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7	Attorneys for Complainant		
8	BEFORE THE		
9	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS		
10	STATE OF CALI	FORNIA	
11	In the Matter of the Accusation Against:	Case No. 4519	
12	ROSELA CARNARIO		
13	15405 S. Gibson Ave Compton, CA 90221	ACCUSATION	
14	Pharmacy Technician Registration No. TCH 111201		
15	Respondent.		
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18	Complainant alleges:		
19	<u>PARTIES</u>		
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 February 28, 2011, the Board issued Pharmacy Technician Registration		
23	No. TCH 111201 to Rosela Carnario (Respondent). The Pharmacy Technician Registration was		
24	in full force and effect at all times relevant to the charges brought herein and will expire on		
25	August 31, 2014, unless renewed.		
26	<u>JURISDICTION</u>		
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 P	rofessions Code unless otherwise indicated.	
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## **STATUTORY PROVISIONS**

4. Section 492 states:

"Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

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

- 5. Section 4300, subdivision (a), states that "[e]very license issued may be suspended or revoked."
  - 6. Section 4300.1 states:

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

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:

"(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

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whether the act is a felony or misdemeanor or not.

"(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. . . . "

#### **REGULATORY PROVISION**

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

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

#### DRUG STATUTES

9. Penal Code section 381b states:

"Any person who possesses nitrous oxide or any substance containing nitrous oxide, with the intent to breathe, inhale, or ingest for the purpose of causing a condition of intoxication, elation, euphoria, dizziness, stupefaction, or dulling of the senses or for the purpose of, in any manner, changing, distorting, or disturbing the audio, visual, or mental processes, or who knowingly and with the intent to do so is under the influence of nitrous oxide or any material containing nitrous oxide is guilty of a misdemeanor. This section shall not apply to any person who is under the influence of nitrous oxide or any material containing nitrous oxide pursuant to an administration for the purpose of medical, surgical, or dental care by a person duly licensed to administer such an agent."

- Penal Code section 381c states, in pertinent part: 10.
- "(a) As used in this section, "nitrous oxide" refers to any of the following substances: N[2]O, dinitrogen monoxide, dinitrogen oxide, nitrogen oxide, or laughing gas.
- "(b) Every person who sells, furnishes, administers, distributes, gives away, or offers to sell, furnish, administer, distribute, or give away a device, canister, tank, or receptacle either

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exclusively containing nitrous oxide or exclusively containing a chemical compound mixed with nitrous oxide, to a person under 18 years of age is guilty of a misdemeanor. The court shall consider ordering the person to perform community service as a condition of probation."

- 11. United States Code Service, title 21, section 331 states, in pertinent part: "The following acts and the causing thereof are hereby prohibited:
- "(k) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to, a food, drug, device, tobacco product, or cosmetic, if such act is done while such article is held for sale (whether or not the first sale) after shipment in interstate commerce and results in such article being adulterated or misbranded. . . ."
  - 12. United States Code Service, title 21, section 352 states, in pertinent part: "A drug or device shall be deemed to be misbranded--
- "(a) False or misleading label. If its labeling is false or misleading in any particular. Health care economic information provided to a formulary committee, or other similar entity, in the course of the committee or the entity carrying out its responsibilities for the selection of drugs for managed care or other similar organizations, shall not be considered to be false or misleading under this paragraph if the health care economic information directly relates to an indication approved under section 505 [21 USCS § 355] or under section 351(a) of the Public Health Service Act [42 USCS § 262(a)] for such drug and is based on competent and reliable scientific evidence. The requirements set forth in section 505(a) [21 USCS § 355(a)] or in section 351(a) of the Public Health Service Act [42 USCS § 262(a)] shall not apply to health care economic information provided to such a committee or entity in accordance with this paragraph. Information that is relevant to the substantiation of the health care economic information presented pursuant to this paragraph shall be made available to the Secretary upon request. In this paragraph, the term "health care economic information" means any analysis that identifies, measures, or compares the economic consequences, including the costs of the represented health outcomes, of the use of a drug to the use of another drug, to another health care intervention, or to no intervention.

- "(b) Package form; Contents of label. If in package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count:

  Provided, That under clause (2) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Secretary.
- "(c) Prominence of information on label. If any word, statement, or other information required by or under authority of this Act [21 USCS §§ 301 et seq.] to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use."
  - 13. United States Code Service, title 21, section 353 states, in pertinent part:
- "(a) Regulations for goods to be processed, labeled, or repacked elsewhere. The Secretary is hereby directed to promulgate regulations exempting from any labeling or packaging requirement of this Act [21 USCS §§ 301 et seq.] drugs and devices which are, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at establishments other than those where originally processed or packed, on condition that such drugs and devices are not adulterated or misbranded under the provisions of this Act [21 USCS §§ 301 et seq.] upon removal from such processing, labeling, or repacking establishment. . . ."

#### **COST RECOVERY**

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

#### FIRST CAUSE FOR DISCIPLINE

#### (Unprofessional Conduct - Violating Drug Statutes)

15. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (j), on the grounds of unprofessional conduct, in that on or about September 23, 2011, Respondent violated statutes regulating controlled substances and dangerous drugs, United States

Code Service, title 21, sections 331, subdivision (k), 352, subdivision (a), and 353, subdivision (a), and / or Penal Code sections 381b, and 381c(b), when she possessed and sold nitrous oxide misbranded from its commercial use into unlabeled balloon packages for sale as a recreational use food or drug, as follows:

- a. On or about September 23, 2011, Respondent informed Los Angeles police officers that she went to a neighbor's "house" party with a nitrous oxide compressed air tank and balloons to make money selling recreational use balloons of nitrous oxide to the party attendees, ranging in ages from 14 through 25 years old. Respondent was selling the balloons of nitrous oxide for four balloons for \$5.00. Respondent was arrested.
- b. Subsequently, on or about September 27, 2011, after pleading guilty to violating Penal Code sections 381b [possession of nitrous oxide] and 381c(b) [possession of nitrous oxide for sale], Respondent was placed on the Deferred Entry of Judgment program for 18 months in the criminal proceeding entitled *The People of the State of California v. Rosela Carnario* (Super. Ct. Los Angeles County, 2011, No. 1CP07019).

#### SECOND CAUSE FOR DISCIPLINE

# (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)

16. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (f), on the grounds of unprofessional conduct, in that on or about September 23, 2011, Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit and / or corruption. Complainant refers to and by this reference incorporates the allegations set forth above in paragraph 15, subparagraphs (a) and (b), inclusive, as though set forth fully.

# THIRD CAUSE FOR DISCIPLINE

### (Completing Document That Misrepresents Factual Truth)

17. Respondent is subject to disciplinary action under section 4301, subdivision (g), in that on or about August 16, 2012, Respondent knowingly completed a pharmacy technician renewal application and marked "No" in response to a question on whether she has been convicted of a crime. Respondent failed to disclose on her license renewal that on or about September 27, 2011, she was convicted of criminal offenses. Complainant refers to, and by this

1	reference incorporates, the allegations set forth above in paragraph 15, subparagraphs (a) and (b),	
2	as though set forth fully.	
3	FOURTH CAUSE FOR DISCIPLINE	
4	(Unprofessional Conduct)	
5	18. Respondent is subject to disciplinary action under sections 4300 and 4301, in	
6	conjunction with California Code of Regulations, title 16, section 1770, in that Respondent	
7	committed substantially related acts of unprofessional conduct. Complainant refers to and by this	
8	reference incorporates the allegations set forth above in paragraphs 15 through 17, inclusive, as	
9	though set forth fully.	
10	PRAYER	
11	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,	
12	and that following the hearing, the Board issue a decision:	
13	1. Revoking or suspending Pharmacy Technician Registration No. TCH 111201, issued	
14	to Respondent Rosela Carnario;	
15	2. Ordering Respondent Rosela Carnario to pay the Board the reasonable costs of the	
16	investigation and enforcement of this case, pursuant to section 125.3; and	
17	3. Taking such other and further action as deemed necessary and proper.	
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19	DATED: VIRGINIA HEROLD Executive Officer Board of Pharmacy Department of Consumer Affairs State of California Complainant	
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