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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. 5697

12 **SOPHIA LOREN RIVAS**
4504 N. Valentine Ave., Apt. 180
13 Fresno, CA 93722

A C C U S A T I O N

14 **Original Pharmacy Technician Registration**
15 **No. TCH 58293**

16 Respondent.

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 September 2, 2004, the Board issued Original Pharmacy Technician
22 Registration Number TCH 58293 to Sophia Loren Rivas ("Respondent"). The Original Pharmacy
23 Technician Registration was in full force and effect at all times relevant to the charges brought
24 herein and will expire on May 31, 2016, unless renewed.

25 **JURISDICTION**

- 26 3. Business and Professions Code ("Code") section 4300 states, in pertinent part:
27 (a) Every license issued may be suspended or revoked.
28 (b) The board shall discipline the holder of any license issued by the board,

1 whose default has been entered or whose case has been heard by the board and found
2 guilty, by any of the following methods:

3 (1) Suspending judgment.

4 (2) Placing him or her upon probation.

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

7 (4) Revoking his or her license.

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

10 4. Code section 4300.1 states:

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

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

26 (h) The administering to oneself, of any controlled substance, or the use of any
27 dangerous drug or of alcoholic beverages to the extent or in a manner as to be
28 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.

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

(l) The conviction of a crime substantially related to the qualifications,
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
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
inquire into the circumstances surrounding the commission of the crime, in order to
fix the degree of discipline or, in the case of a conviction not involving controlled

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

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

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

11 COST RECOVERY

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

18 FIRST CAUSE FOR DISCIPLINE

19 (Criminal Convictions)

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

23 9. On or about July 25, 2011, in a criminal proceeding titled *People v. Sophia Loren*
24 *Rivas*, Fresno County Superior Court of California Case No. M11600546, Respondent was
25 convicted by the court on her plea of nolo contendere to violating Vehicle Code section 23152(b)
26 [driving under the influence of alcohol while having a blood alcohol level of .08% or higher], a
27 misdemeanor. Respondent stipulated to .14% blood alcohol concentration.

1 a. The underlying circumstances of the crime are: On or about December 5, 2010,
2 an officer with the Reedley Police Department responded to a report that Respondent was
3 intoxicated and left the scene of a domestic altercation in a vehicle. The officer detained
4 Respondent in the vehicle she reportedly left in. The officer noted that Respondent's eyes were
5 red, watery and bloodshot, she was unsteady on her feet, and the odor of an alcoholic beverage
6 emitted from her person. Respondent failed to perform field sobriety tests as explained and
7 demonstrated. Respondent's blood alcohol concentration was .16%.

8 10. On or about July 6, 2015, in a criminal proceeding titled *People v. Sophia Loren*
9 *Rivas*, Fresno County Superior Court Case No. F14906770, Respondent was convicted by the
10 court on her plea of no contest to violating Vehicle Code section 23153, subdivision (b) [causing
11 injury to another while driving under the influence of alcohol with .08% or more blood alcohol
12 level], a felony, with two prior convictions for violating Vehicle Code section 23152, and an
13 enhancement of Vehicle Code section 23578 [blood alcohol level .15% or higher]; and, Vehicle
14 Code section 20001, subdivision (a) [failure of a driver involved in an accident resulting in injury
15 to stop and provide reasonable assistance to the injured person and information, as required], a
16 felony. Respondent stipulated to .19% blood alcohol concentration.

17 a. The underlying circumstances of the crime are: On or about July 15, 2014, an
18 officer with the California Highway Patrol responded to a report of an injury accident. At the
19 scene, the officer he observed two cars, one blocking an on-ramp that collided with a guard rail,
20 and a second that collided with a tree down an embankment; both vehicles had visible collision
21 damage. According to the victim with whom Respondent collided, Respondent attempted to flee
22 the scene of the accident, lost control of her vehicle and collided with the tree. The officer
23 questioned Respondent at a local hospital and observed that Respondent showed the objective
24 signs of intoxication. She admitted that she had ingested three 16 oz. gin and tonics prior to
25 driving her vehicle just prior to the collision. Respondent's blood alcohol concentration was
26 .19%.

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SECOND CAUSE FOR DISCIPLINE

(One or More Convictions Involving the Use of Alcoholic Beverages)

11. Respondent is subject to disciplinary action pursuant to Code section 4301, subdivision (k), on the grounds of unprofessional conduct, in that she has been convicted more than once of a crime involving the use of an alcoholic beverage, as set forth in paragraphs 8, 9 and 10, and all of their subparts, above, incorporated herein by reference.

THIRD CAUSE FOR DISCIPLINE

(Use of Alcohol Beverages in a Dangerous or Injurious Manner)

12. Respondent is subject to disciplinary action pursuant to Code section 4301, subdivision (h), in that Respondent used alcoholic beverages in a manner dangerous or injurious to herself and others, as more fully set forth in paragraphs 9 and 10, and all of their subparts, above, incorporated herein by reference.

FOURTH CAUSE FOR DISCIPLINE

(Moral Turpitude, Dishonesty, Corruption)

13. Respondent is subject to disciplinary action for unprofessional conduct pursuant to Code section 4301, subdivision (f), in that Respondent committed an act involving moral turpitude, dishonesty, fraud, deceit, and/or corruption. Specifically, Respondent collided with another vehicle causing injury to another while driving a vehicle under the influence of an alcoholic beverage and attempted to leave the scene of the accident, as set forth in paragraph 10 and its subpart, above, incorporated herein by reference.

MATTERS IN AGGRAVATION

14. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about January 13, 2014, the Board issued Citation and Fine No. CI-2013-58020 to Respondent on the grounds that she violated Code sections 4301, subdivision (h) [use of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself] and 4301, subdivision (l) [conviction of a crime substantially related to the practice of pharmacy], and imposed the fine of \$2,500.00. Respondent paid the fine in full.

1 a. The Citation was based on Respondent's conviction in the matter titled *People*
2 *v. Rivas*, Fresno County Superior Court Case No. M13923926, wherein on about October 21,
3 2013, she pled nolo contendere to violating Vehicle Code section 23152, subdivision (b) [driving
4 under the influence of alcohol while having a blood alcohol level of .08% or higher], a
5 misdemeanor, with an enhancement of Vehicle Code section 23578 [blood alcohol level of .15%
6 or higher], and one prior. Respondent stipulated to a blood alcohol level of .22%. The
7 underlying circumstances of the crime are: On or about July 30, 2013, Respondent was
8 questioned by an officer with the California Highway Patrol who was conducting a DUI
9 evaluation. Respondent declined field sobriety tests, admitting that it would be a waste of time
10 because she knew she was highly intoxicated. Respondent's blood alcohol level was .23/.22%.

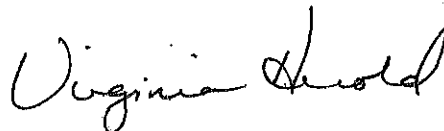
11 **PRAYER**

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

- 14 1. Revoking or suspending Pharmacy Technician Registration Number TCH 58293
15 issued to Sophia Loren Rivas;
- 16 2. Ordering Sophia Loren Rivas to pay the Board of Pharmacy the reasonable costs of
17 the investigation and enforcement of this case, pursuant to Business and Professions Code section
18 125.3; and,
- 19 3. Taking such other and further action as deemed necessary and proper.

20
21 DATED: _____

3/19/16



22 VIRGINIA HEROLD
23 Executive Officer
24 Board of Pharmacy
25 Department of Consumer Affairs
26 State of California
27 Complainant

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