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8	BEFORE THE
9	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS
10	STATE OF CALIFORNIA
11	In the Matter of the Accusation Against: Case No. 4780
12	GIOVANNI MUNOZ A C C U S A T I O N
13	7156 Firmament Avenue Van Nuys, CA 91406
14	Pharmacy Technician Registration No. TCH 87321
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16	Respondent.
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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 November 1, 2008, the Board of Pharmacy (Board) issued Pharmacy
23	Technician Registration No. TCH 87321 to Giovanni Munoz (Respondent). The Pharmacy
24	Technician Registration was in full force and effect at all times relevant to the charges brought
25	herein and will expire on December 31, 2015, 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
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STATUTORY PROVISIONS

- 4. Section 490 states, in pertinent part:
- "(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.
- "(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.
- "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken 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 the provisions of Section 1203.4 of the Penal Code."
- 5. Section 4300 provides in pertinent part, that every license issued by the Boards is subject to discipline, including suspension or revocation.
 - 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:

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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.

. . .

"(1)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.

"(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."

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REGULATORY PROVISIONS

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."

COST RECOVERY

9. Section 125.3 provides, in pertinent part, 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, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

FIRST CAUSE FOR DISCIPLINE

(Conviction of a Substantially Related Crime)

- 10. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and 490, in conjunction with California Code of Regulations, title 16, section 1770, in that, Respondent was convicted of a crime substantially related to the qualifications, functions or duties of a pharmacy technician as follows:
- a. On or about August 12, 2013, Respondent was convicted of one misdemeanor count of violating Vehicle Code section 14601.2, subdivision (a) [driving while driving privileges are suspended or revoked with knowledge] in the criminal proceeding entitled *The People of the State of California v. Giovanni Munoz* (Super. Ct. Los Angeles County, 2013, No. 3MP07586). The Court sentenced Respondent to serve 10 days in Los Angeles County Jail and placed him on 36 months probation, with terms and conditions.

- b. The circumstances surrounding the conviction are that on or about August 9, 2013, Respondent drove a vehicle while his driving privileges were suspended or revoked and with knowledge.
- c. On or about March 28, 2013, after pleading nolo contendere, Respondent was convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving while having 0.08% or more, by weight, of alcohol in his blood] in the criminal proceeding entitled *The People of the State of California v. Giovanni Munoz* (Super. Ct. Los Angeles County, 2013, No. 3VY01154). The Court placed Respondent on 36 months probation, with terms and conditions.
- d. The circumstances surrounding the conviction are that on or about March 3, 2013, during an investigation of a car parked on the right shoulder of the freeway, by the California Highway Patrol, Respondent was contacted. When the officer asked the occupants who was driving. Respondent stated he was the driver of the vehicle. When asked why he stopped on the right shoulder, he stated that he had left TGI Fridays and once he entered the freeway he began to drive very erratically. The passengers had asked him to stop and when he pulled over he got stuck in the dirt. While speaking to Respondent, the officer detected an odor of an alcoholic beverage emitting from his breath and person. He was observed to have red, watery eyes and his speech was thick and slurred. When asked if he had been drinking, Respondent admitted to consuming two large, tall cans of Budweiser and two shots of Adios earlier that night. During the booking procedure, Respondent submitted to a breath test that resulted in a breath-alcohol content level of 0.29% on the first reading and 0.31% on the second.

SECOND CAUSE FOR DISCIPLINE

(Dangerous Use of Alcohol)

11. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (h), on the grounds of unprofessional conduct, in that Respondent used alcohol to an extent or in a manner dangerous or injurious to himself, another person, and the public. Complainant refers to and by this reference incorporates the allegations set forth above in paragraphs 10, subparagraph (d), as though set forth fully.

THIRD CAUSE FOR DISCIPLINE 1 (Unprofessional Conduct/ Violation of Licensing Chapter) 2 12. Respondent is subject to disciplinary action under section 4301, (o), in that 3 Respondent committed acts of unprofessional conduct and/ or violated provisions of the licensing 4 chapter. Complainant refers to, and by this reference incorporates, the allegations set forth above 5 in paragraphs 10, subparagraphs (a) through (d), inclusive, as though set forth fully. 6 7 **PRAYER** 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 87321, issued to 10 Giovanni Munoz; 11 2. Ordering Giovanni Munoz to pay the Board the reasonable costs of the investigation 12 and enforcement of this case, pursuant to section 125.3; and 13 Taking such other and further action as deemed necessary and proper. 3. 14 15 16 DATED: 17 Executive Officer 18 Board of Pharmacy Department of Consumer Affairs 19 State of California Complainant 20 21 22 LA2013510002 23 51361538 3.doc mc (9/9/13) 24 25 26 27 28

6 Accusation