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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. 3327

13 **JOHN J. MARTINEZ**  
14 **25 East Olive Avenue**  
**Fresno, California 93728**

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

15 **Pharmacy Technician Registration**  
16 **No. TCH 14084**

17 Respondent.

18  
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about September 27, 1994, the Board of Pharmacy issued Pharmacy Technician  
24 Registration Number TCH 14084 to John J. Martinez (Respondent). The Pharmacy Technician  
25 Registration was in full force and effect at all times relevant to the charges brought herein and  
26 will expire on March 31, 2010, 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 unless otherwise indicated.

5         4. Section 4300 of the Code states:

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

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

10                 “(1) Suspending judgment.

11                 “(2) Placing him or her upon probation.

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

13                 “(4) Revoking his or her license.

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

16             “(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The  
17 board may, in its sole discretion, issue a probationary license to any applicant for a license who is  
18 guilty of unprofessional conduct and who has met all other requirements for licensure. The board  
19 may issue the license subject to any terms or conditions not contrary to public policy, including,  
20 but not limited to, the following:

21                 “(1) Medical or psychiatric evaluation.

22                 “(2) Continuing medical or psychiatric treatment.

23                 “(3) Restriction of type or circumstances of practice.

24                 “(4) Continuing participation in a board-approved rehabilitation program.

25                 “(5) Abstention from the use of alcohol or drugs.

26                 “(6) Random fluid testing for alcohol or drugs.

27                 “(7) Compliance with laws and regulations governing the practice of pharmacy.

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1           “(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary  
2 certificate of licensure for any violation of the terms and conditions of probation. Upon  
3 satisfactory completion of probation, the board shall convert the probationary certificate to a  
4 regular certificate, free of conditions.

5           “(e) The proceedings under this article shall be conducted in accordance with Chapter 5  
6 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board  
7 shall have all the powers granted therein. The action shall be final, except that the propriety of  
8 the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of  
9 Civil Procedure.”

10           5. Section 4301 of the Code states in pertinent part:

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

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

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

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

24           “(k) The conviction of more than one misdemeanor or any felony involving the use,  
25 consumption, or self-administration of any dangerous drug or alcoholic beverage, or any  
26 combination of those substances.

27           “(l) The conviction of a crime substantially related to the qualifications, functions, and  
28 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13

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

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

20 6. Business and Professions Code section 4060 provides in pertinent part that:

21 "No person shall possess any controlled substance, except that furnished to a person upon  
22 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor  
23 pursuant to Section 3640.7, furnished pursuant to a drug order issued by a certified nurse-midwife  
24 pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant  
25 pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist  
26 pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of  
27 paragraph (5) of, subdivision (a) of Section 4052."

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

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

9           9. "Cocaine" is a Schedule II controlled substance as designated by Health and Safety  
10 Code section 11055(b)(6).

11                               **FIRST CAUSE FOR DISCIPLINE**

12   **(Conviction of crimes)**

13           10. Respondent is subject to disciplinary action under section 490 and 4301 subs. (k)  
14 and (l) in that he was convicted of a crimes substantially related to the practice of a pharmacy  
15 technician. The circumstances are as follows:

16           11. On or about August 5, 2009, in *People v. John J. Martinez*, Superior Court of  
17 California, County of Fresno; Case No. M09918300, respondent was convicted on his plea of  
18 guilty to a violation of Vehicle Code section 23152 (b), for driving while under the influence of  
19 alcohol with a .08 % or higher blood alcohol level. Respondent also admitted a prior conviction  
20 on April 6, 2009.

21           12. On or about April 6, 2009, in *People v. John J. Martinez*, Superior Court of  
22 California, County of Fresno; Case No. M09912399, respondent was convicted on his plea of  
23 nolo contendere to a violation of Vehicle Code section 23152 (b), for driving while under the  
24 influence of alcohol with a .08 % or higher blood alcohol level. Respondent also admitted a  
25 violation of probation.

26           13. On or about June 26, 2007, in *People v. John J. Martinez*, Superior Court of  
27 California, County of Fresno; Case No. M07918988, respondent was convicted on his plea of  
28

1 nolo contendere to a violation of Health and Safety Code section 11550 (a), for being under the  
2 influence of a controlled substance, to wit, Cocaine.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Possession of a Controlled Substance)**

5 14. Respondent is subject to disciplinary action under sections 4060 and 4301  
6 subdivisions (j) and (o) in that he illegally possessed controlled substances. The circumstances  
7 are set forth above in paragraph 13, above and as follows:

8 15. On or about April 20, 2006, respondent was stopped by Fresno police when he was  
9 riding his bike on the wrong side of the road against traffic. Respondent admitted to the Fresno  
10 police that he was in possession of rock cocaine.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Use of Alcohol or Drugs in a Manner Dangerous to Self or Others)**

13 16. Respondent is subject to disciplinary action under section 4301 (h) in that he used  
14 alcohol or drugs in a manner dangerous to himself or others as set forth in paragraphs 11, 12, and  
15 13, above.

16 **PRAYER**

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

19 1. Revoking or suspending Pharmacy Technician Registration Number TCH 14084,  
20 issued to John J. Martinez.

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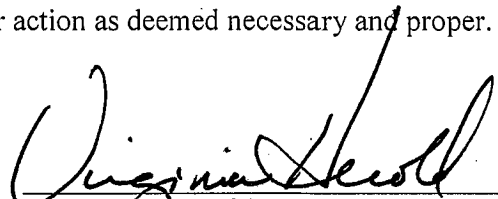
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2. Ordering John J. Martinez to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 10/27/09



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

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