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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. 3524

13 **RITA BERNAL**
14 **4960 N. Teilman**
15 **Fresno, Ca. 93705**
16 **Pharmacy Technician Registration No. TCH**
17 **54691**

ACCUSATION

Respondent.

18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about March 2, 2004, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 54691 to Rita Bernal (Respondent). The Pharmacy Technician
24 Registration was in full force and effect at all times relevant to the charges brought herein and
25 will expire on July 31, 2011, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
28 Consumer Affairs, under the authority of the following laws. All section references are to the
Business and Professions Code unless otherwise indicated.

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4. Section 4300 of the Code states:

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

...

5. 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:

...

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

...

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

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

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

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

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

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

18 8. Business and Professions Code section 125.3 states that:

19 "(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary
20 proceeding before any board within the department or before the Osteopathic Medical Board
21 upon request of the entity bringing the proceedings, the administrative law judge may direct a
22 licensee found to have committed a violation or violations of the licensing act to pay a sum not
23 to exceed the reasonable costs of the investigation and enforcement of the case.

24 ...

25 FIRST CAUSE FOR DISCIPLINE

26 (CRIMINAL CONVICTION)

27 9. Respondent is subject to disciplinary action under section 4301 (k)(1) in that on or
28 about August 7, 2006, in a criminal proceeding entitled *People v. Rita Bernal* in Fresno County

1 Superior Court, Case Number T06903832-4, Respondent was convicted by a plea of no contest
2 for violating Vehicle Code section 23152(b) (drunk driving) with a blood alcohol content of .15
3 percent or higher (Vehicle Code section 23578) with a prior conviction (Vehicle Code section
4 23540) and Vehicle Code section 23152 (with a minor under the age of 14 years as a passenger),
5 misdemeanors. Respondent was given a suspended sentence, three years of probation and 90
6 days county jail with 70 days stayed. The conviction is substantially related to the qualifications,
7 functions or duties as a registrant.

8 SECOND CAUSE FOR DISCIPLINE

9 (CRIMINAL CONVICTION)

10 10. Respondent is subject to disciplinary action under section 4301 (k)(1) in that on or
11 about February 21, 2007, in a criminal proceeding entitled *People v. Rita Bernal* in Fresno
12 County Superior Court Case Number M07910810, Respondent was convicted by a plea of for
13 violation Vehicle Code section 23152(b)(drunk driving) with a prior conviction (Vehicle Code
14 section) and a blood alcohol level of .15 percent or higher (Vehicle Code section) and Vehicle
15 Code section 14601.2 (driving while license suspended for prior DUI), all misdemeanors.
16 Sentence was suspended with three years of probation with 120 days in county jail with 90 days
17 suspended and a fine of \$1500, to run concurrent with the prior conviction.

18 THIRD CAUSE FOR DISCIPLINE

19 (USE OF ALCOHOLIC BEVERAGES)

20 11. Respondent is subject to disciplinary action under section 4301 (h) in that she used
21 alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a
22 person holding a license under this chapter, or to any other person or to the public, or to the extent
23 that the use impairs the ability of the person to conduct with safety to the public the practice
24 authorized by the license as described in paragraphs 9 and 10 above.

25 PRAYER

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

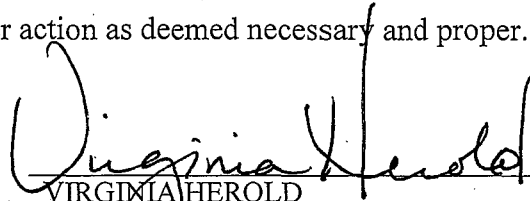
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1. Revoking or suspending Pharmacy Technician Registration Number TCH 54691, issued to Rita Bernal;
2. Ordering RITA BERNAL to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED:

8/23/10



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

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