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

12 In the Matter of the Accusation Against:

Case No. 4477

13 **JESUS SALVADOR GONZALEZ RIVERA**
11901 Taylor Street
14 Riverside, CA 92503

A C C U S A T I O N

15 **Pharmacy Technician Registration No.**
16 **TCH 89655**

17 Respondent.

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19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about March 22, 2010, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 89655 to Jesus Salvador Gonzalez Rivera (Respondent). The
25 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges
26 brought herein and will expire on July 31, 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 (Code) unless otherwise indicated.

5 4. Section 4300, subdivision (a) of the Code states: "Every license issued may be
6 suspended or revoked."

7 5. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
8 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
9 disciplinary action during the period within which the license may be renewed, restored, reissued
10 or reinstated.

11 **STATUTORY PROVISIONS**

12 6. Section 482 of the Code states:

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

- 15 (a) Considering the denial of a license by the board under Section 480; or
16 (b) Considering suspension or revocation of a license under Section 490.

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

19 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or
20 revoke a license on the ground that the licensee has been convicted of a crime substantially
21 related to the qualifications, functions, or duties of the business or profession for which the
22 license was issued.

23 8. Section 493 of the Code states:

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

1 As used in this section, "license" includes "certificate," "permit," "authority,"
2 and "registration."

3 9. Section 4301 of the Code states:

4 The board shall take action against any holder of a license who is guilty of
5 unprofessional conduct or whose license has been procured by fraud or
6 misrepresentation or issued by mistake. Unprofessional conduct shall include, but is
7 not limited to, any of the following:

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

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15 (k) The conviction of more than one misdemeanor or any felony involving the
16 use, consumption, or self-administration of any dangerous drug or alcoholic beverage,
17 or any combination of those substances.

18 (l) The conviction of a crime substantially related to the qualifications,
19 functions, and duties of a licensee under this chapter. The record of conviction of a
20 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
21 States Code regulating controlled substances or of a violation of the statutes of this
22 state regulating controlled substances or dangerous drugs shall be conclusive
23 evidence of unprofessional conduct. In all other cases, the record of conviction shall
24 be conclusive evidence only of the fact that the conviction occurred. The board may
25 inquire into the circumstances surrounding the commission of the crime, in order to
26 fix the degree of discipline or, in the case of a conviction not involving controlled
27 substances or dangerous drugs, to determine if the conviction is of an offense
28 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:

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

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

22 **COSTS**

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

27 **FIRST CAUSE FOR DISCIPLINE**

28 **(June 29, 2012 Criminal Conviction for DUI on April 6, 2012)**

13. Respondent has subjected his registration to discipline under sections 490 and 4301,
subdivision (l) of the Code in that he was convicted of crimes that are substantially related to the
qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

a. On or about June 29, 2012, in a criminal proceeding entitled *People of the State
of California v. Jesus Salvador Gonzalez Rivera, aka Jesus Salvador Gonzalez, aka Jesus*

1 *Salvado Gonzalez*, in Riverside County Superior Court, case number RIM1208229, Respondent
2 was convicted on his plea of guilty to violating Vehicle Code section 23152, subdivision (a),
3 driving under the influence, and Vehicle Code section 23152, subdivision (b), driving with a
4 blood alcohol concentration (BAC) of .08 or more, misdemeanors. Respondent admitted, and the
5 court found true the special allegation that Respondent was previously convicted of violating
6 Vehicle Code section 23152, subdivision (a) within 10 years, as detailed in paragraph 16, below.

7 b. As a result of the convictions, on or about June 29, 2012, Respondent was
8 granted 48 months summary probation, and he was committed to the custody of the Riverside
9 County Sheriff for 30 days, with credit for one day, to be served in the Sheriff's Labor Program.
10 Respondent was further ordered to complete a Drinking Driver Program, pay fines and fees in the
11 amount of \$2,044, and comply with enhanced DUI probation terms. On October 2, 2012,
12 Respondent's probation was revoked and reinstated for his failure to enroll in the Drinking Driver
13 Program, and his failure to appear for the Sheriff's Labor Program. The court has ordered
14 Respondent to appear at a second probation violation hearing on January 18, 2013, for failure to
15 complete the Driving Driver Program and the Sheriff's Labor Program.

16 c. The facts that led to the convictions are that on or about 4:30 in the morning of
17 April 6, 2012, officers from the Riverside Police Department were dispatched to investigate a
18 domestic disturbance involving Respondent and his girlfriend. Upon arrival at the reported
19 residence, the parties could not be found. Police dispatch received a call from an intoxicated
20 male (Respondent) stating he was stopped at a nearby intersection waiting for the police to
21 contact him. The police officers found Respondent in the passenger seat of his vehicle, but he
22 eventually admitted he had been the driver, and that he had consumed alcohol. The officer noted
23 that there was a strong odor of an alcoholic beverage emitting from Respondent, and he had
24 bloodshot, watery eyes. Respondent submitted to a series of field sobriety tests which he was
25 unable to complete as explained and demonstrated by the officer. Respondent was arrested for
26 driving under the influence. Respondent provided two breath samples which were analyzed by
27 the Portable Evidential Breath Testing device with a BAC of .21 and .18 percent, respectively.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Dangerous Use of Alcohol)**

3 14. Respondent has subjected his registration to disciplinary action under section 4301,
4 subdivision (h) of the Code for unprofessional conduct in that on or about April 6, 2012,
5 Respondent operated a motor vehicle while substantially impaired by alcoholic beverages, as
6 detailed in paragraph 13, above.

7 **THIRD CAUSE FOR DISCIPLINE**

8 **(Multiple Alcohol-Related Convictions)**

9 15. Respondent has subjected his registration to disciplinary action under sections 4301,
10 subdivision (k) of the Code for unprofessional conduct in that on or about June 29, 2012,
11 Respondent was convicted of violating Vehicle Code section 23152, subdivision (a) (driving
12 under the influence of alcohol), and Vehicle Code section 23152, subdivision (b), (driving with a
13 BAC of .08 percent or more), as described in paragraph 13, above. On or about October 25,
14 2006, Respondent was convicted of violating Vehicle Code section 23152, subdivision (a), and
15 Vehicle Code section 23224, subdivision (a), person under 21 in possession of alcohol, as
16 described in paragraph 16, below.

17 **DISCIPLINARY CONSIDERATIONS**

18 16. To determine the degree of discipline, if any, to be imposed on Respondent, pursuant
19 to California Code of Regulations, title 16, section 1769, Complainant alleges:

20 a. On or about October 26, 2006, in a criminal proceeding entitled *People of the*
21 *State of California v. Jesus Salvador Gonzalez Rivera*, in Riverside County Superior Court, case
22 number RIM489533, Respondent was convicted on his plea of guilty to violating Vehicle Code
23 section 23152, subdivision (a), driving under the influence, and Vehicle Code section 23224,
24 person under 21 in possession of alcohol, misdemeanors. Respondent also pled guilty to violating
25 Vehicle Code section 23140, subdivision (a), minor under 21 driving with a BAC of .05 or
26 higher, an infraction.

27 b. As a result of the convictions, on or about October 26, 2006, Respondent was
28 granted 36 months summary probation, and he was committed to the custody of the Riverside

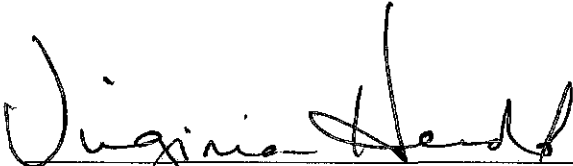
1 County Sheriff for six days, with credit for one day, to be served in the Sheriff's Labor Program.
2 Respondent was further ordered to complete a four-month First Offender DUI Program, pay fines,
3 fees, and restitution in the amount of \$1,675.40, and to comply with DUI probation terms.

4 **PRAYER**

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

- 7 1. Revoking or suspending Pharmacy Technician Registration Number TCH 89655,
8 issued to Jesus Salvador Gonzalez Rivera;
- 9 2. Ordering Jesus Salvador Gonzalez Rivera to pay the Board of Pharmacy the
10 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
11 Professions Code section 125.3;
- 12 3. Taking such other and further action as deemed necessary and proper.

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15 DATED: 3/1/13

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

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