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1 2 3 4 5 6 7 8 9	KAMALA D. HARRIS Attorney General of California GLORIA A. BARRIOS Supervising Deputy Attorney General MATTHEW A. KING Deputy Attorney General State Bar No. 265691 300 So. Spring Street, Suite 1702 Los Angeles, CA 90013 Telephone: (213) 897-7446 Facsimile: (213) 897-2804 Attorneys for Complainant BEFORE THE BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA
11	In the Matter of the Accusation Against: Case No. 4004
12	WENDY GARCIA 5819 Fayette St.
13	Los Angeles, CA 90042 ACCUSATION
14	Pharmacy Technician Registration No. TCH
15	91004
16	Respondent.
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19	Complainant alleges:
	<u>PARTIES</u>
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 (Board).
22	2. On or about April 26, 2010, the Board of Pharmacy issued Original Pharmacy
23	Technician Registration Number TCH 91004 to Wendy Garcia. (Respondent). The Pharmacy
24	Technician Registration was in full force and effect at all times relevant to the charges brought
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26	herein and will expire on April 30, 2012, unless renewed.
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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.

STATUTORY PROVISIONS

- 4. Section 118, subdivision (b), of the Code provides 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.
- 5. Section 4202, subdivision (d), of the Code provides that "[t]he board may suspend or revoke any registration issued pursuant to this section on any ground specified in Section 4301."
- 6. Section 4300, subdivision (a), of the Code states that "[e]very license issued may be suspended or revoked."
 - 7. Section 4301 of the Code states, in pertinent part:

"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.

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"(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee...[T]he 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...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.

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"(p) Actions or conduct that would have warranted denial of a license."

REGULATORY PROVISIONS

8. 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."

COST RECOVERY

9. Section 125.3 of the Code states, 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

(Conviction of Substantially Related Crime)

10. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (I), for unprofessional conduct in that Respondent was convicted of a crime substantially related to the qualifications, functions, and duties of a Registered Pharmacy Technician. On or about December 15, 2010, Respondent was convicted, upon a plea of nolo contendere, of violating Vehicle Code section 23152, subdivision (b) (driving a vehicle with .08

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

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

duties of a Registered Pharmacy Technician.

SECOND CAUSE FOR DISCIPLINE

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

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

THIRD CAUSE FOR DISCIPLINE

(Commission of Acts Warranting Denial of Licensure)

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

FOURTH CAUSE FOR DISCIPLINE

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

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

OTHER MATTERS

(Prior Conviction Involving Alcohol)

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

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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

Board of Pharmacy

Department of Consumer Affairs

State of California Complainant

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