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8	BEFORE THE
9	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS
10	STATE OF CALIFORNIA
11	In the Matter of the Accusation Against: Case No. 3709
12	
	MICHELLE M. MIX AKA MICHELLE MARIE RAGGHIANTI
13	25661 La Lanne Los Altos Hills, CA 94022
14	Pharmacy Technician License No. TCH 13063
15	Respondent.
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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 (Board), Department of Consumer Affairs.
22	2. On or about June 1, 1994, the Board issued Pharmacy Technician License Number
23	TCH 13063 to Michelle M. Mix (Respondent). The Pharmacy Technician License was in full
24	force and effect at all times relevant to the charges brought herein and will expire on June 30,
25	2010, unless renewed.
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ACCUSATION

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**JURISDICTION** 

- 3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.
- 4. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law (Bus. & Prof. Code § 4000 et seq.) and the Uniform Controlled Substances Act (Health & Safety Code § 11000 et seq.).
- 5. Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked.
- 6. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

## STATUTORY AND REGULATORY PROVISIONS

7. 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.

"(1) 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. . . . A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision."

- 8. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.
  - 9. 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."

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

#### FIRST CAUSE FOR DISCIPLINE

## (Unprofessional Conduct: Using Alcohol in a Dangerous Manner)

11. Respondent is subject to disciplinary action under section 4301(h) of the Code in that she used alcohol in a manner dangerous or injurious to herself and the public. On or about May 12, 2009, at approximately 2:50 p.m., Respondent was stopped by police officers on El Camino Real in Mountain View, California, after rear-ending another vehicle. Respondent failed field

sobriety tests performed at the scene and was arrested for driving under the influence of alcohol (Vehicle Code section 23152(a)).

- 12. Respondent is further subject to disciplinary action under section 4301(h) of the Code in that she used alcohol in a manner dangerous or injurious to herself. On or about May 12, 2009, at approximately 8:35 p.m., two police officers found Respondent stumbling in the bike lane on Almond Avenue in Los Altos, California. The officers observed objective signs and symptoms of alcohol intoxication about Respondent. A breathalyzer test performed at the scene revealed that Respondent's blood alcohol level was 0.17%. After determining that Respondent could not care for her safety or the safety of others, the officers arrested her for public intoxication (Penal Code section 647(f)).
- 13. Respondent is further subject to disciplinary action under section 4301(h) of the Code in that she used alcohol in a manner dangerous or injurious to herself. On or about October 13, 2009, police officers approached Respondent on W. Edith Avenue in Los Altos, California, after reports that an intoxicated female had refused to pay her taxi fare. While at the scene, the officers observed objective signs and symptoms of alcohol intoxication about Respondent. Respondent yelled at the officers and the taxi driver. Based on their observations, the officers determined that Respondent could not care for her safety or the safety of others and decided to arrest her.

#### SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Conviction of More than one Misdemeanor Involving Use of Alcohol)

14. Respondent is subject to disciplinary action under section 4301(k) and/or section 490 of the Code in that on or about June 26, 2009, in a criminal proceeding entitled *The People of the State of California v. Michelle Marie Ragghianti*, in Santa Clara County Superior Court, Case Number BB941180, Respondent was convicted by her plea of nolo contendere of violating Vehicle Code section 23152(b) (driving with blood alcohol level of 0.08% or above), a misdemeanor. Respondent was sentenced to three years of probation and ordered to pay fines in the amount of \$1,750.00.

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The circumstances of the conviction were that on or about May 12, 2009, Respondent was stopped by police officers on El Camino Real in Mountain View, California, after her vehicle rear-ended another vehicle stopped at a red light. While at the scene of the accident, the officers conducted an investigation to determine whether Respondent had been driving under the influence of alcohol or drugs. Respondent failed field sobriety tests and was arrested for violating Vehicle Code section 23152(a).

15. Also, on or about November 30, 2009, in a criminal proceeding entitled *The People of the State of California v. Michelle Marie Ragghianti*, in Santa Clara County Superior Court, Case Number BB943785, Respondent was convicted by her plea of nolo contendere of violating Penal Code section 647(f) (public intoxication) and Penal Code section 148(a)(1) (resisting, delaying, or obstructing an officer), both of which are misdemeanors. Respondent was sentenced to one year of probation and ordered to pay fines in the amount of \$610.00.

The circumstances of the conviction were that on or about October 13, 2009, police officers approached Respondent on W. Edith Avenue in Los Altos, California, after reports that an intoxicated female had refused to pay her taxi fare. While at the scene, the officers observed objective signs and symptoms of alcohol intoxication about Respondent. Respondent yelled at the officers and the taxi driver. Based on their observations, the officers determined that Respondent could not care for her safety or the safety of others and decided to arrest her. After being advised that she was under arrest, Respondent resisted arrest by pulling away from the officers, yelling at them, tensing her muscles, and refusing to sit inside the back seat of the patrol vehicle.

## THIRD CAUSE FOR DISCIPLINE

# (Unprofessional Conduct: Criminal Conviction)

16. Respondent is subject to disciplinary action under section 4301(l) and/or section 490 of the Code, by reference to California Code of Regulations, title 16, section 1770, in that on or about June 26, 2009, in a criminal proceeding entitled *The People of the State of California v. Michelle Marie Ragghianti*, in Santa Clara County Superior Court, Case Number BB941180, Respondent was convicted by her plea of nolo contendere of violating Vehicle Code section

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23152(b) (driving with blood alcohol level of 0.08% or above), a misdemeanor. Respondent was sentenced to three years of probation and ordered to pay fines in the amount of \$1,750.00.

The circumstances of the conviction were that on or about May 12, 2009, Respondent was stopped by police officers on El Camino Real in Mountain View, California, after her vehicle rear-ended another vehicle stopped at a red light. While at the scene of the accident, the officers conducted an investigation to determine whether Respondent had been driving under the influence of alcohol or drugs. Respondent failed field sobriety tests and was arrested for violating Vehicle Code section 23152(a).

17. Respondent is further subject to disciplinary action under section 4301(l) and/or section 490 of the Code, by reference to California Code of Regulations, title 16, section 1770, in that on or about November 30, 2009, in a criminal proceeding entitled *The People of the State of California v. Michelle Marie Ragghianti*, in Santa Clara County Superior Court, Case Number BB943785, Respondent was convicted by her plea of nolo contendere of violating Penal Code section 647(f) (public intoxication) and Penal Code section 148(a)(1) (resisting, delaying, or obstructing an officer), both of which are misdemeanors. Respondent was sentenced to one year of probation and ordered to pay fines in the amount of \$610.00.

The circumstances of the conviction were that on or about October 13, 2009, police officers approached Respondent on W. Edith Avenue in Los Altos, California, after reports that an intoxicated female had refused to pay her taxi fare. While at the scene, the officers observed objective signs and symptoms of alcohol intoxication about Respondent. Respondent yelled at the officers and the taxi driver. Based on their observations, the officers determined that Respondent could not care for her safety or the safety of others and decided to arrest her. After being advised that she was under arrest, Respondent resisted arrest by pulling away from the officers, yelling at them, tensing her muscles, and refusing to sit inside the back seat of the patrol vehicle.

# **PRAYER**

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

- 1. Revoking or suspending Pharmacy Technician License Number TCH 13063 issued to Michelle M. Mix;
- 2. Ordering Michelle M. Mix to pay the Board the reasonable costs of the investigation and enforcement of this case pursuant to section 125.3 of the Code;
  - 3. Taking such other and further action as deemed necessary and proper.

DATED: 7/1/10

VIRGINIA HEROLD Executive Officer

Board of Pharmacy

Department of Consumer Affairs

State of California Complainant

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