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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. 3507

13 **ANDREW LOPEZ**
1272 Durkin Street
Camarillo, CA 93010

ACCUSATION

14 Pharmacy Technician Registration
15 No. TCH 36439

16 Respondent.

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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 February 9, 2001, the Board of Pharmacy ("Board") issued Pharmacy
24 Technician Registration No. TCH 36439 to Andrew Lopez ("Respondent"). The Pharmacy
25 Technician Registration was in full force and effect at all times relevant to the charges brought
26 herein and will expire on September 30, 2012, unless renewed.

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1 **JURISDICTION**

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

5 **STATUTORY PROVISIONS**

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

10 5. Section 490 states:

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

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

19 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
20 conviction following a plea of nolo contendere. Any action that a board is permitted to take
21 following the establishment of a conviction may be taken 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 the
24 provisions of Section 1203.4 of the Penal Code."

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

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1 7. Section 4301 states:

2 "The board shall take action against any holder of a license who is guilty of unprofessional
3 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

4 Unprofessional conduct shall include, but is not limited to, any of the following:

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

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10 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous
11 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
12 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
13 to the extent that the use impairs the ability of the person to conduct with safety to the public the
14 practice authorized by the license.

15 "(i) Except as otherwise authorized by law, knowingly selling, furnishing, giving away, or
16 administering or offering to sell, furnish, give away, or administer any controlled substance to an
17 addict.

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

1 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
2 of this provision. The board may take action when the time for appeal has elapsed, or the
3 judgment of conviction has been affirmed on appeal or when an order granting probation is made
4 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
5 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
6 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
7 indictment.”

8 **REGULATORY PROVISIONS**

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

10 "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 manner
15 consistent with the public health, safety, or welfare."

16 **COST RECOVERY**

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

21 **FIRST CAUSE FOR DISCIPLINE**

22 **(Criminal Convictions)**

23 10. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and
24 490 of the Code, in conjunction with California Code of Regulations, title 16, section 1770, in
25 that Respondent was convicted of crimes substantially related to the qualifications, functions or
26 duties of a licensed pharmacy technician, as follows:

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1 a. On or about October 19, 2005, after pleading nolo contendere, Respondent was
2 convicted of one misdemeanor count of violation Vehicle Code section 23152, subdivision (b)
3 [driving while having 0.8% and more, of alcohol in his blood], in the criminal proceeding entitled
4 *The People of the State of California vs. Andrew Lopez* (Super. Ct. Ventura County, 2005, No.
5 2005032176). The Court sentenced Respondent to 48 hours in custody and placed him on
6 probation for a period of 36 months, on specific terms conditions. The circumstances
7 surrounding the conviction are that on or about September 16, 2005, the Ventura Sheriff's
8 Department arrested Respondent for driving under the influence of alcohol.

9 b. On or about July 24, 2006, after pleading guilty, Respondent was convicted of
10 one misdemeanor count of violating Vehicle Code section 14601.5, subdivision (a) [driving while
11 license suspended/revoked], in the criminal proceeding entitled *The People of the State of*
12 *California vs. Andrew Lopez* (Super. Ct. Ventura County, 2006, No. 2006017702). The Court
13 sentenced Respondent to 10 days in custody and placed him on probation for 36 months, on
14 specific terms and conditions. The circumstances surrounding the conviction are that on or about
15 May 8, 2006, Respondent was driving a vehicle while his license was suspended or revoked.

16 c. On or about June 7, 2011, after a jury trial, Respondent was convicted of one
17 misdemeanor count of violating Penal Code section 148, subdivision (a)(1) [resist, obstruct, delay
18 of peace officer] and convicted of one misdemeanor count of violating Penal Code section 594,
19 subdivision (b)(2)(A) [graffiti vandalism, \$400 or less in damage], in the criminal proceeding
20 entitled *The People of the State of California vs. Andrew Lopez* (Super. Ct. Ventura County,
21 2009, No. 2009039818). The Court sentenced Respondent to 30 days in custody and placed him
22 on probation for 36 months, on specific terms and conditions. The circumstances surrounding the
23 conviction are that on or about October 29, 2009, Respondent unlawfully resisted, delayed, and
24 obstructed Ventura County Sheriff's Deputy Marrs and unlawfully and maliciously defaced with
25 graffiti and damaged and destroyed a Ventura County Sheriff's patrol vehicle.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Use of Alcohol Beverages to the Extent to be Dangerous to Oneself)**

3 11. Respondent is subject to disciplinary action under section 4301, subdivision (h), of
4 the Code, on the grounds of unprofessional conduct, in that on or about September 16, 2005,
5 Respondent used and consumed alcoholic beverages to the extent or in a manner as to be
6 dangerous and injurious to himself and others. Complainant refers to, and by this reference
7 incorporates, the allegations set forth in paragraph 10, subparagraph (a), as though set forth fully.

8 **THIRD CAUSE FOR DISCIPLINE**

9 **(Act Involving Moral Turpitude and/or Corruption)**

10 12. Respondent is subject to disciplinary action under section 4301, subdivision (f), of the
11 Code, on the grounds of unprofessional conduct, in that on or about October 29, 2009,
12 Respondent engaged in conduct constitution moral turpitude and/or corruption. Complainant
13 refers to, and by this reference incorporates, the allegations set forth in paragraph 10,
14 subparagraph (c), as though set forth fully.

15 **PRAYER**

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

- 18 1. Revoking or suspending Pharmacy Technician Registration No. TCH 36439, issued
19 to Respondent.
- 20 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
21 enforcement of this case, pursuant to Business and Professions Code section 125.3; and
- 22 3. Taking such other and further action as deemed necessary and proper.

23
24 DATED: 8/29/12


25 VIRGINIA HEROLD
26 Executive Officer
27 Board of Pharmacy
28 Department of Consumer Affairs
State of California
Complainant

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