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

11 In the Matter of the Accusation Against:

Case No. 4241

12 **EDUARDO HUVENTINO GONZALEZ**  
13 **15279 Orchid Street**  
14 **Fontana, CA 92335**

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

15 **Pharmacy Technician Registration No. TCH**  
**96364**

16 **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, Department of Consumer Affairs.

22 2. On or about February 1, 2011, the Board of Pharmacy issued Pharmacy Technician  
23 Registration Number TCH 96364 to Eduardo Gonzalez (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 February 28, 2013, unless renewed.

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1 JURISDICTION

2 3. 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 unless otherwise indicated.

5 4. Code section 118, subdivision (b), states, in pertinent part, that the expiration of a  
6 license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the  
7 period within which the license may be renewed, restored, reissued or reinstated.

8 5. Section 482 of the Code states:

9 Each board under the provisions of this code shall develop criteria to  
10 evaluate the rehabilitation of a person when:

11 . . . .

12 (b) Considering suspension or revocation of a license under Section 490.

13 Each board shall take into account all competent evidence of  
14 rehabilitation furnished by the applicant or licensee.

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

19 7. Section 493 of the Code states:

20 Notwithstanding any other provision of law, in a proceeding conducted  
21 by a board within the department pursuant to law to deny an application for a license  
22 or to suspend or revoke a license or otherwise take disciplinary action against a  
23 person who holds a license, upon the ground that the applicant or the licensee has  
24 been convicted of a crime substantially related to the qualifications, functions, and  
25 duties of the licensee in question, the record of conviction of the crime shall be  
26 conclusive evidence of the fact that the conviction occurred, but only of that fact, and  
27 the board may inquire into the circumstances surrounding the commission of the  
28 crime in order to fix the degree of discipline or to determine if the conviction is  
substantially related to the qualifications, functions, and duties of the licensee in  
question.

As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,'  
and 'registration.'

8. Section 4300 of the Code provides, in pertinent part, that every license issued may be  
suspended or revoked.

STATUTORY PROVISIONS

9. 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:

....

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

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

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1 REGULATORY PROVISIONS

2 10. California Code of Regulations, title 16, section 1769 states, in  
3 pertinent part:

4 (b) When considering the suspension or revocation of a facility or a personal license  
5 on the ground that the licensee or the registrant has been convicted of a crime, the  
6 board, in evaluating the rehabilitation of such person and his present eligibility for a  
7 license will consider the following criteria:

8 (1) Nature and severity of the act(s) or offense(s).

9 (2) Total criminal record.

10 (3) The time that has elapsed since commission of the act(s) or offense(s).

11 (4) Whether the licensee has complied with all terms of parole, probation,  
12 restitution or any other sanctions lawfully imposed against the licensee.(5) Evidence,  
13 if any, of rehabilitation submitted by the licensee.

14 11. California Code of Regulations, title 16, section 1770, states:

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

22 COST RECOVERY

23 12. Section 125.3 of the Code states, in pertinent part, that the Board  
24 may request the administrative law judge to direct a licentiate found to have committed  
25 a violation or violations of the licensing act to pay a sum not to exceed the reasonable cost  
26 of the investigation and enforcement of the case.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(March 7, 2012 Criminal Conviction for Driving on a Suspended License from a DUI**  
3 **on January 25, 2012)**

4 13. Grounds exist to revoke Respondent's license pursuant to Code section 4300, section  
5 4301, subdivisions (f) and (l), as well as 490 and 493 for unprofessional conduct and for a  
6 criminal conviction that is substantially related to the qualifications, functions, and duties of a  
7 Pharmacy Technician.

8 a. On or about March 21, 2012, in a case entitled People vs. Gonzales (Tulare  
9 County Superior Court Case No. 12001645), Respondent pled guilty to a violation of Vehicle  
10 Code section 14601.2(a), driving on a suspended license from DUI, a misdemeanor.

11 b. The facts and circumstances surrounding this cause for discipline are as  
12 follows: On January 25, 2012, Respondent drove his vehicle when his license was suspended  
13 from a previous conviction from driving under the influence of alcohol.

14 c. On March 21, 2012, Respondent was sentenced to three years probation, 10  
15 days in jail, and ordered to pay \$2,291 in fines and fees.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(July 21, 2011 Criminal Conviction for Public Intoxication on May 2, 2011)**

18 14. Grounds exist to revoke Respondent's license pursuant to Code sections 4300, and  
19 4301, subdivisions (f), (h), (k), and (l) as well as 490 and 493 for unprofessional conduct, using  
20 alcoholic beverages to an extent or in a manner as to be dangerous to himself or others, and for  
21 multiple criminal convictions involving the use of alcoholic beverages, and for a criminal  
22 conviction that is substantially related to the qualifications, functions, and duties of a Pharmacy  
23 Technician.

24 a. On or about July 21, 2011, in a case entitled People vs. Gonzales (San  
25 Bernardino Superior Court Case No. MWV1102211), Respondent pled nolo contendere to a  
26 violation of Penal Code section 415(3), disorderly conduct: public intoxication, a misdemeanor.

27 b. The facts and circumstances surrounding this cause for discipline are as  
28 follows: On May 2, 2011, Respondent and a friend left a restaurant/bar very intoxicated. They

1 were asked to leave the area by the mall security. Respondent and his friend verbally and  
2 physically harassed the two security guards at a mall. Respondent yelled obscenities, touched his  
3 own genitals, and lunging at one of the guards with a fist. Respondent and his friend then fled the  
4 scene. Respondent was apprehended and arrested for assault, public intoxication, and disturbing  
5 the peace.

6 c. On July 21, 2011, Respondent was sentenced to three years probation, 52  
7 days in jail, weekend commitment, and ordered to pay a \$692 fine.

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9 **THIRD CAUSE FOR DISCIPLINE**

10 **(April 20, 2010 Criminal Conviction for Driving Under the Influence on January 16, 2010)**

11 15. Grounds exist to revoke Respondent's license pursuant to Code sections 4300, and  
12 4301, subdivisions (h), (k) and (l) as well as 490 and 493 for using alcoholic beverages to an  
13 extent or in a manner as to be dangerous to himself or others and for multiple criminal  
14 convictions involving the use of alcoholic beverages and that are substantially related to the  
15 qualifications, functions, and duties of a Pharmacy Technician.

16 a. On or about April 20, 2010, in a case entitled People vs. Gonzales (San  
17 Bernardino Superior Court Case No. TVA1000174), Respondent pled nolo contendere to a  
18 violation of Vehicle Code section 23152(b), driving under the influence of alcohol with a BAC  
19 greater than .08, a misdemeanor.

20 b. The facts and circumstances surrounding this cause for discipline are as  
21 follows: On January 16, 2010, Respondent swerved into another car causing an accident. When  
22 police arrived, Respondent admitted that he had had one alcoholic drink and he was given a field  
23 sobriety test, which he failed. He was transported to the Police Department where he took a  
24 breathalyzer test with a result of .08% BAC.

25 c. On April 20, 2010, Respondent was sentenced to two days in jail, three  
26 years summary probation, to pay \$1,838.00 in fines and fees, and to attend a three month First  
27 Offender Program.

28 d. On November 28, 2011, Respondent admitted violating the terms of his

1 probation and his probation was extended to expire on November 28, 2012 with certain  
2 modifications.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(April 8, 2010 Criminal Conviction for Petty Theft on February 5, 2010)**

5 16. Grounds exist to revoke Respondent's license pursuant to Code section 4300, section  
6 4301, subdivisions (f) and (l), as well as 490 and 493 for commission of an act involving moral  
7 turpitude and dishonesty leading to a criminal conviction that is substantially related to the  
8 qualifications, functions, and duties of a Pharmacy Technician.

9 a. On or about April 8, 2010, in a case entitled People vs. Gonzales (San  
10 Bernardino Superior Court Case No. MWV1001084), Respondent pled guilty to a violation of  
11 Penal Code section 484(a)/490.5(a), petty theft: retail merchandise, a misdemeanor.

12 b. The facts and circumstances surrounding this cause for discipline are as  
13 follows: on or about February 5, 2010, Respondent was observed taking the price tag off of a pair  
14 of sunglasses valued at \$26.10, putting the sunglasses in his pocket, and walking out of a Sears  
15 Grand store by a security guard watching security cameras. When confronted, the security guard  
16 located the glasses in Respondent's pocket. Respondent admitted to the police that he took the  
17 glasses without paying for them.

18 c. On April 8, 2010, Respondent was sentenced to 2 years probation, to pay a  
19 \$491 fine and restitution, and to 1 day in jail. On July 21, 2011, Respondent violated the terms of  
20 his probation, his probation was ordered terminated, and in lieu of the balance of his unpaid fine  
21 he was sentenced to serve four days in jail on a work release/weekender program.

22 d. On August 8, 2011, the guilty plea was set aside and vacated, a plea of not  
23 guilty was entered, and the complaint dismissed pursuant to Penal Code 1203.4.

24 **FIFTH CAUSE FOR DISCIPLINE**

25 **(January 6, 2009 Criminal Conviction for Drunk in Public on November 16, 2008)**

26 17. Grounds exist to revoke Respondent's license pursuant to Code sections 4300, and  
27 4301, subdivisions (h), (k) and (l) as well as 490 and 493 for using alcoholic beverages to an  
28 extent or in a manner as to be dangerous to himself or others and for multiple criminal

1 convictions involving the use of alcoholic beverages and that are substantially related to the  
2 qualifications, functions, and duties of a Pharmacy Technician.

3 a. On or about January 6, 2009, in a case entitled People vs. Gonzales (San  
4 Bernardino Superior Court Case No. MVA803725), Respondent pled guilty to a violation of  
5 Penal Code section 647(f), disorderly conduct: public intoxication, a misdemeanor.

6 b. The facts and circumstances surrounding this cause for discipline are as  
7 follows: On November 16, 2008, a Fontana Police Department Officer was dispatched to a  
8 location where individuals were engaged in an altercation. He observed several subjects arguing  
9 on the street and sidewalk. Respondent and his brother appeared to be very intoxicated and would  
10 not comply with the Officer's orders to sit down and stop arguing. Respondent called the Officer  
11 an expletive "pig." After sitting down on the curb, Respondent stood up again and faced an  
12 officer. Because he was stumbling, could not care for himself, and appeared very intoxicated, he  
13 was arrested.

14 c. On May 1, 2008, Respondent was sentenced to pay a \$150.00 fine.

#### 15 SIXTH CAUSE FOR DISCIPLINE

#### 16 (Failure to Disclose January 6, 2009 Criminal Conviction on Application)

17 18. Grounds exist to revoke Respondent's license pursuant to Code sections 4300, and  
18 4301, subdivisions (f) and (g), for the commission of an act of dishonesty and knowingly making  
19 or signing a document falsely representing a fact when he failed to disclose his January 6, 2009  
20 criminal conviction for a violation of Penal Code section 647(f) (disorderly conduct: public  
21 intoxication) in his application.

22 19. The facts supporting this cause for discipline are as follows. On or about September  
23 15, 2009, Respondent filed an application with the Pharmacy Board to be a Pharmacy Technician.  
24 Question 6 on the application asks:

25 Have you ever been convicted of or pled no contest to a violation of any law of a  
26 foreign country, the United States or any state or local ordinances? You must include  
27 all misdemeanor and felony convictions, regardless of the age of the conviction,  
28 including those which have been set aside under Penal Code section 1203.4. Traffic  
violations of \$500 or less need not be reported. **If "yes," attach an explanation  
including the type of violation, the date, circumstances, location and complete  
penalty received.** In addition to this written explanation, please provide the Board of



1 Pharmacy with **certified copies of all pertinent court documents or arrest reports**  
2 **related to this conviction.** (Emphasis in original.)

3 20. Respondent checked "no" to that question. He signed the application, under penalty  
4 of perjury, on September 12, 2009. Accordingly, Respondent did not disclose his January 6,  
5 2009, conviction on his application to the Pharmacy Board, as described in paragraph 16 above,  
6 which is herein incorporated by reference.

7 PRAYER

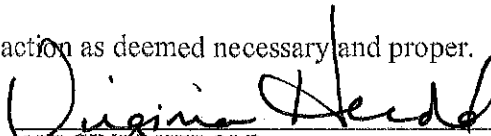
8 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
9 and that following the hearing, the Board of Pharmacy issue a decision:

10 1. Revoking or suspending Pharmacy Technician Registration Number TCH 96364,  
11 issued to Eduardo Gonzalez

12 2. Ordering Eduardo Gonzalez to pay the Board of Pharmacy the reasonable costs of the  
13 investigation and enforcement of this case, pursuant to Business and Professions Code section  
14 125.3;

15 3. Taking such other and further action as deemed necessary and proper.

16 DATED: 8/20/12

  
17 VIRGINIA HEROLD  
18 Executive Officer  
19 Board of Pharmacy  
20 Department of Consumer Affairs  
21 State of California  
22 Complainant

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