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8	BEFORE THE
9	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS
10	STATE OF CALIFORNIA
11	In the Matter of the Accusation Against: Case No. 5446
12	CATHERINE VENEGAS A C C U S A T I O N
13	4092 W. 129th St.
14	Hawthorne, CA 90250
15	Pharmacy Technician Registration No. TCH 109197
16	Respondent.
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18	Complainant alleges:
19	PARTIES
20	1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
21	as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
22	2. On or about December 15, 2010, the Board of Pharmacy (Board) issued Pharmacy
23	Technician Registration No. TCH 109197 to Catherine Venegas (Respondent). The Pharmacy
24	Technician Registration was in full force and effect at all times relevant to the charges brought
25	herein and will expire on August 31, 2016, unless renewed.
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STATUTORY PROVISIONS

3. Section 490 states, in pertinent part:

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

7 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
8 discipline a licensee for conviction of a crime that is independent of the authority granted under
9 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
10 of the business or profession for which the licensee's license was issued."

"(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
conviction following a plea of nolo contendere. Any action that a board is permitted to take
following the establishment of a conviction may be taken 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 the
provisions of Section 1203.4 of the Penal Code."

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4. Section 493 states:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within 18 the department pursuant to law to deny an application for a license or to suspend or revoke a 19 license or otherwise take disciplinary action against a person who holds a license, upon the 20ground that the applicant or the licensee has been convicted of a crime substantially related to the 21 qualifications, functions, and duties of the licensee in question, the record of conviction of the 22crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, 23 and the board may inquire into the circumstances surrounding the commission of the crime in 24 order to fix the degree of discipline or to determine if the conviction is substantially related to the 25 qualifications, functions, and duties of the licensee in question. As used in this section, "license" 26 includes "certificate," "permit," "authority," and "registration." 27

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

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

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Section 4300.1 states:

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

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Section 4301 states, in pertinent part:

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

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17 "(g) Knowingly making or signing any certificate or other document that falsely represents
18 the existence or nonexistence of a state of facts.

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

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

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"(1) The conviction of a crime substantially related to the qualifications, functions, and 1 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 2 (commencing with Section 801) of Title 21 of the United States Code regulating controlled 3 substances or of a violation of the statutes of this state regulating controlled substances or 4 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the 5 record of conviction shall be conclusive evidence only of the fact that the conviction occurred. 6 The board may inquire into the circumstances surrounding the commission of the crime, in order 7 to fix the degree of discipline or, in the case of a conviction not involving controlled substances or 8 dangerous drugs, to determine if the conviction is of an offense substantially related to the 9 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or 10 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning 11 of this provision. The board may take action when the time for appeal has elapsed, or the 12 judgment of conviction has been affirmed on appeal or when an order granting probation is made 13 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of 14 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not 15 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or 16 indictment." 17

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REGULATORY PROVISIONS

9. California Code of Regulations, title 16, section 1770 states, in pertinent part: 19 "For the purpose of denial, suspension, or revocation of a personal or facility license 20 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a 21 crime or act shall be considered substantially related to the qualifications, functions or duties of a 22 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a 23 licensee or registrant to perform the functions authorized by his license or registration in a manner 24 consistent with the public health, safety, or welfare." 25

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COST RECOVERY

10. Section 125.3 states, in pertinent part, that the Board may request the administrative 27 law judge to direct a licentiate found to have committed a violation or violations of the licensing 28

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act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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CONTROLLED SUBSTANCE

11. "Alprazolam," is the generic name for Xanax. It is a Schedule IV controlled substance as designated by Health and Safety Code section 11057, subdivision (d) and is categorized as a dangerous drug pursuant to section 4022.

7 12. "Marijuana," is a Schedule I controlled substance as designated by Health and Safety
8 Code section 11054, subdivision (d)(13) and is categorized as a dangerous drug pursuant to
9 section 4022.

FIRST CAUSE FOR DISCIPLINE

(Conviction of a Substantially Related Crime)

13. Respondent is subject to disciplinary action under sections 4301, subdivision (1) and 12 490, in conjunction with California Code of Regulations, title 16, section 1770, in that 13 Respondent has been convicted of a crime substantially related to the qualifications, functions or 14 duties of a pharmacy technician. On or about August 4, 2014, Respondent was convicted of one 15 misdemeanor count of violating Vehicle Code section 23103.5 [reckless driving: involving] 16 alcohol] in the criminal proceeding entitled *The People of the State of California v. Catherine* 17 Venegas (Super. Ct. L.A. County, 2014, No. 4IG01550). The court placed Respondent on 36 18 months probation, with terms and conditions. The circumstances surrounding the conviction are 19 that on or about March 6, 2014, during a traffic enforcement stop, an officer detected an odor of 20an alcoholic beverage emitting from Respondent. She was observed to have a horizontal gaze 21 nystagmus. Respondent admitted that she consumed two beers (Coronas). She did not perform 22 the standard Field Sobriety Tests (F.S.T.), as demonstrated and explained by the officer. As she 23 was being arrested, Respondent admitted that she possessed Xanax in her car. A search of 24 Respondent's vehicle revealed a purple pill container, with no label, containing multiple pills 25 marked "GG249," later identified as Alprazolam and less than one ounce of Marijuana. During 26 the booking procedure, Respondent submitted to a blood test that resulted in a blood-alcohol 27 concentration level of 0.10%. 28

SECOND CAUSE FOR DISCIPLINE 1 (Dangerous Use of Alcohol) 2 14. Respondent is subject to disciplinary action under section 4301, subdivision (h), in 3 that on or about March 6, 2014, Respondent used alcoholic beverages to the extent or in a manner 4 as to be dangerous or injurious to herself, another person, or to the public. Complainant refers to, 5 and by this reference incorporates, the allegations set forth above in paragraph 13, as though set 6 forth fully. 7 THIRD CAUSE FOR DISCIPLINE 8 9 (Illegally Obtained or Possessed a Controlled Substance) 15. Respondent is subject to disciplinary action under section 4301, subdivision (j), as 10 11 defined in section 4060, in that on or about March 6, 2014, Respondent illegally obtained or possessed a controlled substance. Complainant refers to, and by this reference incorporates, the 12 allegations set forth above in paragraph 13, as though set forth fully. 13 14 FIRST CAUSE FOR DISCIPLINE (Knowingly Made a False Statement of Fact) 15 Respondent is subject to disciplinary action under section 4301, subdivision (g), in 16. 16 17 that on or about November 6, 2014, Respondent knowingly made a false statement of fact, by failing to disclose her 2014 conviction on her renewal application as a pharmacy technician. 18 Specifically, Respondent answered "No" to the question which asked whether she had been 19 convicted of any crime since her last renewal. Complainant refers to, and by this reference 20incorporates, the allegations set forth above in paragraph 13, as though set forth fully. 21 PRAYER 22 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, 23 and that following the hearing, the Board of Pharmacy issue a decision: 24 1. Revoking or suspending Pharmacy Technician Registration No. TCH 109197, issued 25 to Catherine Venegas; 26 27 $\parallel \mid$ /// 28 6

In the Matter of the Accusation Against Catherine Venegas

Ordering Catherine Venegas to pay the Board of Pharmacy the reasonable costs of the 2. investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and Taking such other and further action as deemed necessary and proper. 3. 9/21/15 DATED: VIRGIXIA HEROLD Executive Officer Board of Pharmacy Department of Consumer Affairs State of California Complainant LA2015500869 51909997.doc jz(9/16/15) In the Matter of the Accusation Against Catherine Venegas