the license was issued.

23 "(b) Notwithstanding any other provision of law, a board may exercise any authority to  
24 discipline a licensee for conviction of a crime that is independent of the authority granted under  
25 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties  
26 of the business or profession for which the licensee's license was issued.

27 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a  
28 conviction following a plea of nolo contendere. An action that a board is permitted to take

1 following the establishment of a conviction may be taken when the time for appeal has elapsed, or  
2 the judgment of conviction has been affirmed on appeal, or when an order granting probation is  
3 made suspending the imposition of sentence, irrespective of a subsequent order under the  
4 provisions of Section 1203.4 of the Penal Code."

5 8. Section 492 of the Code states:

6 "Notwithstanding any other provision of law, successful completion of any diversion  
7 program under the Penal Code, or successful completion of an alcohol and drug problem  
8 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of  
9 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2  
10 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that  
11 division, from taking disciplinary action against a licensee or from denying a license for  
12 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a  
13 record pertaining to an arrest. This section shall not be construed to apply to any drug diversion  
14 program operated by any agency established under Division 2 (commencing with Section 500) of  
15 this code, or any initiative act referred to in that division."

16 9. Section 4060 of the Code states:

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

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1 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a  
2 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and  
3 devices."

4 10. Section 4301 of the Code states:

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

8 . . . .

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

11 . . . .

12 "(l) The conviction of a crime substantially related to the qualifications, functions, and  
13 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
14 (commencing with Section 801) of Title 21 of the United States Code regulating controlled  
15 substances or of a violation of the statutes of this state regulating controlled substances or  
16 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the  
17 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.  
18 The board may inquire into the circumstances surrounding the commission of the crime, in order  
19 to fix the degree of discipline or, in the case of a conviction not involving controlled substances or  
20 dangerous drugs, to determine if the conviction is of an offense substantially related to the  
21 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or  
22 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning  
23 of this provision. The board may take action when the time for appeal has elapsed, or the  
24 judgment of conviction has been affirmed on appeal or when an order granting probation is made  
25 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of  
26 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
27 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
28 indictment."

1 . . . .  
2 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
3 violation of or conspiring to violate any provision or term of this chapter or of the applicable  
4 federal and state laws and regulations governing pharmacy, including regulations established by  
5 the board or by any other state or federal regulatory agency."

6 **HEALTH AND SAFETY CODE SECTION**

7 11. Health and Safety Code section 11377, subsection (a) states in pertinent

8 "Every person who possesses any controlled substance which is (1) classified in Schedule  
9 III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054,  
10 except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph (11) of  
11 subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section  
12 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the  
13 prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state,  
14 shall be punished by imprisonment in a county jail for a period of not more than one year or  
15 pursuant to subdivision (h) of Section 1170 of the Penal Code."

16 **REGULATORY PROVISION**

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

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

24 **COST RECOVERY**

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

1 CONTROLLED SUBSTANCE

2 14. Section 4022 of the Code states:

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

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

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

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

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

15 FIRST CAUSE FOR DISCIPLINE

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

17 16. Respondent is subject to disciplinary action under sections 490, 4301, subdivision (l),  
18 in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent was  
19 convicted of a crime substantially related to the qualifications, functions, or duties of a licensee  
20 which to a substantial degree evidence the present or potential unfitness of a licensee to perform  
21 the functions authorized by her license or registration in a manner consistent with the public  
22 health, safety, or welfare. The circumstances are as follows:

23 a. On or about July 31, 2013, Culver City Police Officers were dispatched to a Circle K  
24 Motel. Officers contacted Victim B.M. and he stated that he had been assaulted by Respondent.  
25 Officers conducted a search of Respondent's motel room and found 2 small bags containing  
26 suspected Methamphetamine and a glass pipe. Officer Raetz searched Respondent's vehicle and  
27 found a second glass pipe. Subsequently on or about December 19, 2013 a criminal case was  
28 filed against Respondent, charging her with one misdemeanor count of violating Health and

1 Safety Code section 11377, subdivision (a) [possession of a controlled substance] and one  
2 misdemeanor count of violating Health and Safety Code section 11375, subdivision (b)  
3 [possession for sale of a controlled substance] in the criminal proceeding entitled *The People of*  
4 *the State of California v. Manal Mohammad Saleh* (Super. Ct. Los Angeles, 2014, No.  
5 3WA13193). On or about March 11, 2014, after pleading guilty to Health and Safety Code  
6 section 11377, subdivision (a) [possession of a controlled substance], the Court placed  
7 Respondent on deferred entry of judgment for a period of 18 months and sentenced Respondent to  
8 1 day in Los Angeles County Jail, with terms and conditions.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct)**

11 17. Respondent's license is subject to disciplinary action for unprofessional conduct  
12 under section 4301, subdivisions (j) and (o) of the Code, in that Respondent was in possession of  
13 a controlled substance, Methamphetamine, in violation of section 4060 of the Code and Health  
14 and Safety Code section 11377, subdivision (a). Complainant refers to, and by this reference  
15 incorporates, the allegations set forth above in paragraph 16, as though set forth fully.

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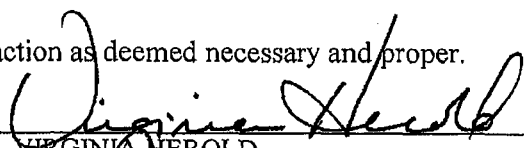
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PRAYER

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 Pharmacy Technician Registration Number TCH 99773, issued to Manal M. Saleh;
2. Ordering Manal M. Saleh 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: 3/13/15

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

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7

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

10 In the Matter of the Accusation Against:	Case No. 5036
11 <b>MANAL M. SALEH</b>	
12 <b>756 Center Pl., #B</b>	
13 <b>Manhattan Beach, CA 90266</b>	<b>A C C U S A T I O N</b>
14 <b>Pharmacy Technician Registration No. TCH</b>	
15 <b>99773</b>	
16 Respondent.	

17 Complainant alleges:

18 **PARTIES**

- 19 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 21 2. On or about May 19, 2010, the Board of Pharmacy issued Pharmacy Technician  
22 Registration Number TCH 99773 to Manal M. Saleh (Respondent). The Pharmacy Technician  
23 Registration was in full force and effect at all times relevant to the charges brought herein and  
24 will expire on April 30, 2014, unless renewed.

25 **JURISDICTION**

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

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

5 5. Section 4300 of the Code permits the Board to take disciplinary action to suspend or  
6 revoke a license issued by the Board.

7 6. Section 4300.1 of the Code states:

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

13 **STATUTORY PROVISIONS**

14 7. Section 4301 of the Code states:

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

18 . . . .

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

21 . . . .

22 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
23 violation of or conspiring to violate any provision or term of this chapter or of the applicable  
24 federal and state laws and regulations governing pharmacy, including regulations established by  
25 the board or by any other state or federal regulatory agency."

26 8. Section 4060 of the Code states:

27 "No person shall possess any controlled substance, except that furnished to a person upon  
28 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor

1 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified  
2 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a  
3 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,  
4 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of  
5 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not  
6 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,  
7 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified  
8 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly  
9 labeled with the name and address of the supplier or producer.

10 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a  
11 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and  
12 devices."

#### 13 HEALTH AND SAFETY CODE SECTION

14 9. Health and Safety Code section 11377, subsection (a) states in pertinent

15 "Every person who possesses any controlled substance which is (1) classified in Schedule  
16 III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054,  
17 except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph (11) of  
18 subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section  
19 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the  
20 prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state,  
21 shall be punished by imprisonment in a county jail for a period of not more than one year or  
22 pursuant to subdivision (h) of Section 1170 of the Penal Code."

#### 23 REGULATORY PROVISION

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

25 "For the purpose of denial, suspension, or revocation of a personal or facility license  
26 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a  
27 crime or act shall be considered substantially related to the qualifications, functions or duties of a  
28 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a

1 licensee or registrant to perform the functions authorized by his license or registration in a manner  
2 consistent with the public health, safety, or welfare."

3 **COST RECOVERY**

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

8 **CONTROLLED SUBSTANCE**

9 12. Section 4022 of the Code states:

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

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

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

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

19 13. 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 Business and Professions Code section 4022.

22 **FIRST CAUSE FOR DISCIPLINE**

23 (Unprofessional Conduct)

24 14. Respondent's license is subject to disciplinary action for unprofessional conduct  
25 under section 4301, subdivisions (j) and (o) of the Code, in that Respondent was in possession of  
26 a controlled substance, Methamphetamine, in violation of section 4060 of the Code and Health  
27 and Safety Code section 11377, subdivision (a). The circumstances are as follows:

28 ///

1 15. On or about July 31, 2013, Culver City Police Officers were dispatched to a Circle K  
2 Motel. Officers contacted Victim B.M. and he stated that he had been assaulted by Respondent.  
3 Officers conducted a search of Respondent's motel room and found 2 small bags containing  
4 suspected Methamphetamine and a glass pipe. Officer Raetz searched Respondent's vehicle and  
5 found a second glass pipe.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Substantially Related Act)**

8 16. Respondent is subject to disciplinary action under California Code of Regulations,  
9 title 16, section 1770, on the grounds of unprofessional conduct, in that Respondent committed an  
10 act substantially related to the qualifications, functions, or duties of a pharmacy technician.  
11 Complainant refers to, and by this reference incorporates, the allegations set forth above in  
12 paragraph 15, as though set forth fully.

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**PRAYER**

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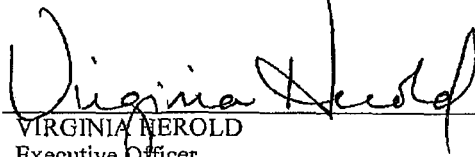
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