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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. 4336

13 **CESAR MENDOZA**  
5234 Strohm Avenue  
North Hollywood, CA 91601

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

14 Pharmacy Technician License  
15 No. TCH 62162

16 Respondent.

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 July 8, 2005, the Board of Pharmacy (Board) issued Pharmacy  
22 Technician License No. TCH 62162 to Cesar Mendoza (Respondent). The Pharmacy Technician  
23 License was in full force and effect at all times relevant to the charges brought herein and will  
24 expire on November 30, 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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1 **STATUTORY PROVISIONS**

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

5 5. Section 490 states, in pertinent part:

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

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

14 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a  
15 conviction following a plea of nolo contendere. Any action that a board is permitted to take  
16 following the establishment of a conviction may be taken when the time for appeal has elapsed, or  
17 the judgment of conviction has been affirmed on appeal, or when an order granting probation is  
18 made suspending the imposition of sentence, irrespective of a subsequent order under the  
19 provisions of Section 1203.4 of the Penal Code."

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

22 7. Section 4300.1 provides, in pertinent part, that the expiration, cancellation, forfeiture,  
23 or suspension of a board-issued license by operation of law or by order or decision of the board or  
24 a court of law, the placement of a license on a retired status, or the voluntary surrender of a  
25 license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any  
26 investigation of, or action or disciplinary proceeding against, the licensee or to render a decision  
27 suspending or revoking the license.

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1           8.     Section 4301 states, in pertinent part:

2           "The board shall take action against any holder of a license who is guilty of unprofessional  
3 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

4 Unprofessional conduct shall include, but is not limited to, any of the following:

5           ....

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

9           ....

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

27          ///

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1 **REGULATORY PROVISIONS**

2 9. 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 10. Section 125.3 provides, in pertinent part, that the Board may request the  
11 administrative law judge to direct a licentiate found to have committed a violation or violations of  
12 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
13 enforcement of the case.

14 **FIRST CAUSE FOR DISCIPLINE**

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

16 11. 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 June 7, 2011, after pleading nolo contendere,  
20 Respondent was convicted of one misdemeanor count of violating Penal Code section 594,  
21 subdivision (a)(2) [vandalism] in the criminal proceeding entitled *The People of the State of*  
22 *California v. Cesar Mendoza* (Super. Ct. Los Angeles County, 2011, No. 1BR01233). The Court  
23 placed Respondent on 36 months probation, with terms and conditions. Respondent was ordered  
24 to attend 30 Alcoholic Anonymous (AA) at the rate of one meeting per week and make restitution  
25 to the victim for the damages. The circumstances surrounding the conviction are that on or about  
26 April 30, 2011, Respondent smashed the rear window of a vehicle, belonging to E.I.<sup>1</sup>, with a large

27 <sup>1</sup> In order to protect the privacy of the victim, his first and last name initials are used for the purpose of  
28 identification.

(continued...)

1 metal "club" steering wheel lock. When questioned by Burbank Police Officers, Respondent  
2 appeared to be intoxicated as he staggered towards the officer. Burbank Police Officer observed  
3 Respondent to have blood on his hands and jeans. When questioned about the blood Respondent  
4 explained that his dog bit him. Respondent denied smashing the rear window of the vehicle  
5 belonging to E.I. Subsequently, the officers recovered the bloody "club" steering wheel lock.

6 **SECOND CAUSE FOR DENIAL OF APPLICATION**

7 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, or Deceit)**

8 12. Respondent's application is subject to denial under section 4301, subdivision (f), in  
9 that Respondent committed acts involving moral turpitude, dishonesty, fraud, or deceit with the  
10 intent to substantially benefit himself, or substantially injure another. Complainant refers to, and  
11 by this reference incorporates, the allegations set forth above in paragraph 11, as though set forth  
12 fully.

13 **DISCIPLINARY CONSIDERATION**

14 13. In order to determine the degree of discipline, if any to be imposed on Respondent,  
15 Complainant alleges, as follows:

16 a. On or about November 29, 2007, after pleading nolo contendere, Respondent was  
17 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b)  
18 [driving while having 0.08% or more, by weight, of alcohol in his blood] *with enhancement of*  
19 *prior DUI conviction* in the criminal proceeding entitled *The People of the State of California v.*  
20 *Cesar Mendoza* (Super. Ct. Los Angeles, County, 2007, No. 7VY04391) The Court sentenced  
21 Respondent to served 180 days in Los Angeles County Jail and placed him on 60 months  
22 probation, with terms and conditions. The circumstances surrounding the conviction are that on  
23 or about September 30, 2007, California Highway Patrol (CHP) officer conducted a routine traffic  
24 stop on a vehicle that was traveling at high rate of speed. The CHP officer smelled the odor of an  
25 alcoholic beverage emitting from the Respondent's vehicle. Respondent denied consuming any  
26 alcoholic beverages in the preceding 24 hours. The officer further observed that Respondent was

1 unsteady on his feet, his speech was slurry and that his eyes were bloodshot and watery. The  
2 CHP officer administered a series of Standardized Field Sobriety Tests which Respondent failed  
3 to perform as explained and demonstrated. Respondent was arrested and transported to the LAPD  
4 Van Nuys Office where a breath alcohol test was administered. Respondent told the officer “I  
5 *don't want to go to jail, this is going to be my third DUI.*” During the booking procedure,  
6 Respondent submitted to a breath test that resulted in breath-alcohol level of .14%, approximately  
7 twice the legal limit. Respondent drove a vehicle while having 0.08% or more, by weight, of  
8 alcohol in his blood.

9 b. On or about May 16, 2005, after pleading, nolo contendere, Respondent was  
10 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (a)  
11 [driving under the influence of alcohol or drugs] and one count of Vehicle Code section 14601.2  
12 [driving while driving privileges are suspended or revoked with knowledge] in the criminal  
13 proceeding entitled *The People of the State of California v. Cesar Mendoza* (Super. Ct. Los  
14 Angeles County, 2005, No. 5VN00188). The Court sentenced Respondent to serve one day in  
15 Los Angeles County Jail and placed him on 48 months probation, with terms and conditions. The  
16 circumstances surrounding the conviction are that on or about January 1, 2005, during a traffic  
17 stop by the Los Angeles Police Department, Respondent was contacted. While speaking to  
18 Respondent the officer detected a strong odor of an alcoholic beverage emitting from his breath.  
19 He was observed to have bloodshot eyes and slurred speech. During the booking procedure,  
20 Respondent submitted to a breath test that resulted in a breath-alcohol content level of 0.14% on  
21 the first and second reading.

22 c. On or about March 7, 2005, Respondent was convicted of one misdemeanor count of  
23 violating Vehicle Code Section 20002, subdivision (a) [hit and run: property damage] and one  
24 count of Vehicle Code section 14601.2, subdivision (a) [driving while driver's license is  
25 suspended or revoked] in the criminal proceeding entitled *The People of the State of California v.*  
26 *Cesar Mendoza* (Super. Ct. Los Angeles County, 2005, No. 5VN00108). The Court sentenced  
27 Respondent to 30 days in Los Angeles County Jail and placed him on 36 months probation, with  
28 terms and conditions. The circumstances surrounding the convictions are that on or about

1 October 17, 2004, Respondent was arrested for hit and run: property damage, and driving while  
2 driver's license is suspended or revoked.

3 d. On or about October 14, 2004, after pleading nolo contendere, Respondent was  
4 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b)  
5 [driving while having 0.08% or more, by weight, of alcohol in his blood] in the criminal  
6 proceeding entitled *The People of the State of California v. Cesar Mendoza* (Super. Ct. Los  
7 Angeles County, 2004, No. 4WL04261). The Court placed Respondent on 36 months probation,  
8 with terms and conditions. The circumstances surrounding the conviction are that on or about  
9 September 18, 2004, during a traffic stop by the Los Angeles Police Department, Respondent was  
10 contacted. While speaking to Respondent, the officer detected an odor of an alcoholic beverage  
11 on his breath. Respondent was given a Standardized Field Sobriety Test, which he failed to  
12 perform. During the booking procedure, Respondent submitted to a breath test that resulted in  
13 breath-alcohol level of 0.11% on the first reading and 0.12% on the second.

14 e. On or about February 4, 2010 the Board issued a Letter of Admonishment to  
15 Respondent for his prior convictions of 2004, 2005 and 2007. Complainant incorporates by  
16 reference as though set forth fully the allegations of Paragraphs 12(a) through 12(d), above.

17 **PRAYER**

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

- 20 1. Revoking or suspending Pharmacy Technician License No. TCH 62162, issued to  
21 Cesar Mendoza;
- 22 2. Ordering Cesar Mendoza to pay the Board of Pharmacy the reasonable costs of the  
23 investigation and enforcement of this case, pursuant to section 125.3; and

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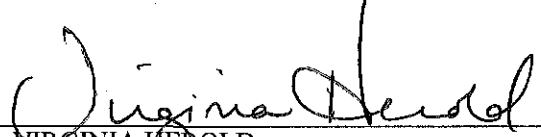
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3. Taking such other and further action as deemed necessary and proper.

DATED: 9/19/13



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

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