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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. 4395

13 **MARTIN FERNANDO ROYBAL**
21 W. Camino Real
14 Arcadia, CA 91007

ACCUSATION

15 Pharmacy Technician Registration No. TCH
77315

16 Respondent.

17
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 (Board).
22 2. On or about June 2, 2008, the Board issued Pharmacy Technician Registration No.
23 TCH 77315 to Martin F. Roybal (Respondent). The Pharmacy Technician Registration was in
24 full force and effect at all times relevant to the charges brought herein and will expire on April 30,
25 2014, unless renewed.

26 **JURISDICTION**

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

1 **STATUTORY PROVISIONS**

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

6 5. Section 490 states, in pertinent part:

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

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

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

21 6. Section 492 states:

22 "Notwithstanding any other provision of law, successful completion of any diversion
23 program under the Penal Code, or successful completion of an alcohol and drug problem
24 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of
25 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2
26 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that
27 division, from taking disciplinary action against a licensee or from denying a license for

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1 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a
2 record pertaining to an arrest.

3 "This section shall not be construed to apply to any drug diversion program operated by any
4 agency established under Division 2 (commencing with Section 500) of this code, or any
5 initiative act referred to in that division."

6 7. Section 4300, subdivision (a), states that "[e]very license issued may be suspended or
7 revoked."

8 8. Section 4300.1 states:

9 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by
10 operation of law or by order or decision of the board or a court of law, the placement of a license
11 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
12 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
13 proceeding against, the licensee or to render a decision suspending or revoking the license."

14 9. Section 4301 states, in pertinent part:

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

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

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

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

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

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"(j) The violation of any of the statutes of this state, or any other state, or of the United States regulating controlled substances and dangerous drugs.

"(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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"(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency."

1 **REGULATORY PROVISION**

2 10. California Code of Regulations, title 16, section 1770, states:

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

14 **FIRST CAUSE FOR DISCIPLINE**

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

16 12. Respondent is subject to disciplinary action under sections 490, 4300, and 4301,
17 subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, on the
18 grounds of unprofessional conduct, in that Respondent was convicted of a crime substantially
19 related to the qualifications, functions, or duties of a registered pharmacy technician which to a
20 substantial degree evidence his present or potential unfitness to perform the functions authorized
21 by his registration in a manner consistent with the public health, safety, or welfare, as follows:

22 a. On or about January 23, 2012, after pleading *nolo contendere*, Respondent was
23 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b)
24 [driving while have 0.08% or more, by weight, of alcohol in the blood (BAC)], in the criminal
25 proceeding entitled *The People of the State of California v. Martin Fernando Roybal* (Super. Ct.
26 Los Angeles County, 2011, No. 1AH04771). The court placed Respondent on probation for a
27 period of 36 months, with terms and conditions including a first offender alcohol/drug education
28 and counseling, and fined him. The circumstances surrounding the conviction are that on or

1 about October 15, 2011, a Los Angeles Sheriff's Department Officer stopped Respondent's
2 vehicle after observing him entering an intersection on a red light, and stopping in the middle of
3 the intersection, in violation of Vehicle Code section 21453, subdivision (a). The officer made
4 contact with the Respondent and smelled an odor of an alcoholic beverage emitting from
5 Respondent's breath and person. The officer also observed Respondent to have bloodshot red
6 eyes and slurred speech. The officer was unable to administer the field sobriety tests out of
7 concern for the Respondent's safety. The Respondent was swaying and unable to stand without
8 assistance. The Respondent subsequently agreed to two breathalyzer tests with results of .18 and
9 .19 BAC.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Conviction of Substantially-Related Crime)**

12 13. Respondent is subject to disciplinary action under sections 490, 4300, and 4301,
13 subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, on the
14 grounds of unprofessional conduct, in that Respondent was convicted of a crime substantially
15 related to the qualifications, functions, or duties of a registered pharmacy technician which to a
16 substantial degree evidence his present or potential unfitness to perform the functions authorized
17 by his registration in a manner consistent with the public health, safety, or welfare, as follows:

18 a. On or about July 05, 2001, after pleading *guilty*, Respondent was convicted of one
19 misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving while have
20 0.08% or more, by weight, (BAC)], in the criminal proceeding entitled *The People of the State of*
21 *California v. Martin Fernando Roybal* (Super. Ct. Los Angeles County, 2001, No. 1SA0174301).
22 The court placed Respondent on probation for a period of 3 years, and fined him. The
23 circumstances surrounding the conviction are that on or about April 29, 2001, Respondent
24 unlawfully, drove a vehicle, while having 0.08% or more, by weight, (BAC).

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Conviction of Substantially-Related Crime)**

3 14. Respondent is subject to disciplinary action under sections 490, 4300, and 4301,
4 subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, on the
5 grounds of unprofessional conduct, in that Respondent was convicted of a crime substantially
6 related to the qualifications, functions, or duties of a registered pharmacy technician which to a
7 substantial degree evidence his present or potential unfitness to perform the functions authorized
8 by his registration in a manner consistent with the public health, safety, or welfare, as follows:

9 a. On or about February 15, 2000, after pleading *guilty*, Respondent was convicted of
10 one misdemeanor count of violating Penal Code section 653M, subdivision (b) [annoying repeat
11 phone calls], in the criminal proceeding entitled *The People of the State of California v. Martin*
12 *Fernando Roybal* (Super. Ct. Los Angeles County, 2000, No. 0AL0049401). The court sentenced
13 Respondent to serve 15 days in jail, placed him on probation for a period of 36 months, and fined
14 him. The court set aside the judgment and dismissed the case on December 07, 2007 pursuant to
15 section 1203.4 of the Penal Code. The circumstances surrounding the conviction are that on or
16 about February 11, 2000, Respondent telephoned and made contact with a family member, using
17 obscene language and threatening to inflict injury to that family member, in violation of Penal
18 Code section 653M, subdivision (a).

19 **FOURTH CAUSE FOR DISCIPLINE**

20 **(Conviction of Substantially-Related Crime)**

21 15. Respondent is subject to disciplinary action under sections 490, 4300, and 4301,
22 subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, on the
23 grounds of unprofessional conduct, in that Respondent was convicted of a crime substantially
24 related to the qualifications, functions, or duties of a registered pharmacy technician which to a
25 substantial degree evidence his present or potential unfitness to perform the functions authorized
26 by his registration in a manner consistent with the public health, safety, or welfare, as follows:

27 a. On or about April 04, 1995, after pleading *guilty*, Respondent was convicted of one
28 misdemeanor count of violating Penal Code section 594, subdivision (a) [vandalism], in the

1 criminal proceeding entitled *The People of the State of California v. Martin Fernando Roybal*
2 (Super. Ct. Los Angeles County, 1995, No. 95M01152). The court placed Respondent on
3 probation for a period of 24 months, and fined him. The court set aside the judgment and
4 dismissed the case on January 11, 2008 pursuant to section 1203.4 of the Penal Code. The
5 circumstances surrounding the conviction are that on or about March 18, 1995, Respondent
6 maliciously damaged and destroyed personal property belonging to another person, violating
7 Penal Code section 594, subdivision (a).

8 **SIXTH CAUSE FOR DISCIPLINE**

9 **(Dangerous Use of Alcohol and/or Drugs)**

10 16. Respondent is subject to disciplinary action under sections 4300 and 4301,
11 subdivision (h), on the grounds of unprofessional conduct, in that Respondent used alcohol in a
12 dangerous manner on April 29, 2001, violating the state statute. Complainant refers to, and by
13 this reference incorporates, the allegations set forth above in paragraphs 12 through 13, as though
14 set forth fully.

15 **SEVENTH CAUSE FOR DISCIPLINE**

16 **(Dangerous Use of Alcohol and/or Drugs)**

17 17. Respondent is subject to disciplinary action under sections 4300 and 4301,
18 subdivision (h), on the grounds of unprofessional conduct, in that Respondent used alcohol in a
19 dangerous manner on October 15, 2011, violating the state statute. Complainant refers to, and by
20 this reference incorporates, the allegations set forth above in paragraphs 12 through 13, as though
21 set forth fully.

22 **EIGHTH CAUSE FOR DISCIPLINE**

23 **(Knowingly Made a False Statement of Fact)**

24 18. Respondent is subject to disciplinary action under sections 4300 and 4301,
25 subdivision (g), on the grounds of unprofessional conduct, in that Respondent knowingly made a
26 false statement of fact by failing to disclose the following criminal convictions on his original
27 application for licensure signed under penalty of perjury on March 8, 2007:

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1 (a) February 15, 2000 violating Penal Code section 653M, subdivision (b) [annoying
2 repeat phone calls], in the criminal proceeding entitled *The People of the State of California v.*
3 *Martin Fernando Roybal* (Super. Ct. Los Angeles County, 2000, No. 0AL0049401);

4 (b) July 05, 2001 conviction for violating Vehicle Code section 23152, subdivision (b)
5 [driving while have 0.08% or more, by weight, (BAC)], in the criminal proceeding entitled *The*
6 *People of the State of California v. Martin Fernando Roybal* (Super. Ct. Los Angeles County,
7 2001, No. 1SA0174301).

8 **NINTH CAUSE FOR DISCIPLINE**

9 **(Knowingly Made a False Statement of Fact)**

10 19. Respondent is subject to disciplinary action under sections 4300 and 4301,
11 subdivision (g), on the grounds of unprofessional conduct, in that on February 28, 2012,
12 Respondent knowingly made a false statement of fact in his license renewal application.
13 The license renewal application asked whether Respondent had been convicted of any crime
14 since his last renewal. Respondent answered "no", when in fact, Respondent suffered a DUI
15 conviction in January, 2012. Complainant refers to, and by this reference incorporates, the
16 allegations set forth in paragraph 12, as though set forth fully.

17 **TENTH CAUSE FOR DISCIPLINE**

18 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit and/or Corruption)**

19 20. Respondent is subject to disciplinary action under sections 4300 and 4301,
20 subdivision (f), on the grounds of unprofessional conduct, in that Respondent committed acts and
21 was convicted of crimes involving moral turpitude, dishonesty, fraud, deceit, and / or corruption.
22 Complainant refers to, and by this reference incorporates, the allegations set forth above in
23 paragraphs 14, 15, 18 and 19, as though set forth fully.

24 **ELEVENTH CAUSE FOR DISCIPLINE**

25 **(Violation of Pharmacy Act)**

26 21. Respondent is subject to disciplinary action under section 4301, subdivision (o), on
27 the grounds of unprofessional conduct, in that Respondent committed acts and was convicted of

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1 crimes that violated the Pharmacy Act. Complainant refers to, and by this reference incorporates,
2 the allegations set forth above in paragraphs 12 through 15, inclusive, as though set forth fully.

3 PRAYER

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

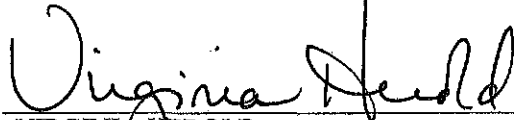
6 1. Revoking or suspending Pharmacy Technician Registration No. TCH 77315, issued
7 to Martin F. Roybal;

8 2. Ordering Martin F. Roybal to pay the Board the reasonable costs of the investigation
9 and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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

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12 DATED: _____

3/15/14



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

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