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

12 In the Matter of the Accusation Against:

Case No. 5217

13 **DOMINIQUE JOEL DIMARCO**
22650 Bay Avenue
14 Moreno Valley, CA 92553

A C C U S A T I O N

15 **Pharmacy Technician Registration No. TCH 47136**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On August 25, 2003, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 47136 to Dominique Joel Dimarco (Respondent). Respondent has
24 also been known as Dominque Joel Marco and Dominique J. Di Marco. The Pharmacy
25 Technician Registration was in full force and effect at all times relevant to the charges brought
26 herein and will expire on November 30, 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 unless otherwise indicated.

5 4. Section 4300, subdivision (a), of the Code provides that every license issued by the
6 Board may be suspended or revoked.

7 5. Section 4300.1 of the Code states:

8 The expiration, cancellation, forfeiture, or suspension of a board-issued
9 license by operation of law or by order or decision of the board or a court of law,
10 the placement of a license on a retired status, or the voluntary surrender of a
11 license by a licensee shall not deprive the board of jurisdiction to commence or
12 proceed with any investigation of, or action or disciplinary proceeding against, the
13 licensee or to render 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
15 evaluate 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 4301 of the Code states:

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

25

26 (h) The administering to oneself, of any controlled substance, or the use of
27 any dangerous drug or of alcoholic beverages to the extent or in a manner as to be
28 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.

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(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.

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REGULATORY PROVISIONS

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

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

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) Evidence, if any, of rehabilitation submitted by the licensee.

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1 9. California Code of Regulations, title 16, section 1770, states:

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

7 **COST RECOVERY**

8 10. Section 125.3 of the Code provides, in pertinent part, that the Board may request
9 the administrative law judge to direct a licentiate found to have committed a violation or
10 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
11 and enforcement of the case, with failure of the licentiate to comply subjecting the license to not
12 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs
13 may be included in a stipulated settlement.

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(March 17, 2014 Criminal Conviction for DUI on January 10, 2014)**

16 11. Respondent has subjected his pharmacy technician registration to discipline under
17 Code sections 490 and 4301, subdivision (l), in that he was convicted of a crime that is
18 substantially related to the qualifications, functions, and duties of a registered pharmacy
19 technician. The circumstances are as follows:

20 a. On March 17, 2014, in a criminal proceeding entitled *The People of the State*
21 *of California v. Dominique Joel Dimarco, aka Dominique J. Di Marco, aka Dominique Joel*
22 *Marco*, in the Riverside County Superior Court, Riverside Hall of Justice, Case Number
23 RIM1402592, Respondent was convicted on his plea of guilty to violating Vehicle Code (VC)
24 sections 23152, subdivisions (a), driving while under the influence of alcohol (DUI), and (b),
25 driving with a blood alcohol concentration (BAC) of 0.08 percent or more, misdemeanors, and
26 23154, subdivision (a), driving with a BAC of 0.01 percent or more while on probation for a
27 violation of VC section 23152, an infraction. Respondent admitted and the court found true the
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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Conviction of Alcohol Related Felony)**

3 13. Respondent has subjected his pharmacy technician registration to discipline under
4 Code section 4301, subdivision (k) in that on March 17, 2014, he was convicted of more than
5 one misdemeanor involving the use or consumption of alcohol.

6 **DISCIPLINARY CONSIDERATIONS**

7 14. To determine the degree of discipline, if any, to be imposed on Respondent,
8 Complainant alleges:

9 15. In July 2001, in a prior criminal proceeding entitled *The People of the State of*
10 *California v. Dominique Joel Dimarco*, in the Los Angeles County Superior Court, Pomona
11 Courthouse South, Respondent was convicted on his plea of *nolo contendere* to violating Penal
12 Code section 488, petty theft, a misdemeanor. As a result of the conviction, Respondent served
13 two days in the Los Angeles County Jail and paid a fine of \$100.00. The facts that led to the
14 conviction are that Respondent walked out without paying a pair of pants from the Robinsons-
15 May store inside Puente Hills Mall in Industry, California.

16 16. On August 10, 2012, in a prior criminal proceeding entitled *The People of the*
17 *State of California v. Dominique Joel Dimarco, aka Dominique J. Di Marco, aka Dominique Joel*
18 *Marco*, in the Riverside County Superior Court, Riverside Hall of Justice, Case Number
19 RIM1210080, Respondent was convicted on his plea of guilty to violating VC section 23152,
20 subdivision (b), driving with a blood alcohol concentration (BAC) of 0.08 percent or more, a
21 misdemeanor. Respondent admitted and the court found true the allegation that Respondent's
22 BAC was .15 percent or more, a sentencing enhancement pursuant to VC section 23578. A
23 misdemeanor charge for violation of VC section 23152, subdivision (a), DUI, was dismissed
24 pursuant to a plea bargain. As a result of the conviction, on August 10, 2012, Respondent was
25 sentenced to be committed to the custody of the Riverside County Sheriff for 20 days, with the
26 remaining 19 days to be served under the Sheriff's Labor Program. Respondent was granted 36
27 months summary probation under standard alcohol conditions and ordered to pay fines, fees, and
28 penalty assessments. Respondent was also ordered to attend and satisfactorily complete a First

1 Offender DUI Program for nine months and the Mothers Against Drunk Driving Victim Impact
2 Panel session.

3 17. As a result of Respondent's conviction, detailed in paragraph 16, above, on
4 January 31, 2013, the Board issued Respondent Citation Number CI 2011 52238, ordering him to
5 pay a fine assessed at \$3,500.00. The citation included the following charges:

6 a. Respondent violated Code section 4301, subdivision (h), for unprofessional
7 conduct, administering to oneself, of any controlled substance, or the use of any dangerous drug
8 or of alcoholic beverages.

9 b. Respondent violated Code section 4301, subdivision (l), for unprofessional
10 conduct, conviction of a crime substantially related to the practice of pharmacy.

11 **PRAYER**

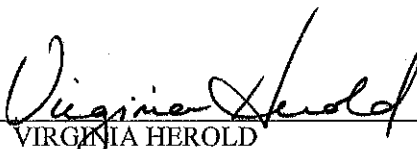
12 WHEREFORE, Complainant requests that a hearing be held on the matters herein
13 alleged, and that following the hearing, the Board of Pharmacy issue a decision:

14 1. Revoking or suspending Pharmacy Technician Registration Number TCH 47136,
15 issued to Dominique Joel Dimarco;

16 2. Ordering Dominique Joel Dimarco to pay the Board of Pharmacy the reasonable
17 costs of the investigation and enforcement of this case, pursuant to Business and Professions
18 Code section 125.3;

19 3. Taking such other and further action as deemed necessary and proper.
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23 DATED: 9/13/14


24 VIRGINIA HEROLD
25 Executive Officer
26 Board of Pharmacy
27 Department of Consumer Affairs
28 State of California
Complainant

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