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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. 3835

13 **JOJO ROSARIO ALIPIO**
1248 Sheldon Road
Brentwood, CA 94513

A C C U S A T I O N

14 **Pharmacy Technician License No.**
15 **TCH 72334**

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 November 27, 2007, the Board of Pharmacy issued Pharmacy Technician
22 License Number TCH 72334 to Jojo Rosario Alipio (Respondent). The Pharmacy Technician
23 License was in full force and effect at all times relevant to the charges brought in this Accusation
24 and will expire on August 31, 2011, unless renewed.

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JURISDICTION

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

9 5. Code section 4300 states, in pertinent part:

10 (a) Every license issued may be suspended or revoked.

11 (b) The board shall discipline the holder of any license issued by the board,
12 whose default has been entered or whose case has been heard by the board and
13 found guilty, by any of the following methods:

14 (1) Suspending judgment.

15 (2) Placing him or her upon probation.

16 (3) Suspending his or her right to practice for a period not exceeding one year.

17 (4) Revoking his or her license.

18 (5) Taking any other action in relation to disciplining him or her as the board
19 in its discretion may deem proper . . .

STATUTORY PROVISIONS

20
21 6. Code section 490 provides, in pertinent part, that a board may suspend or revoke a
22 license on the ground that the licensee has been convicted of a crime substantially related to the
23 qualifications, functions, or duties of the business or profession for which the license was issued.

24 7. Code section 493 states:

25 Notwithstanding any other provision of law, in a proceeding conducted by a
26 board within the department pursuant to law to deny an application for a license or
27 to suspend or revoke a license or otherwise take disciplinary action against a
28 person who holds a license, upon the ground that the applicant or the licensee has
been convicted of a crime substantially related to the qualifications, functions, and
duties of the licensee in question, the record of conviction of the crime shall be

1 conclusive evidence of the fact that the conviction occurred, but only of that fact,
2 and the board may inquire into the circumstances surrounding the commission of
3 the crime in order to fix the degree of discipline or to determine if the conviction is
substantially related to the qualifications, functions, and duties of the licensee in
question.

4 As used in this section, "license" includes "certificate," "permit," " authority,"
5 and "registration."

6 8. Code section 4022 states:

7 "Dangerous drug" or "dangerous device" means any drug or device unsafe for
8 self use, except veterinary drugs that are labeled as such, and includes the
following:

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

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

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

16 9. Code section 4059 states, in pertinent part, that a person may not furnish any
17 dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist, or
veterinarian.

18 10. Code section 4060 states, in pertinent part:

19 No person shall possess any controlled substance, except that furnished to a
20 person upon the prescription of a physician, dentist, podiatrist, or veterinarian, or
21 furnished pursuant to a drug order issued by a certified nurse midwife pursuant to
22 Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician
23 assistant pursuant to Section 3502.1. This section shall not apply to the possession
24 of any controlled substance by a manufacturer, wholesaler, pharmacy, physician,
podiatrist, dentist, veterinarian, certified nurse midwife, nurse practitioner, or
physician assistant, when in stock in containers correctly labeled with the name
and address of the supplier or producer . . .

25 11. Code section 4301 states, in pertinent part:

26 The board shall take action against any holder of a license who is guilty of
27 unprofessional conduct Unprofessional conduct shall include, but is not
28 limited to, any of the following:

1
2 (h) The administering to oneself, of any controlled substance, or the use of
3 any dangerous drug or of alcoholic beverages to the extent or in a manner as to be
4 dangerous or injurious to oneself, to a person holding a license under this chapter,
5 or to any other person or to the public, or to the extent that the use impairs the
6 ability of the person to conduct with safety to the public the practice authorized by
7 the license.

8
9 ...
10 (j) The violation of any of the statutes of this state or of the United States
11 regulating controlled substances and dangerous drugs.

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

29 ...
30 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
31 abetting the violation of or conspiring to violate any provision or term of this
32 chapter or of the applicable federal and state laws and regulations governing
33 pharmacy, including regulations established by the board.

34 ...
35 12. Health and Safety Code section 11170 provides that no person shall prescribe,
36 administer, or furnish a controlled substance for himself.
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1 13. Health and Safety Code section 11364, subdivision (a), provides in pertinent part, that
2 no person shall possess any device, contrivance, instrument, or paraphernalia used for unlawfully
3 smoking a controlled substance.

4 14. Health and Safety Code section 11377, subdivision (a), prohibits possession of
5 methamphetamines without a valid prescription.

6 15. Health and Safety Code section 11550, subdivision (a), provides that no person shall
7 use, or be under the influence of any controlled substance.

8 **REGULATORY PROVISION**

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

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

14 **COST RECOVERY**

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

19 **DRUGS**

20 18. At all times material in the Accusation, methamphetamine was and is designated as a
21 Schedule II controlled substance as designated by Health and Safety Code section 11055,
22 subdivision (d)(2), and a dangerous drug as designated by Business and Professions Code section
23 4022. It is a stimulant drug.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct - Self-Administration of Controlled Substances)**
3 **(Bus. & Prof. Code § 4301(h))**

4 19. Respondent has subjected his pharmacy technician license to disciplinary action
5 under Code section 4301, subdivision (h), for unprofessional conduct in that on or about October
6 14, 2008, he administered to himself controlled substances and used dangerous drugs. The
7 circumstances are as follows:

8 a. On or about October 14, 2008, at approximately 2000 hours, Respondent was arrested
9 by the Contra Costa County Sheriff's Department for using methamphetamine, a controlled
10 substance. After responding to a report of a suspicious car driving through a neighborhood, the
11 arresting officer observed the Respondent resting or sleeping in his car that was parked but with
12 the engine running. Respondent admitted to the arresting officer that he had taken
13 methamphetamine.

14 20. Respondent is subject to disciplinary action under Code section 4301, subdivision (h),
15 for unprofessional conduct in that he administered to himself controlled substances and used
16 dangerous drugs. The circumstances are as follows:

17 a. On or about October 16, 2009, at approximately 1345 hours, Respondent was arrested
18 by the Contra Costa County Sheriff's Department for being under the influence of a controlled
19 substance. After responding to a mental illness investigation at Respondent's house, the arresting
20 officer observed that the Respondent was yelling unintelligibly, non-responsive to
21 communication, and staring at a wall. A bag of methamphetamine and a warm glass water pipe
22 were found adjacent to the Respondent.

23 **SECOND CAUSE FOR DISCIPLINE**

24 **(Unprofessional Conduct - Conviction re: Controlled Substances)**
25 **(Bus. & Prof. Code § 4301(l))**

26 21. Respondent has subjected his pharmacy technician license to discipline for
27 unprofessional conduct under Code sections 490 and 4301, subdivision (l), for violating Health
28

1 and Safety Code section 11377, subdivision (a) (Possession of Methamphetamine), a state statute
2 regulating controlled substances and dangerous drugs. The circumstances are as follows:

3 a. On or about May 13, 2010 in the criminal proceeding entitled *People v. Jojo Rosario*
4 *Alipio*, Contra Costa County Superior Court Case No. 4-164659-7, Respondent was convicted by
5 a no contest plea of violating Health and Safety Code section 11377, a criminal misdemeanor
6 offense.

7 b. Respondent was sentenced to serve 30 days in county jail and two years of
8 conditional probation, to pay restitution fines and fees, and to comply with additional terms and
9 conditions.

10 c. The circumstances that gave rise to the conviction are described in detail in Paragraph
11 20, above.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Unprofessional Conduct – Conviction re: Controlled Substances)** 14 **(Bus. & Prof. Code § 4301(j))**

15 22. Respondent has subjected his pharmacy technician license to discipline for
16 unprofessional conduct under Code section 4301, subdivision (j), for violating Health and Safety
17 Code sections 11173, subdivision (a), a state statute regulating controlled substances and
18 dangerous drugs. Respondent unlawfully possessed a controlled substance and dangerous drug,
19 as set forth in Paragraph 21, above.

20 **FOURTH CAUSE FOR DISCIPLINE**

21 **(Unprofessional Conduct - Violating Provisions of the Pharmacy Law)** 22 **(Bus. & Prof. Code § 4301(o))**

23 23. Respondent has subjected his pharmacy technician license to discipline for
24 unprofessional conduct under Code section 4301, subdivision (o), for violating the provisions of
25 the Pharmacy Law (commencing with Code section 4000, et seq.) and applicable federal and state
26 laws and regulations governing pharmacy in that Respondent was convicted of violating Health
27 and Safety Code section 11377, subdivision (a), and he unlawfully administered to himself
28 controlled substances and dangerous drugs without a prescription. These acts constitute

1 violations of Code sections 4059, 4060, and 4301, subdivisions (h), (j), (and (l), as set forth in
2 Paragraphs 19-22, above.

3 **DISCIPLINARY CONSIDERATIONS**

4 24. To determine the degree of discipline, if any, to be imposed on Respondent,
5 Complainant alleges that on or about March 22, 2004, in a criminal proceeding entitled *People v.*
6 *Jojo Rosario Alipio* in Contra Costa Superior Court, Case Number 04-139588-8, Respondent was
7 convicted for violating Health and Safety Code section 11377, subdivision (a), (Possession of a
8 Controlled Substance). This misdemeanor offense that was committed on or about October 24,
9 2003. Respondent was ordered to serve 3 years of conditional probation, complete a drug abuse
10 diagnostic evaluation and program, pay restitution fines and fees, and to comply with additional
11 terms and conditions. After Respondent completed a drug treatment program, the no contest plea
12 was set aside and the conviction was dismissed on November 4, 2005. The record of the criminal
13 proceeding is incorporated as if fully set forth.

14 25. To determine the degree of discipline, if any, to be imposed on Respondent,
15 Complainant alleges that on or about March 22, 2004, in a criminal proceeding entitled *People v.*
16 *Jojo Alipio* in Contra Costa Superior Court, Case Number 04-141941-5, Respondent was
17 convicted for violating Health and Safety Code section 11550, subdivision (a), (Under the
18 Influence of a Controlled Substance), a misdemeanor offense that was committed on or about
19 May 26, 2004. Respondent was ordered to serve 3 years of conditional probation, complete 20
20 hours of community service, complete a drug abuse diagnostic evaluation, pay restitution fines
21 and fees, and to comply with additional terms and conditions. Respondent's probation ran
22 concurrently with the probation ordered in Case Number 04-139588-8, referenced above. After
23 Respondent completed a drug treatment program, the no contest plea was set aside and the
24 conviction was dismissed on November 4, 2005. The record of the criminal proceeding is
25 incorporated as if fully set forth.

26 **PRAYER**

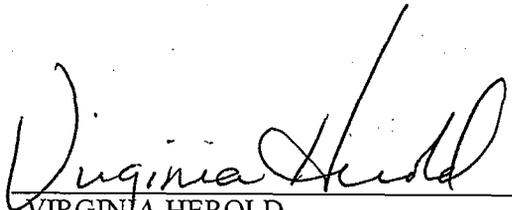
27 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
28 Accusation, and that following the hearing, the Board of Pharmacy issue a decision:

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1. Revoking or suspending Pharmacy Technician Number TCH 72334, issued to Jojo Rosario Alipio;
2. Ordering Jojo Rosario Alipio 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:

4/5/11



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

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