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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. 4004

13 **WENDY GARCIA**
5819 Fayette St.
Los Angeles, CA 90042

ACCUSATION

14 Pharmacy Technician Registration No. TCH
91004

15 Respondent.
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18 Complainant alleges:
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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 (Board).
23 2. On or about April 26, 2010, the Board of Pharmacy issued Original Pharmacy
24 Technician Registration Number TCH 91004 to Wendy Garcia. (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 April 30, 2012, unless renewed.

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1 percent or more, by weight, of alcohol in the blood), a misdemeanor, in the criminal proceeding
2 entitled *The People of the State of California v. Wendy Garcia* (Super. Ct. Los Angeles County,
3 2010, No. OWW06850). The Court sentenced Respondent to 96 hours in jail, placed her on 48
4 months probation, ordered her to pay fines and restitution, to complete a second-offender alcohol
5 program, and to participate in the Victim Impact Panel of Mothers Against Drunk Driving.

6 11. The circumstances surrounding the conviction are that on or about October 10, 2010,
7 Respondent drove after drinking eight glasses of alcohol over a six-hour period. In a state of
8 intoxication, Respondent "took a wrong turn" onto an active rail line and immobilized her car
9 between a rail tie and a bed of rocks. Two bystanders pulled Respondent to safety before a train
10 collided with Respondent's car, pushing the car one hundred feet from its initial location.
11 Whittier Police Department Officer Hernandez arrived on the scene and met with Respondent.
12 Respondent exuded a "strong odor" of alcohol, spoke in an "extremely slurred" manner, and
13 displayed bloodshot and watery eyes. Officer Hernandez asked Respondent whether she had
14 been drinking prior to driving. Respondent answered that she had four glasses of wine and four
15 beers at a friend's house three hours prior to driving. She stated that she drove onto the railroad
16 tracks because she was "drunk and just was really sleepy." Officer Hernandez invited
17 Respondent to participate in a series of field sobriety tests. Respondent agreed to perform the
18 tests including the One Leg Time 30 second test, Walk and Turn test, Alphabet Recital test, and
19 Number Count test. Respondent failed all four tests. She was "extremely unstable on her feet"
20 during the One Leg Time and Walk and Turn tests. She was unable to complete the alphabet
21 without repeating or skipping letters, and she could not count backwards from 67 to 57. When
22 tested, Respondent exhibited an immediate horizontal gaze nystagmus. Based on the totality of
23 the circumstances, Officer Hernandez arrested Respondent for driving under the influence of
24 alcohol. He advised Respondent of her obligation to submit to a test to evaluate the level of
25 alcohol in her system. Respondent elected to have blood drawn. An analyst for the Los Angeles
26 County Sheriff's Department, Scientific Services Bureau, tested the sample and concluded that it
27 contained .29 percent alcohol by weight. Respondent's conviction of driving with a blood
28 alcohol level of .08 percent or higher is substantially related to the qualifications, functions, and

1 duties of a Registered Pharmacy Technician.

2 **SECOND CAUSE FOR DISCIPLINE**

3 (Use of Alcohol to an Extent Dangerous to Self or Others)

4 12. Respondent is subject to disciplinary action under sections 4300 and 4301,
5 subdivision (h), for use of alcoholic beverages to the extent or in a manner as to be dangerous or
6 injurious to oneself or to the public, in that Respondent drove while intoxicated with a blood
7 alcohol concentration more than three times the legal limit. Respondent drove onto an active rail
8 line and became trapped, exposing rescuers and train passengers to substantial risk of injury or
9 death. Complainant refers to and by this reference incorporates the allegations set forth above in
10 paragraphs 11–12, inclusive, as though set forth fully.

11 **THIRD CAUSE FOR DISCIPLINE**

12 (Commission of Acts Warranting Denial of Licensure)

13 13. Respondent is subject to disciplinary action under sections 480, subdivision (a)(1),
14 4300, and 4301, subdivision (p), for committing acts, which would warrant denial of licensure, in
15 that Respondent was convicted of driving with a blood alcohol content of .08 percent or more.
16 Respondent's conviction is substantially related to the qualifications, functions, and duties of a
17 Registered Pharmacy Technician. Complainant refers to and by this reference incorporates the
18 allegations set forth above in paragraphs 11–12, inclusive, as though set forth fully.

19 **FOURTH CAUSE FOR DISCIPLINE**

20 (Conviction of More than One Misdemeanor Involving Use of Alcohol)

21 14. Respondent is subject to disciplinary action under sections 4300 and 4301,
22 subdivision (k), in that Respondent has been convicted of more than one misdemeanor involving
23 the use, consumption, or self-administration of an alcoholic beverage. Respondent was convicted
24 twice of violating Vehicle Code section 23152, subdivision (b) (driving a vehicle with .08 percent
25 or more, by weight, of alcohol in the blood). Respondent was convicted on or about January 13,
26 2005 and on or about December 15, 2010. Complainant refers to and by this reference
27 incorporates the allegations set forth above in paragraphs 11–12, inclusive, as though set forth
28 fully.

1 OTHER MATTERS

2 (Prior Conviction Involving Alcohol)

3 16. On or about January 13, 2005, in the *People of the State of California v. Wendy*
4 *Garcia* (Super. Ct. Los Angeles County, No. 4MT1254701), Respondent was convicted, upon a
5 plea of nolo contendere, of violating Vehicle Code section 23152, subdivision (b) (driving with
6 .08 percent or more, by weight, of alcohol in the blood), a misdemeanor. Respondent was placed
7 on three years probation and ordered to perform 188 hours of community service and complete
8 the Los Angeles County Hospital and Morgue Program. The circumstances of the conviction are
9 that on or about December 19, 2004, Respondent drove a vehicle while under the influence of
10 alcohol and collided with two parked cars. Los Angeles Police Department Officer Robinson met
11 with Respondent at the scene and observed that Respondent smelled of alcohol and had
12 bloodshot, watery eyes, and slurred speech. Respondent was transported to the hospital, where
13 she received treatment for minor injuries. At the hospital, Respondent agreed to perform a series
14 of field sobriety tests. During the Romberg Balance test, she estimated 18 seconds to be 30
15 seconds and swayed two inches in a circular motion. She could not perform the Walk and Turn
16 test without stumbling, nor could she perform the One Leg Stand test without using her arms for
17 balance. She failed to perform the Finger to Nose test as instructed and exhibited immediate
18 horizontal gaze nystagmus. The breathalyzer recorded Respondent's blood alcohol content at .21
19 percent in the first reading and .20 percent in the second reading.

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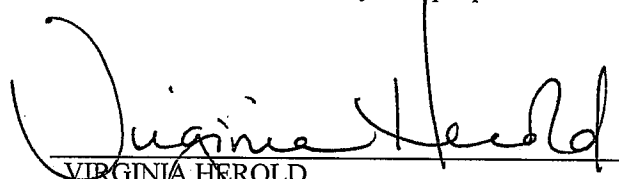
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PRAYER

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

- 1.1. Revoking or suspending Pharmacy Technician Registration Number TCH 91004, issued to Wendy Garcia;
- 1.2. Ordering Wendy Garcia to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and
- 1.3. Taking such other and further action as deemed necessary and proper.

DATED: 7/6/11



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

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