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7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 5399

12 **NILSA MARIA GAMBOA**
2771 Golden Avenue
13 Long Beach, CA 90806

A C C U S A T I O N

14 Pharmacy Technician Registration
15 No. TCH 11868

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about February 25, 1994, the Board issued Pharmacy Technician Registration
23 No. TCH 11868 to Nilsa Maria Gamboa (Respondent). The Pharmacy Technician Registration
24 was in full force and effect at all times relevant to the charges brought herein and will expire on
25 March 31, 2017, unless renewed.

26 **JURISDICTION**

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

1 **JURISDICTION**

2 4. This Accusation is brought before the Board under the authority of the following laws.

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

4 5. Section 4300 provides in pertinent part, that every license issued by the Boards is
5 subject to discipline, including suspension or revocation.

6 6. Section 4300.1 states:

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

12 **STATUTORY AND REGULATORY PROVISIONS**

13 7. Section 4301 states, in pertinent part:

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

17

18 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
19 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
20 whether the act is a felony or misdemeanor or not.

21

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

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

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

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

18 COST RECOVERY

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

25 10. DANGEROUS DRUGS

26 a. "Albuterol," is used to dilate the airways of the lung and is used for treating asthma
27 and other conditions of the lung. It is categorized as a dangerous drug within the meaning of
28 section 4022.

1 Complainant refers to, and by reference incorporates, the allegations set forth above in paragraph
2 11, as though set forth fully.

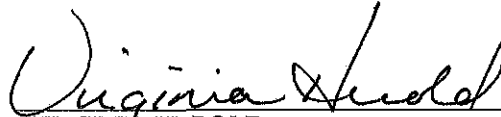
3 **PRAYER**

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

- 6 1. Revoking or suspending Pharmacy Technician Registration No. TCH 11868, issued to
7 Nilsa Maria Gamboa;
- 8 2. Ordering Nilsa Maria Gamboa to pay the Board the reasonable costs of the
9 investigation and enforcement of this case, pursuant to section 125.3; and
- 10 3. Taking such other and further action as deemed necessary and proper.

11
12
13 DATED: _____

9/5/15



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

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