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

In the Matter of the Accusation Against:

JAVIER M. VARELA aka JAVIER MAURICIO
VARELA FELIX aka JAVIER MAURICIO
VARELA-FELIX
3796 Palm Dr., Apt. A
Desert Shores, CA 92274

Pharmacy Technician Registration No. TCH 61270

Respondent.

Case No. 3486

A C C U S A T I O N

Complainant alleges:

PARTIES

1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
2. On or about February 24, 2005, the Board of Pharmacy issued Pharmacy Technician Registration Number TCH 61270 to Javier M. Varela (Respondent). The Pharmacy Technician Registration will expire on December 31, 2010, unless renewed.

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8. Section 4022 of the Code states

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

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

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

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

9. Section 4060 of the Code states:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, 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.

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

10. Section 4300 of the Code states that "(a) Every license issued may be suspended or revoked."

11. Section 4301 of the Code states:

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

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

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

7

8 (k) The conviction of more than one misdemeanor or any felony involving
9 the use, consumption, or self administration of any dangerous drug or alcoholic
10 beverage, or any combination of those substances.

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

24 12. California Code of Regulations, title 16, section 1769 states, in
25 pertinent part:

26 (b) When considering the suspension or revocation of a facility or a personal
27 license on the ground that the licensee or the registrant has been convicted of a crime,
28 the board, in evaluating the rehabilitation of such person and his present eligibility for
a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with all terms of parole, probation,
restitution or any other sanctions lawfully imposed against the licensee.(5) Evidence,
if any, of rehabilitation submitted by the licensee.

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

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

1 COST RECOVERY

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

6 DRUG

7 15. Marijuana is a Schedule I controlled substance as designated by Health and
8 Safety Code section 11054, subdivision (d)(13), and is a dangerous drug pursuant to Business &
9 Professions Code section 4022.

10 FIRST CAUSE FOR DISCIPLINE

11 **(March 20, 2008 Criminal Convictions - Felony Driving Under the Influence With Injury
12 and Felony Hit and Run on November 18, 2007)**

13 16. Grounds exist to revoke Respondent's license pursuant to Code section
14 4300, section 4301, subdivisions (h), (k) and (l) as well as 490 and 493 for using alcoholic
15 beverages to an extent or in a manner as to be dangerous to himself or others and a criminal
16 conviction that is substantially related to the qualifications, functions, and duties of a Pharmacy
17 Technician. On March 20, 2008, in a case entitled People vs. Javier Mauricio Varela Felix (Santa
18 Barbara Superior Court Case No. 1255878), Respondent was convicted by a plea of no contest to
19 a violation of Vehicle Code Sections 23153(a) (driving under the influence of alcohol with
20 injury), a felony, and 20001(a) (hit and run), a felony.

21 17. The facts and circumstances surrounding this cause for discipline are
22 as follows: On November 18, 2007 Respondent rear ended a car that was stopped at a stop
23 light with two women and three small children in it. Respondent admitted to the victim that
24 he had been drinking, that he was drunk, and then he drove away. The victim chased him
25 in her car, blocked him in a parking lot, and called the police. One of the passengers in the
26 car suffered minor injuries in the accident. A blood test revealed that Respondent was
27 driving under the influence of alcohol with a blood alcohol level of .12%. Respondent was
28

1 also found to be in possession of 28.7 grams of marijuana and \$440.62 in cash. The police
2 came and arrested Respondent for hit and run, driving under the influence, and sale of
3 marijuana.

4 18. On the plea form, Respondent admitted that the facts on the police report
5 show enough to convict me of DUI with injury. I did drive while under the influence of alcohol
6 and while doing so committed a vehicle code violation which in turn caused injury to J.D. I
7 subsequently left the scene of the crime without doing as I was required to do pursuant to the
8 vehicle code.

9 19. On May 1, 2008, Respondent was sentenced to 90 days in jail, three years
10 probation under certain terms and conditions, including a first time offender alcohol program, a
11 12 month license suspension, \$2,725.00 in fines and fees, and restitution in an amount to be
12 determined.

13 SECOND CAUSE FOR DISCIPLINE

14 **(March 20, 2008 Criminal Conviction –**
15 **Driving on a Suspended License on November 6, 2007)**

16 20. Grounds exist to revoke Respondent's license pursuant to Code section
17 4300, section 4301, subdivisions (f) and (l), as well as 490 and 493 for commission of an act
18 involving moral turpitude and dishonesty, and a criminal conviction that is substantially related to
19 the qualifications, functions, and duties of a Pharmacy Technician. On March 20, 2008, in a case
20 entitled People vs. Javier Mauricio Varela Felix (Santa Barbara Superior Court Case No.
21 1255498), Respondent was convicted by a plea of no contest Vehicle Code section 14601.1(a)
22 (driving on a suspended license), a misdemeanor.

23 21. The facts and circumstances surrounding this cause for discipline are as
24 follows: On November 6, 2007, Respondent was stopped when he drove through a stop sign.
25 Respondent informed the officer at that time that his license was suspended. A burned marijuana
26 cigarette and a useable amount of marijuana was found in the ash tray of the car. Respondent was
27 cited for driving on a suspended license, failing to stop, and possession of marijuana while
28 driving.

1 the bike racks on campus at the University of California Santa Barbara. Respondent admitted to
2 the police that he had borrowed the bolt cutters, had cut the locks on two of the bikes, and that he
3 drove onto campus where each planned to take a bike to ride.

4 28. On August 8, 2008, Respondent was sentenced to 45 days in jail and \$145
5 in fines and fees.

6 PRAYER

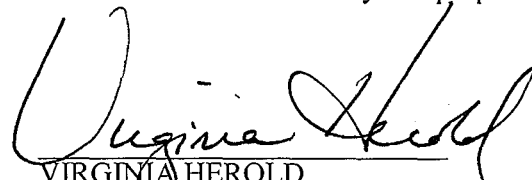
7 WHEREFORE, Complainant requests that a hearing be held on the matters herein
8 alleged, and that following the hearing, the Board of Pharmacy issue a decision:

9 1. Revoking or suspending Pharmacy Technician Registration Number TCH 61270,
10 issued to Javier M. Varela.

11 2. Ordering Javier M. Varela to pay the Board of Pharmacy the reasonable costs of
12 the investigation and enforcement of this case, pursuant to Business and Professions Code section
13 125.3.

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

15 DATED: 4/7/10



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

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