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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:
12. **MARLON GIOVANNI LOBO**
13. 2585 Ohio Avenue
14. South Gate, CA 90280
15. **Pharmacy Technician Registration**
16. **No. TCH 58270**
17. Respondent.

Case No. 4564
ACCUSATION

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.
22. 2. On or about September 10, 2004, the Board of Pharmacy issued Pharmacy Technician
23. Registration No. TCH 58270 to Marlon Giovanni Lobo (Respondent). The Pharmacy Technician
24. Registration was in full force and effect at all times relevant to the charges brought herein and
25. will expire on February 28, 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) 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, "[T]he 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."

28 8. Section 4301 states, in pertinent part:

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

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 "(k) The conviction of more than one misdemeanor or any felony involving the use,
12 consumption, or self-administration of any dangerous drugs or alcoholic beverage, or any
13 combination of those substances.

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

1 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
2 indictment."

3 **REGULATORY PROVISIONS**

4 9. California Code of Regulations, title 16, section 1770 states, in pertinent part:

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

11 **COST RECOVERY**

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

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(Convictions of Substantially Related Crimes)**

18 11. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and
19 490, in conjunction with California Code of Regulations, title 16, section 1770, in that
20 Respondent has been convicted of a crime substantially related to the qualifications, functions or
21 duties of a pharmacy technician, as follows:

22 a. On or about May 15, 2012, after pleading nolo contendere, Respondent was convicted
23 of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving
24 while having 0.08% or more, by weight, of alcohol in his blood] in the criminal proceeding
25 entitled *The People of the State of California v. Marlon Giovanni Lobo* (Super. Ct. Los Angeles
26 County, 2012, No. 2EA02177). The Court sentenced Respondent to serve 120 days in Los
27 Angeles County Jail and placed him on five (5) years of summary probation, ordered him to
28 finish an eighteen month alcohol program, and ordered him to pay fines.

1 b. The circumstances surrounding the conviction are that on or about February 28, 2012,
2 a California Highway Patrol officer spotted Respondent driving his car at a high rate of speed.
3 The officer conducted a traffic stop and asked Respondent and his two (2) passengers to exit the
4 car. While speaking to Respondent, the officer detected a strong odor of an alcoholic beverage
5 emitting from his breath and person. When asked if he had consumed any alcoholic beverages,
6 Respondent stated that he had been drinking beer all day long. Respondent was observed to have
7 slurred, slow, mumbled speech, and red, watery eyes. While at the scene, Respondent submitted
8 to a Preliminary Screening Test (PAS) that resulted in a breath-alcohol level of 0.08% on the first
9 reading and 0.09% on the second.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Dangerous Use of Alcohol)**

12 12. Respondent is subject to disciplinary action under section 4301, subdivision (h), in
13 that on or about February 28, 2012, Respondent used alcoholic beverage to an extent or in a
14 manner dangerous or injurious to himself, another person, or the public, when he operated a
15 vehicle while having 0.08% or more of alcohol in his blood. Complainant refers to, and by this
16 reference incorporates, the allegations set forth above in paragraph 11, subdivisions (a) and (b) as
17 though set forth fully.

18 **THIRD CAUSE FOR DISCIPLINE**

19 **(Convictions Involving the Consumption of Alcohol)**

20 13. Respondent is subject to disciplinary action under section 4301, subdivision (k), in
21 that on or about August 26, 2003, December 5, 2006, and May 15, 2012, Respondent was
22 convicted of crimes involving the consumption of alcohol. Complainant refers to, and by this
23 reference incorporates allegations set forth in paragraph 11, subdivision (a) and 14, subdivision
24 (a) and (d), inclusive, as though set forth fully.

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DISCIPLINE CONSIDERATIONS

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2 14. To determine the degree of discipline, if any, to be imposed on Respondent,
3 Complainant alleges, as follows:

4 a. On or about December 5, 2006, Respondent was convicted of one misdemeanor count
5 of violating Vehicle Code section 14601.1, subdivision (a) [driving while driver's license is
6 suspended or revoked] and one misdemeanor count of violating Vehicle Code 23152, subdivision
7 (b) [driving while having 0.08% or more, by weight, of alcohol in his blood] in the criminal
8 proceeding entitled *The People of the State of California v. Marlon Giovanni Lobo* (Super. Ct. Los
9 Angeles County, 2003, No. 6DW07035). The court sentenced Respondent to serve 1 day in Los
10 Angeles county Jail and placed him on three (3) years summary probation, with terms and
11 conditions.

12 b. On or about November 22, 2006, Respondent was convicted of one misdemeanor
13 count of violating Vehicle Code section 14601., subdivision (a) [driving while driver's license is
14 suspended or revoked] in the criminal proceeding entitled *The People of the State of California v.*
15 *Marlon Giovanni Lobo* (Super. Ct. Los Angeles County, 2006, No. 6BR03573. The court
16 sentenced Respondent to serve 10 days in Los Angeles county Jail and placed him on three (3)
17 years summary probation, with terms and conditions.

18 c. On or about February 24, 2006, Respondent was convicted of one misdemeanor count
19 of violating Penal Code section 594, subdivision (a) [vandalism] in the criminal proceeding
20 entitled *The People of the State of California v. Marlon Giovanni Lobo* (Super. Ct. Los Angeles
21 County, 2006, No. 5DW08122). The court placed Respondent on two (2) years summary
22 probation, with terms and conditions.

23 d. On or about August 26, 2003, Respondent was convicted of one misdemeanor count
24 of violating Vehicle Code section 20002, subdivision (a) [hit and run: property damage] and one
25 misdemeanor count of violating Vehicle Code section 23103.5 [reckless driving involving
26 alcohol] in the criminal proceeding entitled *The People of the State of California v. Marlon*
27 *Giovanni Lobo* (Super. Ct. Los Angeles County, 2003, No. 3DW04155). The court sentenced
28

1 Respondent to serve 1 day in Los Angeles county Jail and placed him on three (3) years summary
2 probation, with terms and conditions.

3 e. On or about January 13, 2010, the Board issued Respondent Citation No. CI 2007
4 36797 for violating sections 4301, subdivision (h) and (l) for the conviction listed in paragraph
5 13, subdivision(a). The Board imposed a \$750.00 fine.

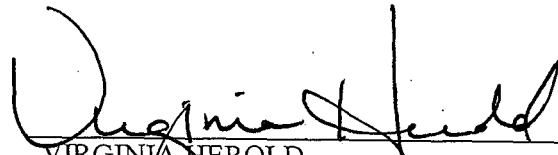
6 **PRAYER**

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

- 9 1. Revoking or suspending Pharmacy Technician Registration No. TCH 58270, issued
10 to Marlon Giovanni Lobo;
- 11 2. Ordering Marlon Giovanni Lobo to pay the Board the reasonable costs of the
12 investigation and enforcement of this case, pursuant to section 125.3; and
- 13 3. Taking such other and further action as deemed necessary and proper.

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16 DATED: _____

11/4/13



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

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