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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. 5127

13 **FRED IBARRA**
8238 Rosemead Ave., Apt. E.
Pico Rivera, CA 90660

ACCUSATION

14 Pharmacy Technician Registration
15 No. TCH 40995

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about September 19, 2002, the Board of Pharmacy (Board) issued Pharmacy
22 Technician Registration No. TCH 40995 to Fred Ibarra (Respondent). The Pharmacy Technician
23 Registration was in full force and effect at all times relevant to the charges brought herein and
24 will expire on June 30, 2016, unless 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.

1 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2
2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that
3 division, from taking disciplinary action against a licensee or from denying a license for
4 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a
5 record pertaining to an arrest."

6 8. Section 4060 of the Code provides in pertinent part, that no person shall possess any
7 controlled substance, except that furnished to a person upon the prescription of a physician,
8 dentist, podiatrist, optometrist, veterinarian, or other authorized prescriber.

9 9. Section 4301 states, in pertinent part:

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

13

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

19

20 "(j) The violation of any of the statutes of this state, or any other state, or of the United
21 States regulating controlled substances and dangerous drugs.

22

23 "(l) The conviction of a crime substantially related to the qualifications, functions, and
24 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
25 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
26 substances or of a violation of the statutes of this state regulating controlled substances or
27 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
28 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

1 The board may inquire into the circumstances surrounding the commission of the crime, in order
2 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
3 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
4 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
5 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
6 of this provision. The board may take action when the time for appeal has elapsed, or the
7 judgment of conviction has been affirmed on appeal or when an order granting probation is made
8 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
9 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
10 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
11 indictment.

12

13 “(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
14 violation of or conspiring to violate any provision or term of this chapter or of the applicable
15 federal and state laws and regulations governing pharmacy, including regulations established by
16 the board or by any other state or federal regulatory agency.”

17 10. Health and Safety Code Section 11350, subdivision (a) makes it a crime in this
18 state to possess any controlled substance, unless upon the written prescription of a physician or
19 other authorized prescriber.

20 **REGULATORY PROVISIONS**

21 11. California Code of Regulations, title 16, section 1770 states, in pertinent part:

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

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1 **COST RECOVERY**

2 12. Section 125.3 states, in pertinent part, that the Board may request the administrative
3 law judge to direct a licentiate found to have committed a violation or violations of the licensing
4 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
5 case.

6 **CONTROLLED SUBSTANCE**

7 13. "Cocaine," is a Schedule II controlled substance as designated by the Health and
8 Safety Code section 11055, subdivision (b)(6) and is categorized as a dangerous drug pursuant to
9 section 4022.

10 **FIRST CAUSE FOR DISCIPLINE**

11 **(Conviction of a Substantially Related Crime)**

12 14. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and
13 490, in conjunction with California Code of Regulations, title 16, section 1770, in that
14 Respondent has been convicted of a crime substantially related to the qualifications, functions or
15 duties of a pharmacy technician, as follows:

16 a. On or about January 20, 2005, Respondent was convicted of one misdemeanor count
17 of violating Vehicle Code section 23152, subdivision (b) [driving while having 0.08% or more,
18 by weight of alcohol in his blood] in the criminal case entitled *The People of the State of*
19 *California v. Fred Ibarra* (Super. Ct. L.A County 2004, No. 4DW09337-01). The Court
20 sentenced Respondent to serve 2 days in Los Angeles County Jail and placed him on 36 months
21 probation, with terms and conditions. The circumstances surrounding the conviction are that on
22 or about December 11, 2004, Respondent was pulled over by a Bell Police Department officer for
23 not stopping at a red light and exceeding the speed limit. Upon contacting Respondent, the
24 officer noticed that there were two additional occupants in the vehicle: Respondent's three year
25 old son and the child's mother. The officer observed that Respondent's eyes were bloodshot,
26 watery, and sleepy-like and that his speech was thick, slow, and slurred. The officer also noticed
27 that Respondent's breath and person smelled of an alcoholic beverage. Respondent admitted to
28 the officer that he had consumed four 12 ounce "Bud Light" beers earlier in the night.

1 Respondent submitted to a breath test, the results of which showed a blood alcohol content of
2 .14% and .15%. Respondent was arrested for, and subsequently charged with, violating Vehicle
3 Code section 23152, subdivision (b) [driving under the influence of alcohol], Vehicle Code
4 section 23152, subdivision (b) [driving while having 0.08% or more, by weight of alcohol in his
5 blood], and Penal Code section 273A, subdivision (a) [child endangerment].

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Illegal Possession of a Controlled Substances)**

8 15. Respondent is subject to disciplinary action under section 4301, subdivision (j) for
9 violating section 4060 and Health and Safety Code section 11350, subdivision (a) in that on or
10 about July 21, 2013, Respondent was in illegal possession of the controlled substance cocaine.

11 The circumstances are as follows:

12 a. On or about November 1, 2013, Respondent plead guilty to one felony count of
13 violating Health and Safety Code section 11350, subdivision (a) [possession of a controlled
14 substance- Cocaine] in the criminal case entitled *The People of the State of California v. Fred*
15 *Ibarra* (Super. Ct. L.A County 2013, No. VA131278). The Court placed respondent on deferred
16 entry of judgment for 18 months pending Respondent's completion of a drug diversion program.
17 The circumstances underlying the criminal charge are that on or about July 21, 2013, during an
18 investigation of an assault with a deadly weapon at King Taco Restaurant in Maywood, Los
19 Angeles County Sheriff's Department officers detained and ordered several male Hispanics,
20 including Respondent, to stay on the ground. Respondent had blood stains on his neck and left
21 hand, was uncooperative, and attempted to stand up several times. Respondent was escorted to
22 the patrol vehicle pending further investigation into the fight. While being escorted to the patrol
23 vehicle, Respondent admitted that he was involved in the fight. Respondent also admitted that he
24 had Cocaine in his front right pant pocket for his personal use. The officer recovered a plastic
25 bindle from Respondent's right front pant pocket, containing an off-white powdery substance
26 resembling Cocaine. Respondent was subsequently arrested for violating Health and Safety Code
27 section 11350, subdivision (a) [possession of a narcotic controlled substance-Cocaine].

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Dangerous Use of Alcohol)**

3 16. Respondent is subject to disciplinary action under sections 4301, subdivisions (h) and
4 (o), in that Respondent used alcohol in a manner dangerous to himself and the public, as follows:

5 a. On or about December 11, 2004, Respondent drove a vehicle, while having 0.08% or
6 more, by weight of alcohol in his blood. Complainant refers to, and by this reference
7 incorporates, the allegations set forth above in paragraph 14, subparagraph (a), as though set forth
8 fully.

9 **DISCIPLINARY CONSIDERATION**

10 17. In order to determine the degree of discipline, if any to be imposed on Respondent,
11 Complainant alleges the following:

12 a. On or about March 3, 1998, Respondent was convicted of one misdemeanor count of
13 violating Penal Code section 594, subdivision (b) [vandalism: deface property] in the criminal
14 case entitled *The People of the State of California v. Fred Ibarra* (Super. Ct. L.A County 1998,
15 No. 7SE04796). The circumstances surrounding the conviction are that in or about January 1998,
16 Respondent maliciously defaced, damaged or destroyed real or personal property belonging to
17 another.

18 b. On or about January 7, 1998, Respondent was convicted of one misdemeanor count
19 of violating Penal Code section 415, subdivision (1) [fighting/challenging in a public place] in the
20 criminal case entitled *The People of the State of California v. Fred Ibarra* (Super. Ct. L.A County
21 1998, No. 7SE05397-02). The Court sentenced Respondent to serve 1 day in Los Angeles
22 County Jail and placed him on 1 year probation, with terms and conditions. The circumstances
23 surrounding the conviction are that on or about November 29, 1997, Respondent was observed by
24 Huntington Park Police Department officers to be fighting with 5-6 other males outside of a large
25 house party.

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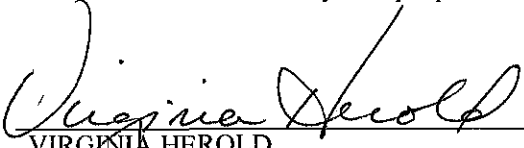
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PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration No. TCH 40995, issued to Fred Ibarra;
2. Ordering Fred Ibarra to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 9/24/14 
VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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