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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. 4768

13 **CARLOS SOLTERO**
2716 1/2 Leafdale Ave.
El Monte, CA 91732

ACCUSATION

14 Pharmacy Technician Registration
15 No. TCH 94675

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.

22 2. On or about October 6, 2009, the Board of Pharmacy (Board) issued Pharmacy
23 Technician Registration No. TCH 94675 to Carlos Soltero (Respondent). The Pharmacy
24 Technician Registration expired on April 30, 2011, and has not been 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 490 states, in pertinent part:

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

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

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

17 5. Section 4300 provides in pertinent part, that every license issued by the Boards is
18 subject to discipline, including suspension or revocation.

19 6. Section 4300.1 states, in pertinent part:

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

25 7. Section 4301 states, in pertinent part:

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

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

....

"(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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1 **REGULATORY PROVISIONS**

2 8. 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 9. 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, with failure of the licentiate to comply subjecting the license to not being
14 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
15 included in a stipulated settlement.

16 **FIRST CAUSE FOR DISCIPLINE**

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

18 10. 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 was convicted of crimes substantially related to the qualifications, functions or duties
21 of a pharmacy technician as follows:

22 a. On or about January 22, 2013, after pleading nolo contendere, Respondent was
23 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b)
24 [driving while having 0.08% or more, by weight, of alcohol in his blood] and one misdemeanor
25 count of Vehicle Code section 14601.5, subdivision (a) [driving while driving privileges are
26 suspended or revoked] in the criminal proceeding entitled *The People of the State of California v.*
27 *Carlos Soltero* (Super. Ct. Los Angeles County, 2013, No. 2PS91740.) The Court sentenced
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1 Respondent to serve 2 days in Los Angeles County Jail and placed him on 36 months probation
2 with terms and conditions.

3 b. The circumstances surrounding the conviction are that on or about March 19, 2012,
4 during an investigation of a vehicle hitting a traffic light pole and leaving the scene, Respondent
5 was contacted by an officer of the Monrovia Police Department. Respondent's vehicle was
6 parked with a flat tire and moderate collision damage to the hood and front passenger fender.
7 While speaking to Respondent, the officer could smell an odor of an alcoholic beverage on his
8 breath and person. Respondent admitted to colliding with the traffic light pole. He also admitted
9 to consuming two 32 ounce glasses of beer prior to driving. During the booking procedure,
10 Respondent submitted to a breath test that resulted in a breath-alcohol content level of 0.18% on
11 the first reading and 0.21% on the second.

12 c. On or about January 14, 2013, after pleading nolo contendere, Respondent was
13 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b)
14 [driving while having 0.08% or more, by weight, of alcohol in his blood] and one misdemeanor
15 count of Vehicle Code section 14601.1, subdivision (a) [driving while driver's license is
16 suspended or revoked] in the criminal proceeding entitled *The People of the State of California v.*
17 *Carlos Soltero* (Super. Ct. Los Angeles County, 2011, No. 2VY00285.) The Court sentenced
18 Respondent to serve 2 days in Los Angeles County Jail and placed him on 36 months probation
19 with terms and conditions.

20 d. The circumstances surrounding the conviction are that on or about June 11, 2011,
21 during a traffic stop by officers of the California Highway Patrol Department, Respondent was
22 contacted. While speaking to Respondent one of the officers detected an odor of an alcoholic
23 beverage emitting from the interior of the vehicle. The officer observed that Respondent had red,
24 watery eyes and his speech was slow and slurred. When questioned by the officer, Respondent
25 admitted to having consumed three beers. The officers then ran a license check which revealed
26 that Respondent's driver's license was suspended. During the booking procedure, Respondent
27 submitted to a breath test that resulted in a breath-alcohol content level of 0.23% on the first and
28 second readings.

1 e. On or about December 12, 2012, after pleading nolo contendere, Respondent was
2 convicted of one misdemeanor count of violating Vehicle Code section 14601.1, subdivision (a)
3 [driving while driver's license is suspended or revoked] in the criminal proceeding entitled *The*
4 *People of the State of California v. Carlos Soltero* (Super. Ct. Los Angeles County, 2012, No.
5 0JB06386.) The Court placed Respondent on 3 years probation with terms and conditions.

6 f. The circumstances surrounding the conviction are that on or about May 28, 2010,
7 Respondent drove a vehicle while his driving privileges were suspended or revoked.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Convictions Involving Alcohol)**

10 11. Respondent is subject to disciplinary action under sections 4300 and 4301,
11 subdivision (k), on the grounds of unprofessional conduct, in that on or about June 14, 2013 and
12 January 22, 2013, Respondent was convicted of crimes involving the consumption of alcohol.

13 Complainant refers to and by this reference incorporates the allegations set forth above in
14 paragraph 10, subparagraphs (a) and (c), inclusive, as though set forth fully.

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(Dangerous Use of Alcohol)**

17 12. 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 to an
19 extent or in a manner dangerous or injurious to herself or others when he operated a vehicle while
20 having 0.08% or more of alcohol in his blood. Complainant refers to and by this reference
21 incorporates the allegations set forth above in paragraphs 10, subparagraphs (b) and (d), inclusive,
22 as though set forth fully.

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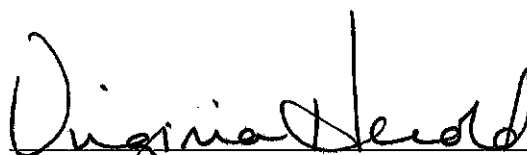
PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration No. TCH 94675, issued to Carlos Soltero;
2. Ordering Carlos Soltero to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: _____

10/21/13



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

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