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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.

12 **SARA ELAINE GARCIA**
13 **a.k.a SARA ELAINE HERNANDEZ**
14 **1805 Evelyn Circle**
15 **Colton, CA 92324**

A C C U S A T I O N

16 Pharmacy Technician Registration
17 No. TCH 46353

Respondent.

18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about July 25, 2003, the Board issued Pharmacy Technician
24 Registration No. TCH 46353 to Sara Elaine Garcia also known as Sara Elaine Hernandez
25 (Respondent). The Pharmacy Technician Registration will expire on March 31, 2011, unless
26 renewed.

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JURISDICTION

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

4. Business and Professions Code section 118, subdivision (b) provides that the suspension, expiration, or forfeiture by operation of law of a license does not deprive the Board of authority or jurisdiction to institute or continue with disciplinary action against the license or to order suspension or revocation of the license, during the period within which the certificate may be renewed, restored, reissued or reinstated.

5. Section 490 states, in pertinent part:
"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

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

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

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

7. Section 4301 of the Code states:
"The board shall take action against any holder of a license who is guilty of

1 unprofessional conduct or whose license has been procured by fraud or misrepresentation or
2 issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the
3 following:

4 (a) Gross immorality.

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

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

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28 (p) Actions or conduct that would have warranted denial of a license.”

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

5 9. Penal Code section 211 states:

6 “Robbery is the felonious taking of personal property in the possession of another,
7 from his person or immediate presence, and against his will, accomplished by means of force or
8 fear.”

9 10. California Code of Regulations, title 16, section 1770, states, in pertinent
10 part: "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
15 manner consistent with the public health, safety, or welfare."

16 FIRST CAUSE FOR DISCIPLINE

17 (*Conviction of a Substantially Related Crime*)

18 11. Respondent is subject to disciplinary action under sections 4300, 4301,
19 subdivision (l), and 490, of the Code, in conjunction with California Code of Regulations, title
20 16, section 1770, in that, Respondent was convicted of a crime which is substantially related to
21 the qualifications, functions or duties of a pharmacy technician, as follows:

22 12. On or about May 21, 2007, Respondent was convicted following her plea
23 of nolo contendere to one count of violating Penal Code section 211 [robbery, 2nd degree], a
24 felony, in the criminal proceeding entitled *The People of the State of California v. Sara Elaine*
25 *Hernandez* (Super. Ct. San Bernardino County, 2007, No. FSB053321). Respondent was
26 sentenced to state prison for 2 years with credit for 488 days already served and 244 days for
27 conduct. As of May 21, 2007, Respondent's sentence was deemed served in full pursuant to
28 Penal Code section 1170(A)(3), and she was placed on parole.

1 13. The circumstances surrounding the conviction are that on or about
2 November 23, 2005, Respondent did unlawfully, and by means of criminal threats, force and
3 fear, take personal property from T. E.¹ A handgun was used during the commission of the
4 crime.

5 **SECOND CAUSE FOR DISCIPLINE**

6 *(Unprofessional Conduct - Gross Immorality)*

7 14. Respondent is subject to disciplinary action under Code sections 4300 and
8 4301, subdivision (a), of the Code, on the grounds of unprofessional conduct, in that, Respondent
9 committed grossly immoral acts, as set forth below. Any act, in and of itself, is an independent
10 ground for disciplinary action against Respondent.

11 a. On or about September 10, 2005, in San Bernardino County, Respondent
12 was an accomplice to an individual who unlawfully entered an inhabited dwelling and committed
13 burglary by stealing cash, keys, and credit cards from the occupant's purse, in violation of Penal
14 Code sections 459 [burglary], and 460(a) [burglary, 1st degree]; was in possession of stolen
15 property following those crimes in violation of Penal Code section 462(a) [burglary of inhabited
16 dwelling]; and then evaded police in a vehicle fleeing from the scene of the crimes in violation of
17 Vehicle Code section 2800.2(a) [felony evading].

18 b. On or about November 23, 2005, in San Bernardino County, Respondent
19 attempted to dissuade the victim of the above referenced crime from giving testimony against her
20 by force or threat in violation of Penal Code section 136.1(c)(1); and

21 c. On or about November 23, 2005, in San Bernardino County, Respondent
22 participated in a car-jacking where an individual, T. E., was kidnapped [Penal Code section
23 207(a) - kidnapping -], robbed [Penal Code section 211 - robbery, 2nd degree] , criminally
24 threatened [Penal Code section 422 - criminal threats], and a handgun was used in the
25 commission of the crimes [Penal Code section 12022(a) special circumstance - knew principal

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28 1. The victim is identified by initials. The name of the victim will be provided, if
requested, during discovery.

1 armed with a firearm during commission of crimes]. Each of the acts is categorized as a serious
2 felony.

3 **THIRD CAUSE FOR DISCIPLINE**

4 *(Unprofessional Conduct - Moral Turpitude)*

5 15. Respondent is subject to disciplinary action under sections 4300 and 4301,
6 subdivision (f) of the Code, on the grounds of unprofessional conduct, in that, Respondent
7 committed acts of moral turpitude, as set forth above in paragraphs 14 (a), (b) and (c). Any act,
8 in and of itself, is an independent ground for disciplinary action against Respondent.

9 **FOURTH CAUSE FOR DISCIPLINE**

10 *(Unprofessional Conduct - Conduct Warranting Denial of a License)*

11 16. Respondent is subject to disciplinary action under section 4300 and 4301,
12 subdivisions (p), of the Code, on the grounds of unprofessional conduct, in that, Respondent
13 committed conduct warranting denial of a license, as set forth above in paragraphs 14 (a), (b) and
14 (c). Any conduct, in and of itself, is an independent ground for disciplinary action against
15 Respondent.

16 **PRAYER**

17 *WHEREFORE*, Complainant requests that a hearing be held on the matters
18 herein alleged, and that following the hearing, the Board issue a decision:

- 19 1. Revoking or suspending Pharmacy Technician Registration Number
20 TCH 46353 issued to Sara Elaine Hernandez;
- 21 2. Ordering Sara Elaine Hernandez to pay the Board the reasonable costs of
22 the investigation and enforcement of this case, pursuant to Business and Professions Code
23 section 125.3; and

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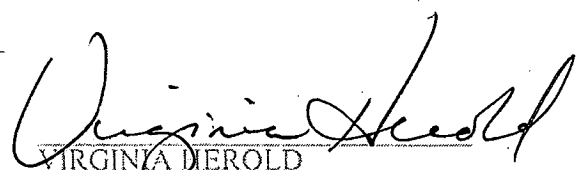
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3. Taking such other and further action as deemed necessary and proper.

DATED: 10/29/09


VIRGINIA DEROLD
Executive Officer
Board of Pharmacy
State of California
Complainant