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8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case Number 5148

12 **MELISSA M. FELARDO**
a.k.a. Melissa Felardo
13 **1684 Decoto Road, #313**
Union City, California 94587

A C C U S A T I O N

14 **Pharmacy Technician Registration Number**
15 **TCH 59902,**

16 Respondent.

17
18 Complainant Virginia Herold alleges:

19 **PARTIES**

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

22 2. On or about December 15, 2004, the Board issued Pharmacy Technician
23 Registration Number TCH 59902 to respondent Melissa M. Felardo, a.k.a. Melissa Felardo. This
24 pharmacy technician registration was in full force and effect at all times relevant to the charges
25 brought in this accusation and will expire on August 31, 2016, unless renewed.

26 **JURISDICTION**

27 3. This accusation is brought before the Board under the authority of the following
28

1 laws. All section references are to the Business and Professions Code unless otherwise indicated.

2 4. Section 4300 states in part:

3 “(a) Every license issued may be suspended or revoked.

4 “(b) The board shall discipline the holder of any license issued by the board, whose
5 default has been entered or whose case has been heard by the board and found guilty, by any of
6 the following methods:

7 “(1) Suspending judgment.

8 “(2) Placing him or her upon probation.

9 “(3) Suspending his or her right to practice for a period not exceeding one year.

10 “(4) Revoking his or her license.

11 “(5) Taking any other action in relation to disciplining him or her as the board in its
12 discretion may deem proper.”

13 5. Section 4300.1 states:

14 “The expiration, cancellation, forfeiture, or suspension of a board-issued license by
15 operation of law or by order or decision of the board or a court of law, the placement of a license
16 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
17 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
18 proceeding against, the licensee or to render a decision suspending or revoking the license.”

19 **STATUTORY AND REGULATORY AUTHORITY**

20 6. Section 490 states in part:

21 “(a) In addition to any other action that a board is permitted to take against a licensee, a
22 board may suspend or revoke a license on the ground that the licensee has been convicted of a
23 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
24 or profession for which the license was issued.”

25 7. Section 4301 states in part:

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

1 following:

2 ...

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

8 ...

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

26 8. California Code of Regulations, title 16, section 1770, states:

27 “For the purpose of denial, suspension, or revocation of a personal or facility license
28 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a

1 crime or act shall be considered substantially related to the qualifications, functions or duties of a
2 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
3 licensee or registrant to perform the functions authorized by his license or registration in a manner
4 consistent with the public health, safety, or welfare.”

5 **COST RECOVERY**

6 9. Section 125.3 states in part:

7 “Except as otherwise provided by law, in any order issued in resolution of a disciplinary
8 proceeding before any board within the department or before the Osteopathic Medical Board,
9 upon request of the entity bringing the proceedings, the administrative law judge may direct a
10 licentiate found to have committed a violation or violations of the licensing act to pay a sum not
11 to exceed the reasonable costs of the investigation and enforcement of the case.”

12 **FACTUAL BACKGROUND**

13 10. On June 10, 2013, at about 11:40 p.m., a California Highway Patrol stopped
14 respondent in Hayward, California, for driving a vehicle with a headlight not working. The
15 officer smelled the odor of an alcoholic beverage coming from respondent. Respondent said that
16 she had stopped at the liquor store and was going home. She admitted to splitting a bottle of wine
17 with a friend.

18 11. Respondent failed to properly perform a series of field sobriety tests.
19 Respondent’s blood alcohol concentrations were measured at the jail at 0.10 percent and 0.11
20 percent.

21 12. On or about January 13, 2014, in *People of the State of California v. Melissa*
22 *Felardo*, Alameda County Superior Court Case Number 450439, respondent pled no contest to
23 reckless driving (Veh. Code, § 23103), a misdemeanor. Execution of sentence was suspended,
24 and respondent was placed on three years’ unsupervised probation. The terms and conditions of
25 probation included one day incarceration and completion of a driving under the influence
26 program.

27 ///

28

1 **CAUSES FOR DISCIPLINE**

2 **FIRST CAUSE FOR DISCIPLINE**

3 **Conviction**

4 **Business and Professions Code section 490, subdivision (a)**

5 13. The allegations of paragraphs 10-12 are realleged and incorporated by reference as
6 if fully set forth.

7 14. Respondent has subjected her pharmacy technician registration to discipline for
8 being convicted of a crime substantially related to the qualifications, functions, or duties of a
9 pharmacy technician (Bus. & Prof. Code, § 490, subd. (a)). On or about January 13, 2014,
10 respondent pled no contest to reckless driving (Veh. Code, § 23103), a misdemeanor.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **Unprofessional Conduct – Conviction**

13 **Business and Professions Code section 4301, subdivision (l)**

14 15. The allegations of paragraphs 10-12 are realleged and incorporated by reference as
15 if fully set forth.

16 16. Respondent has subjected her pharmacy technician registration to discipline for the
17 unprofessional conduct of being convicted of a crime substantially related to the qualifications,
18 functions, or duties of a pharmacy technician (Bus. & Prof. Code, § 4301, subd. (l)). On or about
19 January 13, 2014, respondent pled no contest to reckless driving (Veh. Code, § 23103), a
20 misdemeanor.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **Unprofessional Conduct – Self Administration of Alcoholic Beverages**
23 **to be Dangerous or Injurious to Oneself or Others**

24 **Business and Professions Code section 4301, subdivision (h)**

25 17. The allegations of paragraphs 10-12 are realleged and incorporated by reference as
26 if fully set forth.

27 18. Respondent has subjected her pharmacy technician registration to discipline for the
28 unprofessional conduct of using alcoholic beverages to the extent or in a manner as to be
dangerous or injurious to oneself or others (Bus. & Prof. Code, § 4301, subd. (h)). On June 10,
2013, respondent drove a vehicle with a blood alcohol concentration of approximately 0.10
percent. On or about January 13, 2014, respondent pled no contest to reckless driving (Veh.

1 Code, § 23103), a misdemeanor.

2 **OTHER DISCIPLINARY CONSIDERATIONS**

3 19. On June 13, 2010, respondent was arrested while under the influence of alcohol for
4 vandalism (Pen. Code, § 594, subd. (a)(3)) and resisting/obstructing a public officer (Pen. Code, §
5 148, subd. (a)(1)). On April 4, 2011, the Board issued Citation Number CI 2008 40222 to
6 respondent for the unprofessional conduct of using an alcoholic beverage to the extent or in a
7 manner as to be dangerous or injurious to oneself or others (Bus. & Prof. Code, § 4301, subd.
8 (h)). Respondent paid the \$500.00 citation and the Board closed the case on May 9, 2011.

9 **PRAYER**

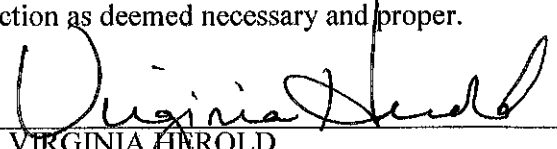
10 WHEREFORE, complainant requests that a hearing be held on the matters alleged in this
11 accusation, and that following the hearing, the Board of Pharmacy issues a decision:

12 1. Revoking or suspending Pharmacy Technician Registration Number TCH 59902
13 issued to Melissa M. Felardo, a.k.a. Melissa Felardo;

14 2. Ordering Melissa M. Felardo, a.k.a. Melissa Felardo, to pay the Board of Pharmacy
15 the reasonable costs of the investigation and enforcement of this case under Business and
16 Professions Code section 125.3; and

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

18 DATED: 12/3/14


19 VIRGINIA HEROLD
20 Executive Officer
21 Board of Pharmacy
22 Department of Consumer Affairs
23 State of California
24 Complainant

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