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7 *Attorneys for Complainant*

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. 4963

13 **ALEXIS VARGAS**
577 Santa Mariana Ave.
La Puente, CA 91746

A C C U S A T I O N

14 Pharmacy Technician Registration
15 No. TCH 122297

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about April 2, 2012, the Board of Pharmacy (Board) issued Pharmacy
22 Technician Registration No. TCH 122297 to Alexis Vargas (Respondent). The Pharmacy
23 Technician Registration was in full force and effect at all times relevant to the charges brought
24 herein and will expire on March 31, 2014, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board under the authority of the following laws.
27 All section references are to the Business and Professions Code unless otherwise indicated.

28

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 of
10 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:

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

....

1 Case No. 3JB04931.) The circumstances underlying the conviction are that on or about May 19,
2 2013, Irwindale Police Department officers encountered Respondent inside a vehicle that had
3 sustained extensive damage after colliding with a tree. While speaking to Respondent, the officers
4 detected objective signs of intoxication and he was ordered to take a field sobriety test, which he
5 failed. Respondent was subsequently arrested and during the booking procedure, his blood
6 alcohol was determined to be 0.12%. As a result of the conviction, the Court sentenced
7 Respondent to serve 30 days in Los Angeles County Jail and placed him on 5 years probation
8 subject to terms and conditions.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Convictions Involving Alcohol)**

11 11. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision
12 (k), in that he suffered a second conviction involving the use of alcohol. Complainant refers to and
13 by this reference incorporates the allegations set forth above in paragraph 10, as though set forth
14 fully.

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(Dangerous Use of Alcohol)**

17 12. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision
18 (h), in that Respondent used alcoholic beverages to an extent or in a manner dangerous or
19 injurious to himself, any person, or the public when he operated a vehicle while having a blood
20 alcohol level of 0.12%. Complainant refers to and by this reference incorporates the allegations
21 set forth above in paragraph 10, as though set forth fully.

22 **FOURTH CAUSE FOR DISCIPLINE**

23 **(Unprofessional Conduct/ Violation of Licensing Chapter)**

24 13. Respondent is subject to disciplinary action under section 4301, (o), in that
25 Respondent committed acts of unprofessional conduct and/ or violated provisions of the licensing
26 chapter. Complainant refers to, and by this reference incorporates, the allegations set forth above
27 in paragraphs 10 through 12, inclusive, as though set forth fully.

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1 **DISCIPLINARY CONSIDERATIONS**

2 14. In order to determine the degree of discipline to impose on Respondent, Complainant
3 alleges the following:

4 a. On or about June 20, 2013, the Board issued Citation and Fine No. CI 2012
5 53818 to Respondent for violating section 4301, subdivisions (f), (h), (l), and (j). The total
6 amount of the fine was \$300 and Respondent has yet to comply.

7 b. On or about November 27, 2012, Respondent was convicted of one
8 misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving while having
9 0.08% or more, by weight, of alcohol in his blood] in a criminal proceeding entitled *The People of*
10 *the State of California v. Alexis Vargas* (Super. Ct. Los Angeles County, Case No. 2PK04701.)
11 The circumstances underlying the conviction are that on or about September 13, 2012,
12 Respondent drove a motor vehicle with a blood alcohol level of at least .08%. As a result of the
13 conviction, the Court sentenced Respondent to serve 13 days in Los Angeles County Jail and
14 placed him on 36 months probation subject to terms and conditions.

15 c. On or about November 28, 2012, Respondent was convicted of one
16 misdemeanor count of violating Penal Code section 415, subdivision (1) [fighting in a public place]
17 in a criminal proceeding entitled *The People of the State of California v. Alexis Vargas* (Super. Ct.
18 San Bernardino County, Case No. MVA1202564.) As a result of the conviction, Respondent was
19 ordered to pay a fine.

20 **PRAYER**

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

23 1. Revoking or suspending Pharmacy Technician Registration No. TCH 122297, issued
24 to Alexis Vargas;

25 2. Ordering Alexis Vargas to pay the Board the reasonable costs of the investigation and
26 enforcement of this case, pursuant to section 125.3; and

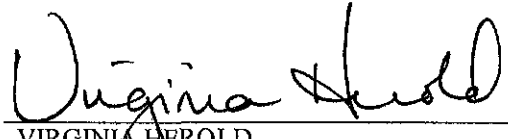
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3. Taking such other and further action as deemed necessary and proper.

DATED: 2/15/14


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

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