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

11 In the Matter of the Accusation Against:

Case No. 5657

12 **JUANITA RAE GARCIA**  
13 **1233 Dealynn Street, #1**  
**Sacramento, CA 95825**

**ACCUSATION**

14 **Pharmacy Technician Registration No. TCH 86079**

15 Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about September 2, 2008, the Board issued Pharmacy Technician Registration  
22 Number TCH 86079 to Juanita Rae Garcia ("Respondent"). The pharmacy technician registration  
23 was in full force and effect at all times relevant to the charges brought herein and will expire on  
24 February 29, 2016, unless renewed.

25 **JURISDICTION/STATUTORY PROVISIONS**

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

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1       4.     Section 4300 states, in pertinent part:

2               (a) Every license issued may be suspended or revoked.

3               (b) The board shall discipline the holder of any license issued by the  
4       board, whose default has been entered or whose case has been heard by the board and  
      found guilty, by any of the following methods:

5               (1) Suspending judgment.

6               (2) Placing him or her upon probation.

7               (3) Suspending his or her right to practice for a period not exceeding one  
8       year.

9               (4) Revoking his or her license.

10              (5) Taking any other action in relation to disciplining him or her as the  
      board in its discretion may deem proper . . .

11     5.     Section 4300.1 states:

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

16     6.     Section 4301 states, in pertinent part:

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

20              . . . .

21              (h) The administering to oneself, of any controlled substance, or the use  
22       of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be  
23       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.

24              . . . .

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

27              (l) The conviction of a crime substantially related to the qualifications,  
28       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

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

### 9 **COST RECOVERY**

10 7. Section 125.3 provides, in pertinent part, that a Board may request the administrative  
11 law judge to direct a licensee found to have committed a violation or violations of the licensing  
12 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the  
13 case.

### 14 **FIRST CAUSE FOR DISCIPLINE**

#### 15 **(Criminal Conviction)**

16 8. Respondent is subject to disciplinary action pursuant to section 4301, subdivision (l),  
17 in that on or about April 21, 2015, Respondent was convicted on her plea of nolo contendere of  
18 violating Vehicle Code section 23152, subdivision (b) (driving a vehicle while having a blood  
19 alcohol of 0.08% or more), a crime substantially related to the qualifications, functions, and  
20 duties of a pharmacy technician. Respondent admitted that she had a blood alcohol of 0.15  
21 percent or more, within the meaning of Vehicle Code section 23578 (the court noted on the  
22 Minute Order/Plea form that Respondent's blood alcohol was .21 percent), and that the current  
23 offense occurred within ten years of a separate violation of Vehicle Code section 23103.5, which  
24 resulted in a conviction. The circumstances of the crime are as follows: On or about April 1,  
25 2015, a California Highway Patrol officer received a radio call of a driving under the influence  
26 turnover from the Sacramento County Sheriff's Department ("SCSD"). The officer immediately  
27 responded to the scene and observed the suspect vehicle stopped at the drive through window at  
28 Jack-in-the-box. The officer observed a solo female, later identified as Respondent, behind the

1 wheel of the vehicle. Respondent exited the vehicle and was directed to walk across the parking  
2 lot to the officer's location. Respondent appeared unsteady on her feet as she walked. The  
3 officer made contact with Respondent and could smell the strong odor of an alcoholic beverage  
4 emitting from her person. Also, Respondent's eyes were red and watery. Respondent had her  
5 cell phone up and told the officer that he was being recorded. The officer told Respondent that he  
6 needed to do a DUI evaluation on her and to put her phone down. Respondent began to argue,  
7 then clinched her left fist as the officer attempted to have her put the phone down. The officer  
8 took a hold of Respondent's hand and placed her in a control hold. The officer's partner assisted  
9 him by taking Respondent's other hand as they struggled to get her into custody. Respondent was  
10 eventually placed into custody and arrested for DUI. Respondent refused to sit in the officer's  
11 patrol vehicle and with the assistance of the officer's partner, was placed in the rear seat. While  
12 en route to the Sacramento County Jail, Respondent admitted several times that she drank wine  
13 and drove her vehicle while drunk. Respondent refused to sit down once she was inside the jail  
14 and was uncooperative with the phlebotomist while her blood sample was being taken. The  
15 above incidents occurred while Respondent was on probation for her conviction of March 12,  
16 2013, set forth in paragraph 11 below.

## **SECOND CAUSE FOR DISCIPLINE**

### **(Use of Alcoholic Beverages to an Extent or in a Manner**

### **Dangerous or Injurious to Oneself, Others and the Public)**

20 9. Respondent is subject to disciplinary action pursuant to section 4301, subdivision (h),  
21 for unprofessional conduct, in that Respondent used alcoholic beverages to an extent or in a  
22 manner dangerous or injurious to herself, others, and the public, as set forth in paragraph 8 above.

## **THIRD CAUSE FOR DISCIPLINE**

### **(Conviction of More than one Misdemeanor**

### **Involving the Consumption of Alcoholic beverages)**

26 10. Respondent is subject to disciplinary action pursuant to section 4301, subdivision (k),  
27 for unprofessional conduct, in that Respondent has been convicted of more than one misdemeanor

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1 involving the consumption of alcoholic beverages, as set forth in paragraphs 8 above and 11  
2 below.

3 **MATTERS IN AGGRAVATION**

4 11. To determine the degree of discipline to be assessed against Respondent, if any,  
5 Complainant alleges as follows: On or about June 28, 2013, the Board issued Citation and Fine  
6 No. CI 2011 51848 against Respondent for violating section 4301, subdivisions (h) (use of  
7 alcoholic beverages to an extent or in a manner dangerous or injurious to oneself, others and the  
8 public) and (l) (conviction of a crime substantially related to the qualifications, functions and  
9 duties of a pharmacy technician). The Board ordered Respondent to pay a fine of \$200 by July  
10 28, 2013. Respondent paid the fine on or about July 14, 2014. On or about March 12, 2013, in  
11 Sacramento County Superior Court, Case No. 12T05850, Respondent pled nolo contendere to  
12 violating Vehicle Code section 23103.5 (reckless driving, alcohol related), a misdemeanor. The  
13 court noted on the Minute Order/Plea form that Respondent's blood alcohol was .09 percent at the  
14 time of the incident. The imposition of Respondent's sentence was suspended and Respondent  
15 was placed on probation for 3 years on certain conditions, including that she obey all laws and not  
16 drive a motor vehicle with any drugs or any measurable amount of alcohol in her system.

17 **PRAYER**

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

20 1. Revoking or suspending Pharmacy Technician Registration Number TCH 86079,  
21 issued to Juanita Rae Garcia;

22 2. Ordering Juanita Rae Garcia to pay the Board of Pharmacy the reasonable costs of the  
23 investigation and enforcement of this case, pursuant to Business and Professions Code section  
24 125.3;

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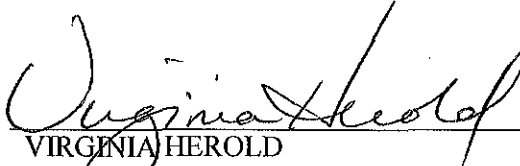
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3. Taking such other and further action as deemed necessary and proper.

DATED:

1/22/16



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

SA2015105648