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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. 5682

12 **YVETTE MUNIZ**
425 S. Conejo Avenue
13 Modesto, CA 95354

ACCUSATION

14 **Original Pharmacy Technician Registration**
15 **No. TCH 81903**

Respondent.

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17 Virginia Herold ("Complainant") alleges:

18 **PARTIES**

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

21 2. On or about March 13, 2008, the Board issued Original Pharmacy Technician
22 Registration Number TCH 81903 to Yvette Muniz ("Respondent"). The original pharmacy
23 technician registration was in effect at all times relevant to the charges brought herein and will
24 expire on October 31, 2017, unless renewed.

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1 JURISDICTION

2 3. Business and Professions Code ("Code") section 4300 states, in pertinent part:

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

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

6 (1) Suspending judgment.

7 (2) Placing him or her upon probation.

8 (3) Suspending his or her right to practice for a period not exceeding one 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
11 its discretion may deem proper . . .

12 4. Code section 4300.1 states:

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

17 STATUTORY AND REGULATORY PROVISIONS

18 5. Code section 4301 states, in pertinent part:

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

22 (h) The administering to oneself, of any controlled substance, or the use
23 of any dangerous drug or of alcoholic beverages to the extent or in a manner
24 as to be dangerous or injurious to oneself, to a person holding a license under
25 this chapter, or to any other person or to the public, or to the extent that the
26 use impairs the ability of the person to conduct with safety to the public the
27 practice authorized by the license.

25 (l) The conviction of a crime substantially related to the qualifications,
26 functions, and duties of a licensee under this chapter. The record of conviction of a
27 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
28 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

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

13 6. California Code of Regulations, title 16, section 1770, states:

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

21 COST RECOVERY

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

28 FIRST CAUSE FOR DISCIPLINE

(Criminal Convictions)

8. Respondent is subject to disciplinary action pursuant to Code section 4301(1), on the
grounds of unprofessional conduct, in that Respondent committed crimes that are substantially
related to the qualifications, functions, and duties of a licensed pharmacy technician, as follows:

a. On or about May 10, 2012, in the case entitled *People v. Yvette Muniz*, Superior Court
of California, Stanislaus County, Case No. 1438496, Respondent was convicted by the court on
her plea of nolo contendere of violating Vehicle Code section 23152(a) (driving under the
influence of alcohol), a misdemeanor, with a blood alcohol level of .10%. Respondent was

1 sentenced to 36 months of informal probation, two days imprisonment, and fines and fees were
2 levied against her. The circumstances of the crime are that on or about October 8, 2011,
3 Respondent was detained by a California Highway Patrol officer who observed a vehicle weaving
4 and being driven under the speed limit. When the officer detained the vehicle, he observed that
5 Respondent, who was driving, had red and watery eyes. Respondent informed the officer that she
6 had consumed two beers, and a shot of "Patron". Respondent was unable to perform field
7 sobriety tests as instructed and demonstrated. A breath test was administered, revealing that
8 Respondent's blood alcohol level was .11%/.11%.

9 b. On or about July 25, 2012, in the case entitled *People v. Yvette Muniz*, Superior Court
10 of California, Stanislaus County, Case No. 1445900, Respondent was convicted by the court on
11 her plea of guilty of violating Vehicle Code section 14601.2(a) (driving when privilege suspended
12 or revoked for driving under the influence), a misdemeanor. Respondent was sentenced to 36
13 months of probation, and fees and fines were levied against her. The circumstances of the crime
14 are that on or about April 6, 2012, Respondent drove a vehicle when her privilege to do so was
15 suspended for driving under the influence of alcohol.

16 SECOND CAUSE FOR DISCIPLINE

17 (Use of Alcoholic Beverages in a Dangerous or Injurious Manner)

18 9. Respondent is subject to disciplinary action pursuant to Code section 4301(h), in that
19 on or about October 8, 2011, Respondent used alcoholic beverages in a manner dangerous or
20 injurious to herself and others, as more fully set forth in paragraph 8, subparagraph a, above.

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:

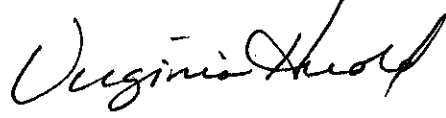
24 1. Revoking or suspending Pharmacy Technician Registration Number TCH 81903,
25 issued to Yvette Muniz;

26 2. Ordering Yvette Muniz to pay the Board of Pharmacy the reasonable costs of the
27 investigation and enforcement of this case, pursuant to Business and Professions Code section
28 125.3; and,

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

DATED: 5/13/16



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

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