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

11 In the Matter of the Accusation Against:

Case No. 4330

12 **MONIQUE ESTELLA MARKHAM**  
13 14030 Dicky Street, #D  
Whittier, CA 90605

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

14 Pharmacy Technician Registration No. TCH  
75513

15 Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about April 14, 2007, the Board of Pharmacy (Board) issued Pharmacy  
22 Technician Registration No. TCH 75513 to Monique Estella Markham (Respondent). The  
23 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges  
24 brought herein and will expire on December 31, 2012, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board under the authority of the following  
27 laws. All section references are to the Business and Professions Code unless otherwise indicated.

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STATUTORY PROVISIONS

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

5. Section 490 states, in pertinent part:

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

"(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

"(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken 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 the provisions of Section 1203.4 of the Penal Code."

6. Section 4300 provides, in pertinent part, that every license issued by the Board is subject to discipline, including suspension or revocation.

7. Section 4301 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:

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

4           ...

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

10          ....

11          "(l) The conviction of a crime substantially related to the qualifications, functions, and  
12 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled  
14 substances or of a violation of the statutes of this state regulating controlled substances or  
15 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the  
16 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.  
17 The board may inquire into the circumstances surrounding the commission of the crime, in order  
18 to fix the degree of discipline or, in the case of a conviction not involving controlled substances  
19 or dangerous drugs, to determine if the conviction is of an offense substantially related to the  
20 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or  
21 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning  
22 of this provision. The board may take action when the time for appeal has elapsed, or the  
23 judgment of conviction has been affirmed on appeal or when an order granting probation is made  
24 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of  
25 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
26 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
27 indictment."

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1 **REGULATORY PROVISIONS**

2 8. California Code of Regulations, title 16, section 1770 states, in pertinent part:

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

9 **COST RECOVERY**

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

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Conviction of a Substantially Related Crime)**

16 10. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and  
17 490, in conjunction with California Code of Regulations, title 16, section 1770, in that  
18 Respondent has been convicted of a crime substantially related to the qualifications, functions or  
19 duties of a pharmacy technician. On or about December 9, 2011, after pleading guilty,  
20 Respondent was convicted of one felony count of violating Penal Code section 245, subdivision  
21 (a)(1) [assault with a deadly weapon] in the criminal proceeding entitled *The People of the State*  
22 *of California v. Monique E. Markham* (Super. Ct. Los Angeles County, 2011, No. VA122641).  
23 The Court sentenced Respondent to serve 1 year in Los Angeles County Jail and placed her on 3  
24 years probation, with terms and conditions.

25 a. The circumstances surrounding the conviction are that on or about November  
26 30, 2011, Respondent was at a bar with friends when she began to argue with her boyfriend.  
27 During the argument, she struck him in the face two to three times. The sister of Respondent's  
28 boyfriend was also at the bar and she attempted to intervene on behalf of her brother. Respondent

1 then began to argue with her boyfriend's sister. At this point, the bartender asked the group to  
2 leave the bar.

3 b. Once outside the bar, Respondent's boyfriend left the bar but Respondent  
4 continued to argue with his sister. The bartender came outside and requested that they leave the  
5 premises. Respondent walked away, got in her car, and then drove it towards her boyfriend's  
6 sister, the bartender, and another person at a high rate of speed in an attempt to strike them with  
7 her vehicle. The victims had to quickly move out of the way in order to avoid being struck by  
8 Respondent's vehicle. Respondent then drove away to her residence.

9 c. During the booking procedure, Respondent admitted to drinking seven hard  
10 liquor drinks and being extremely intoxicated but did not remember anything that occurred in the  
11 bar between her and the victims. When asked about the assault with the vehicle, she indicated  
12 that she did not remember her trip home or attempting to strike the victims with her vehicle while  
13 they stood in front of the bar.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Acts Involving Moral Turpitude)**

16 11. Respondent is subject to disciplinary action under section 4301, subdivision (f), in  
17 that Respondent committed acts involving moral turpitude. Complainant refers to, and by this  
18 reference incorporates, the allegations set forth above in paragraph 10, including subparagraphs  
19 (a)-(c), as though fully set forth herein.

20 **THIRD CAUSE FOR DISCIPLINE**

21 **(Dangerous Use of Alcohol)**

22 12. Respondent is subject to disciplinary action under section 4301, subdivision (h), in  
23 that on or about November 30, 2011, Respondent used alcoholic beverages to an extent or in a  
24 manner dangerous or injurious to herself, another person, or the public. Complainant refers to,  
25 and by this reference incorporates, the allegations set forth above in paragraph 10, including  
26 subparagraphs (a)-(c), as though fully set forth herein.

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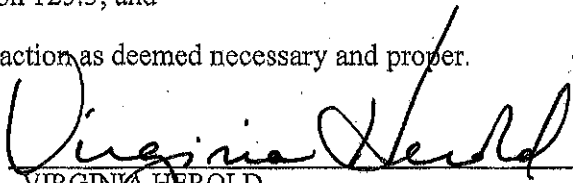
PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration No. TCH 75513, issued to Respondent;
2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: \_\_\_\_\_

10/9/12



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

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