

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 JOSHUA A. ROOM  
Deputy Attorney General  
4 State Bar No. 214663  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
Telephone: (415) 703-1299  
6 Facsimile: (415) 703-5480  
*Attorneys for Complainant*

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

10 In the Matter of the Accusation Against:

Case No. 3611

11 **MARIA GUADALUPE MAGANA**  
12 **11 N. Delaware Street**  
13 **San Mateo, CA 94401**

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

14 **Pharmacy Technician License No. TCH 23065**  
15 **Intern Pharmacist License No. INT 18877**

Respondent.

16 Complainant alleges:

17 PARTIES

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

20 2. On or about July 2, 1997, the Board of Pharmacy issued Pharmacy Technician  
21 License No. TCH 23065 to Maria Guadalupe Magana (Respondent). The Pharmacy Technician  
22 License was in full force and effect at all times relevant to the charges brought herein and will  
23 expire on December 31, 2010, unless renewed.

24 3. On or about February 2, 2006, the Board of Pharmacy issued Intern Pharmacist  
25 License No. INT 18877 to Maria Guadalupe Magana (Respondent). The Intern Pharmacist  
26 License was in full force and effect at all times relevant to the charges brought herein and will  
27 expire on February 28, 2011, unless renewed.

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JURISDICTION

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2       4. 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 (Code) unless otherwise indicated.

5       5. Section 4011 of the Code provides that the Board shall administer and enforce both  
6 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances  
7 Act [Health & Safety Code, § 11000 et seq.].

8       6. Section 4300(a) of the Code provides that every license issued by the Board may be  
9 suspended or revoked.

10       7. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration,  
11 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a  
12 disciplinary action during the period within which the license may be renewed, restored, reissued  
13 or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not  
14 renewed within three years following its expiration may not be renewed, restored, or reinstated  
15 and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of  
16 the Code provides that any other license issued by the Board may be canceled by the Board if not  
17 renewed within 60 days after its expiration, and any license canceled in this fashion may not be  
18 reissued but will instead require a new application to seek reissuance.

STATUTORY AND REGULATORY PROVISIONS

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20       8. Section 4301 of the Code provides, in pertinent part, that the Board shall take action  
21 against any holder of a license who is guilty of "unprofessional conduct," defined to include, but  
22 not be limited to, any of the following:

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

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1 (l) The conviction of a crime substantially related to the qualifications, functions, and duties  
2 of a licensee under this chapter.

3 9. Section 490 of the Code provides, in pertinent part, that the Board may suspend or  
4 revoke a license when it finds that the licensee has been convicted of a crime substantially related  
5 to the qualifications, functions or duties of the license.

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

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

13 11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
14 administrative law judge to direct a licentiate found to have committed a violation of the licensing  
15 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

16 FIRST CAUSE FOR DISCIPLINE

17 (Conviction of Substantially Related Crime(s))

18 12. Respondent is subject to discipline under section 4301(l) and/or section 490 of the  
19 Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of  
20 substantially related crime(s), in that on or about October 3, 2008, in the criminal case *People v.*  
21 *Maria Guadalupe Magana*, Case No. NM378488 in San Mateo County Superior Court,  
22 Respondent was convicted of violating Vehicle Code section 23152(b) (Driving with blood  
23 alcohol level of 0.08% or more), a misdemeanor, with a special allegation pursuant to Vehicle  
24 Code section 23578 for having a blood alcohol level of 0.15% or more, as follows:

25 a. On or about July 20, 2008, Respondent was observed to have significant signs  
26 of intoxication while driving an automobile, including that: she passed out behind the wheel; she  
27 was unable to effectively operate the vehicle; she lacked coordination and was groggy; and she  
28 smelled of alcohol. She was detained and arrested by Daly City (CA) Police.



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3. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

4. Taking such other and further action as is deemed necessary and proper.

DATED: 9/23/10

*Virginia Herold*

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

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