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

12 In the Matter of the Accusation Against:

Case No. 5162

13 **MICHELLE CARRILLO**  
14 **82431 Deborah Drive**  
**Indio, CA 92201**

**A C C U S A T I O N**

15 **Pharmacy Technician Registration**  
16 **No. TCH 102602**

17 Respondent.

18  
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about June 17, 2010, the Board of Pharmacy issued Pharmacy Technician  
24 Registration Number TCH 102602 to Michelle Carrillo (Respondent). The Pharmacy Technician  
25 Registration was in full force and effect at all times relevant to the charges brought herein and  
26 will expire on May 31, 2014, unless renewed.

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1 **JURISDICTION**

2 3. This Accusation is brought before the Board of Pharmacy (Board), Department of  
3 Consumer Affairs, under the authority of the following laws. All section references are to the  
4 Business and Professions Code (Code) unless otherwise indicated.

5 4. Section 4300, subdivision (a) of the Code states: "Every license issued may be  
6 suspended or revoked."

7 5. Section 4300.1 of the Code states:

8 The expiration, cancellation, forfeiture, or suspension of a board-issued license  
9 by operation of law or by order or decision of the board or a court of law, the  
10 placement of a license on a retired status, or the voluntary surrender of a license by a  
11 licensee shall not deprive the board of jurisdiction to commence or proceed with any  
12 investigation of, or action or disciplinary proceeding against, the licensee or to render  
13 a decision suspending or revoking the license.

12 **STATUTORY PROVISIONS**

13 6. Section 482 of the Code states:

14 Each board under the provisions of this code shall develop criteria to evaluate  
15 the rehabilitation of a person when:

16 (a) Considering the denial of a license by the board under Section 480; or

17 (b) Considering suspension or revocation of a license under Section 490.

18 Each board shall take into account all competent evidence of rehabilitation  
19 furnished by the applicant or licensee.

20 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or  
21 revoke a license on the ground that the licensee has been convicted of a crime substantially  
22 related to the qualifications, functions, or duties of the business or profession for which the  
23 license was issued.

24 8. Section 493 of the Code states:

25 Notwithstanding any other provision of law, in a proceeding conducted by a  
26 board within the department pursuant to law to deny an application for a license or to  
27 suspend or revoke a license or otherwise take disciplinary action against a person who  
28 holds a license, upon the ground that the applicant or the licensee has been convicted  
of a crime substantially related to the qualifications, functions, and duties of the  
licensee in question, the record of conviction of the crime shall be conclusive  
evidence of the fact that the conviction occurred, but only of that fact, and the board  
may inquire into the circumstances surrounding the commission of the crime in order

1 to fix the degree of discipline or to determine if the conviction is substantially related  
2 to the qualifications, functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority,"  
4 and "registration."

5 9. Section 4301 of the Code states:

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

10 . . . .

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

16 . . . .

17 (k) The conviction of more than one misdemeanor or any felony involving the  
18 use, consumption, or self-administration of any dangerous drug or alcoholic beverage,  
19 or any combination of those substances.

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

29 . . . .

30 (p) Actions or conduct that would have warranted denial of a license.

31 (q) Engaging in any conduct that subverts or attempts to subvert an  
32 investigation of the board.

33 . . . .

1 **REGULATORY PROVISIONS**

2 10. California Code of Regulations, title 16, section 1769, states:

3 . . . .

4 (b) When considering the suspension or revocation of a facility or a personal  
5 license on the ground that the licensee or the registrant has been convicted of a crime,  
6 the board, in evaluating the rehabilitation of such person and his present eligibility for  
7 a license will consider the following criteria:

8 (1) Nature and severity of the act(s) or offense(s).

9 (2) Total criminal record.

10 (3) The time that has elapsed since commission of the act(s) or offense(s).

11 (4) Whether the licensee has complied with all terms of parole, probation,  
12 restitution or any other sanctions lawfully imposed against the licensee.

13 (5) Evidence, if any, of rehabilitation submitted by the licensee.

14 11. California Code of Regulations, title 16, section 1770, states:

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

22 **COSTS**

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

27 **FIRST CAUSE FOR DISCIPLINE**

28 **(April 13, 2010 Criminal Conviction for DUI on December 28, 2009)**

13. Respondent has subjected her registration to discipline under sections 490 and 4301,  
subdivision (l) of the Code in that she was convicted of a crime that is substantially related to the  
qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

a. On or about April 13, 2010, in a criminal proceeding entitled *People of the  
State of California v. Michelle Carrillo*, in San Bernardino County Superior Court, case number

1 TWV1000348, Respondent was convicted on her plea of nolo contendere to violating Vehicle  
2 Code section 23152, subdivision (b), driving with a blood alcohol concentration (BAC) of .08 or  
3 more, a misdemeanor. Respondent admitted, and the court found true the special allegation that  
4 she had been previously convicted of the same offense on March 25, 2008, as described in  
5 paragraph 21, below. A second count of violating Vehicle Code section 23152, subdivision (a),  
6 driving under the influence of alcohol/drugs, was dismissed pursuant to a plea agreement.

7 b. As a result of the conviction, on or about April 13, 2010, Respondent was  
8 ordered to serve 67 days in the county jail, with credit for two days, and was granted 36 months  
9 summary probation and ordered to pay fees and fines, and comply with DUI probation terms.  
10 Due to a BAC of .20 percent or higher, Respondent was ordered to complete a nine-month  
11 alcohol program.

#### 12 **SECOND CAUSE FOR DISCIPLINE**

#### 13 **(January 27, 2014 Criminal Conviction for DUI on June 14, 2013)**

14 14. Respondent has subjected her registration to discipline under sections 490 and 4301,  
15 subdivision (l) of the Code in that she was convicted of a crime that is substantially related to the  
16 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

17 a. On or about January 27, 2014, in a criminal proceeding entitled *People of the*  
18 *State of California v. Michelle Carrillo*, in San Bernardino County Superior Court, case number  
19 TSB1301841, Respondent was convicted on her plea of guilty to violating Vehicle Code section  
20 23152, subdivision (b), driving with a blood alcohol concentration (BAC) of .08 or more, a  
21 misdemeanor. Respondent admitted, and the court found true the special allegation that she had  
22 been previously convicted of the same offense on March 25, 2008, as described in paragraph 20,  
23 below, and on April 13, 2010, as described in paragraph 13, above. A second count of violating  
24 Vehicle Code section 23152, subdivision (a) was dismissed pursuant to a plea agreement.

25 b. As a result of the conviction, on or about January 27, 2014, Respondent was  
26 ordered to serve 120 days in the county jail, with credit for twenty days, and granted 36 months  
27 summary probation on the condition she comply with DUI probation terms.

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1 c. The facts that led to the conviction are that shortly after two o'clock in the  
2 morning, on or about June 14, 2013, officers with the California Highway Patrol (CHP) observed  
3 a vehicle driven by Respondent weaving in its lane. After conducting a traffic stop, the officers  
4 made contact with Respondent. The officers immediately noted the odor of an alcoholic beverage  
5 coming from inside the vehicle. Respondent was described as having red, watery eyes, an  
6 unsteady gait, and slow, slurred speech. After two field sobriety tests, Respondent refused to  
7 participate further. Respondent was arrested for driving under the influence. During booking,  
8 Respondent provided two breath samples which were analyzed with a BAC of .19 and .21  
9 percent, respectively.

10 **THIRD CAUSE FOR DISCIPLINE**

11 **(Dangerous Use of Alcohol)**

12 15. Respondent has subjected her registration to disciplinary action under section 4301,  
13 subdivision (h) of the Code for unprofessional conduct in that on or about December 28, 2009,  
14 and June 14, 2013, Respondent operated a motor vehicle while substantially impaired by  
15 alcoholic beverages, as described in paragraphs 13 and 14, above.

16 **FOURTH CAUSE FOR DISCIPLINE**

17 **(Multiple Alcohol-Related Convictions)**

18 16. Respondent has subjected her registration to disciplinary action under sections 4301,  
19 subdivision (k) of the Code for unprofessional conduct in that on or about April 13, 2010 and  
20 January 27, 2014, Respondent was convicted of violating Vehicle Code section 23152,  
21 subdivision (b), (driving with a BAC of .08 percent or more), as described in paragraphs 13 and  
22 14, above.

23 **FIFTH CAUSE FOR DISCIPLINE**

24 **(Conduct That Would Have Warranted Denial of a Registration &  
25 Subversion or Attempted Subversion of an Investigation by the Board)**

26 17. Respondent has subjected her registration to disciplinary action under section 4301,  
27 subdivisions (p) and (q) of the Code for unprofessional conduct in that on or about April 13,  
28 2010, the Board received Respondent's application for licensure that was signed and dated by

1 Respondent on January 12, 2010. In a letter that accompanied her application, Respondent  
2 declared the three convictions described in paragraph 18, below. On the day the Board received  
3 her application, Respondent was convicted of driving under the influence, as described in  
4 paragraph 13, above. Respondent did not reveal the fact that she had a criminal matter pending in  
5 San Bernardino County Superior Court for a DUI arrest that occurred prior to the date she signed  
6 her application. In that she was convicted of a second DUI in a two-year period, said conduct  
7 would have warranted the denial of her registration as a pharmacy technician, and was an attempt  
8 to subvert an investigation by the Board into Respondent's conviction history.

### 9 DISCIPLINARY CONSIDERATIONS

10 18. To determine the degree of discipline, if any, to be imposed on Respondent, pursuant  
11 to California Code of Regulations, title 16, section 1769, Complainant alleges:

12 19. On or about September 8, 2006, in a criminal proceeding entitled *People of the State*  
13 *of California v. Michelle Carrillo*, in San Bernardino County Superior Court, case number  
14 MSB095699, Respondent was convicted on her plea of nolo contendere to violating Penal Code  
15 section 242, battery, a misdemeanor. Respondent was granted conditional release for 36 months,  
16 and ordered to complete an Anger Management Diversion Program, and to stay away from the  
17 victim.

18 20. On or about January 4, 2007, in a criminal proceeding entitled *People of the State of*  
19 *California v. Michelle Carrillo*, in San Bernardino County Superior Court, case number  
20 MWV109230, Respondent was convicted on her plea of guilty to violating Penal Code section  
21 647, subdivision (f), public intoxication, a misdemeanor. Respondent was granted 12 months  
22 conditional release, ordered to serve one day in jail, and pay fees and fines.

23 21. On or about March 25, 2008, in a criminal proceeding entitled *People of the State of*  
24 *California v. Michelle Carrillo*, in San Bernardino County Superior Court, case number  
25 TWV800615, Respondent was convicted on her plea of guilty to violating Vehicle Code section  
26 23152, subdivision (b), a misdemeanor. Respondent was granted 36 months conditional release,  
27 and ordered to serve 21 days in jail. Respondent was further ordered to complete a nine-month  
28 First Offender Alcohol Program, and pay fees and fines. As a result of the DUI conviction on

1 April 13, 2010, described in paragraph 13, above, Respondent's probation was revoked and  
2 reinstated.

3 **PRAYER**

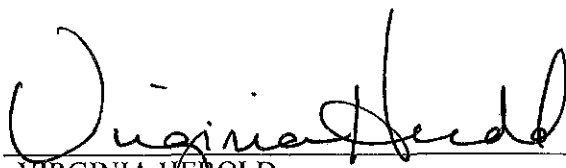
4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
5 and that following the hearing, the Board of Pharmacy issue a decision:

6 1. Revoking or suspending Pharmacy Technician Registration Number TCH 102602,  
7 issued to Michelle Carrillo;

8 2. Ordering Michelle Carrillo to pay the Board of Pharmacy the reasonable costs of the  
9 investigation and enforcement of this case, pursuant to Business and Professions Code section  
10 125.3;

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

12  
13  
14 DATED: 6/14/14



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

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