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

11 In the Matter of the Accusation Against:

Case No. 5564

12 **KAREN KA YIN HO**
13 4654 La Rica Ave.
Baldwin Park, CA 91706

A C C U S A T I O N

14 c/o Central California Women's Facility
15 INMATE No. WF2602
PO Box 1508
16 Chowchilla, CA 93610

17 **Pharmacy Technician Registration No. TCH 39556**

18 Respondent.

19
20 Complainant alleges:

21 **PARTIES**

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

24 2. On or about May 8, 2002, the Board issued Pharmacy Technician Registration No.
25 TCH 39556 to Karen Ka Yin Ho, aka Ka Yin Ho ("Respondent"). Pursuant to Business and
26 Professions Code section 4311, subdivision (a), effective September 18, 2015, the Pharmacy
27 Technician Registration is automatically suspended. The Pharmacy Technician Registration will
28 expire on July 31, 2017, unless renewed.

1 **JURISDICTION**

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

5 4. Section 4300.1 of the Code states:

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

11 5. Section 4011 of the Code provides that "[t]he board shall administer and enforce this
12 chapter [Pharmacy Law, (Business and Professions Code, Sec 4000 et seq.)] and the Uniform
13 Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and
14 Safety Code)."

15 6. Section 4300, subdivision (a), of the Code states, in pertinent part, that "[e]very
16 license issued may be suspended or revoked."

17 **STATUTORY PROVISIONS**

18 7. Section 4060 of the Code states, in pertinent part:

19 "No person shall possess any controlled substance, except that furnished to a person upon
20 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic
21 doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
22 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
23 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
24 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
25 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
26 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
27 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
28 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly

1 labeled with the name and address of the supplier or producer.

2 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a
3 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs
4 and devices."

5 8. Section 4301 of the Code states, in pertinent part:

6 "The board shall take action against any holder of a license who is guilty of unprofessional
7 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

8 Unprofessional conduct shall include, but is not limited to, any of the following:

9

10 "(c) Gross negligence.

11

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

17

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

21 "(l) The conviction of a crime substantially related to the qualifications, functions, and
22 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
23 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
24 substances or of a violation of the statutes of this state regulating controlled substances or
25 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
26 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
27 The board may inquire into the circumstances surrounding the commission of the crime, in order
28 to fix the degree of discipline or, in the case of a conviction not involving controlled substances

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

10

11 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
12 violation of or conspiring to violate any provision or term of this chapter or of the applicable
13 federal and state laws and regulations governing pharmacy, including regulations established by
14 the board or by any other state or federal regulatory agency.

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

16 **REGULATORY PROVISIONS**

17 9. California Code of Regulations, title 16, section 1770, states, in pertinent part:

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

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1 **COST RECOVERY**

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

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(Conviction of a Substantially Related Crime)**

10 11. Respondent is subject to disciplinary action under Code section 4301, subdivision (I),
11 in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent was
12 convicted of a crime substantially related to qualifications, functions, or duties of a registered
13 pharmacy technician which to a substantial degree evidence her present or potential unfitness to
14 perform the functions authorized by her registration in a manner consistent with the public health,
15 safety, or welfare, as follow:

16 a. On or about June 17, 2015, after pleading nolo contendere, Respondent was convicted
17 of one felony count of violating Vehicle Code section 23153 (b) [DUI Causing Injury], and
18 Vehicle Code section 23560 [Second DUI Conviction Within Ten Years]. She admitted a further
19 allegation of violating Penal Code section 12022.7 (a) [inflicting great bodily injury], in the
20 criminal proceeding entitled *The People of the State of California v. Karen Ka Yin Ho* (Super. Ct.
21 L.A. County, 2015, No. KA109412). The court sentenced Respondent to two years in state
22 prison and ordered her to make restitution to the victim.

23 b. The circumstances underlying the conviction are that on or about March 3, 2015,
24 Respondent was driving her vehicle in the wrong direction of traffic on an interstate and then she
25 collided with another vehicle. Respondent told California Highway Patrol officers that she did
26 not know she was traveling in the wrong direction and that she was unable to avoid the collision
27 because she believe another vehicle was approaching her vehicle. The officers detected a strong
28 odor of alcohol emitting from Respondent's breath and observed that she had red and watery

1 eyes, and slurred speech. Respondent's blood alcohol concentration was 0.28%. The
2 Respondent's collision caused a laceration to the left eye of the first victim. He received 15
3 stitches. A second victim sustained injuries to her back.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Dangerous Use of Alcohol)**

6 12. Respondent is subject to disciplinary action under Code section 4301, subdivision (h),
7 on the grounds of unprofessional conduct, in that Respondent used alcoholic beverages to the
8 extent or in a manner as to be dangerous or injurious to herself or others.

9 a. Complainant refers to, and by this reference incorporates, the allegations set forth in
10 paragraph 11, subparagraph b, inclusive, as though set forth fully.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(More Than One Conviction Involving Alcohol)**

13 13. Respondent is subject to disciplinary action under Code section 4301, subdivision (k),
14 on the grounds of unprofessional conduction, in that Respondent has three convictions involving
15 consumption of alcohol, as follows:

16 a. On or about September 24, 2001, after pleading guilty, Respondent was convicted of
17 one misdemeanor count of violating Vehicle Code section 23152, subdivision (a) [driving under
18 the influence of alcohol], in the criminal proceeding entitled *The People of the State of California*
19 *v. Ka Yin Ho* (Super. Ct. L.A. County, 2001, No. 1RH04961). The court placed Respondent on
20 three year probation with terms and conditions, and ordered her to complete a 3-month first-
21 offender alcohol and other drug education and counseling program.

22 b. On or about February 19, 2013, after pleading nolo contendere, Respondent was
23 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b)
24 [driving while having 0.08% and more, by weight, of BAC], and one misdemeanor count of
25 violating Vehicle Code section 20002, subdivision (a) [hit and run],], in the criminal proceeding
26 entitled *The People of the State of California v. Karen Ka Yin Ho* (Super. Ct. L.A. County, 2013,
27 No. 3JB00361). The court placed Respondent on 36 months probation with terms and conditions,
28 ordered her to complete a 6-month first-offender alcohol and other drug education and counseling

1 program, attend a Mothers Against Drunk Driving program, perform 10 days of community
2 service, and pay restitution to a victim.

3 c. On or about June 17, 2015, after pleading nolo contendere, Respondent convicted of
4 one felony count of violating Vehicle Code sections 23153, subdivision (b), and 23560 [driving
5 with a 0.08% or higher blood alcohol content (“BAC”) causing injury, within 10 years of another
6 driving under the influence offense], with a further allegation of violating Penal Code section
7 12022.7, subdivision (a) [inflicting great bodily injury], in the criminal proceeding entitled *The*
8 *People of the State of California v. Karen Ka Yin Ho* (Super. Ct. L.A. County, 2015, No.
9 KA109412). Complainant refers to and by this reference incorporates the allegations set for
10 above paragraph 11, as though set forth fully.

11 **FOURTH CAUSE FOR DISCIPLINE**

12 **(Violate Pharmacy Law / Acts Warranting Denial of Licensure)**

13 14. Respondent is subject to disciplinary action under Code section 4301, subdivisions
14 (o) and (p), in that Respondent violated federal and state law and regulations governing
15 pharmacy, and committed acts of unprofessional conduct that would have warranted a denial of a
16 license. Complainant refers to and by this reference incorporates that allegations set for above in
17 paragraphs 11 through 13, inclusive, as though set forth fully.

18 **DISCIPLINE CONSIDERATIONS**

19 15. To determine the degree of discipline, Complaint alleges that:

20 a. On or about May 31, 2013, the Board issued a citation and \$3,000.00 fine to
21 Respondent (case no. CI 2012 54733) for her February 19, 2013 criminal conviction.
22 Complainant refers to and by this reference incorporates that allegations set for above in
23 paragraph 13 (b) inclusive, as though set forth fully.

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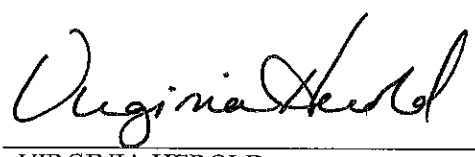
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PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration No. TCH 39556, issued to Karen Ka Yin Ho;
2. Ordering Karen Ka Yin Ho to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 6/7/16



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

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