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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 Statement of Issues
Against:
12 **CINTHIA ZAMORA HERNANDEZ AKA**
13 **CINDY H. ZAMORA**
14 1126 S. Willow Avenue
West Covina, CA 91790
15 Respondent.

Case No. 4050

STATEMENT OF ISSUES

17 Complainant alleges:

18 **PARTIES**

- 19 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official
20 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 21 2. On or about January 12, 2010, the Board of Pharmacy (Board) received an
22 application for Registration as a Pharmacy Technician from Cinthia Zamora Hernandez aka
23 Cindy H. Zamora (Respondent). On or about May 19, 2009, Respondent certified under penalty
24 of perjury to the truthfulness of all statements, answers, and representations in the application.
25 The Board denied the application on March 1, 2011. On or about March 21, 2011, Respondent
26 sent a letter to the Board, requesting an appeal of the decision denying her application for a
27 Pharmacy Technician license.

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1 **JURISDICTION**

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

5 **STATUTORY PROVISIONS**

6 4. Section 480 states, in pertinent part:

7 "(a) A board may deny a license regulated by this code on the grounds that the applicant
8 has one of the following:

9 "(1) Been convicted of a crime. A conviction within the meaning of this section means a
10 plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a
11 board is permitted to take following the establishment of a conviction may be taken when the
12 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when
13 an order granting probation is made suspending the imposition of sentence, irrespective of a
14 subsequent order under the provisions of Section 1203.4 of the Penal Code.

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16 "(3) (A) Done any act that if done by a licentiate of the business or profession in question,
17 would be grounds for suspension or revocation of license.

18 (B) The board may deny a license pursuant to this subdivision only if the crime or act
19 is substantially related to the qualifications, functions, or duties of the business or profession for
20 which application is made."

21 5. Section 490 states, in pertinent part:

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

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

3 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
4 conviction following a plea of nolo contendere. Any action that a board is permitted to take
5 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
6 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
7 made suspending the imposition of sentence, irrespective of a subsequent order under the
8 provisions of Section 1203.4 of the Penal Code."

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

11 7. Section 4301 states, in pertinent part:

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

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

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

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22 "(l) The conviction of a crime substantially related to the qualifications, functions, and
23 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
24 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
25 substances or of a violation of the statutes of this state regulating controlled substances or
26 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
27 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

28 The board may inquire into the circumstances surrounding the commission of the crime, in order

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

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

13 **REGULATORY PROVISIONS**

14 8. California Code of Regulations, title 16, section 1770 states, in pertinent part:

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

21 **FIRST CAUSE FOR DENIAL OF APPLICATION**

22 **(Convictions of Crimes)**

23 9. Respondent's application is subject to denial under Section 480, subdivision (a)(1), in
24 that Respondent was convicted of crimes as follows:

25 a. On or about September 1, 2010, after pleading guilty, Respondent was convicted of
26 one count of violating Vehicle Code section 23152, subdivision (b) [driving while having 0.08%
27 and more, by weight, of alcohol in her blood] in the criminal proceedings entitled *The People of*
28 *the State of California v. Cinthia Zamora Hernandez* (Super. Ct. Los Angeles County, 2010, No.

1 OMP08105). The Court sentenced Respondent to serve 30 days in Los Angeles County Jail,
2 placed her on 60 months probation, ordered her to complete an 18-month Drinking Driver
3 Program, and imposed other terms and conditions. The circumstances surrounding the conviction
4 are as follows:

5 b. On or about June 21, 2010, Respondent drove a vehicle while having 0.08% and
6 more, by weight, of alcohol in her blood and collided with two vehicles, resulting in damages to
7 another. While speaking to Respondent, the Los Angeles Police Department Officer detected a
8 strong odor of an alcoholic beverage emitting from her breath. When asked how much she had to
9 drink, Respondent stated, "nothing." Respondent failed to stop, render aid and identify herself, in
10 violation of Vehicle Code section 20001, subdivision (a). Respondent was found to be at fault for
11 the accident, and was arrested for a violation of Vehicle Code section 23152, subdivision (a). At
12 the time of her arrest, she was on summary probation for a prior conviction of driving under the
13 influence of alcohol, for an arrest on or about November 11, 2008. During the booking
14 procedure, Respondent submitted to breath tests that showed a breath-alcohol content level of
15 0.17% on the first reading and 0.18% on the second.

16 c. On or about March 26, 2009, after pleading nolo contendere, Respondent was
17 convicted of one misdemeanor count of violating Vehicle Code section 23103 [reckless driving]
18 in the criminal proceedings entitled *The People of the State of California v. Cynthia Zamora*
19 *Hernandez* (Super. Ct. Los Angeles County, 2009, No. 8JB10613). The Court placed Respondent
20 on two years probation, restricted her driver's license to driving to and from work and the
21 program for one year, ordered her to enroll in and complete a three-month first-offender alcohol
22 and drug education and treatment program, as well as other terms and conditions. The
23 circumstances surrounding the conviction are as follows:

24 d. On or about November 11, 2008, the West Covina Police Department investigated an
25 injury traffic collision involving a gold Nissan, License No. 4YZY020, which had collided with a
26 tree in the front yard of 1503 S. Broadmoor Avenue. Respondent spoke to the police while she
27 was in the back of an ambulance, being treated for injuries she had sustained in the accident.
28 Respondent stated she was driving from her boyfriend's house and hit a tree. While speaking to

1 Respondent, the officer detected a strong odor of an alcoholic beverage emitting from her breath.
2 She was observed to have a red, bloody face, bloody clothes, and bloodshot and glassy eyes.
3 Respondent slurred her words and mumbled. She indicated that she had a drink with her
4 boyfriend about an hour ago. When asked what she had to drink, Respondent stated "yes, rum
5 and coke." Due to Respondent's injuries, she was transported to Queen of the Valley Hospital for
6 medical treatment, and a blood sample was taken from Respondent to determine her blood
7 alcohol level. Respondent was subsequently arrested for violating Vehicle Code section 23152,
8 subdivision (a) [driving under the influence of alcohol or drugs] and Vehicle Code section 23152,
9 subdivision (b) [driving while having 0.08% and more, by weight, of alcohol in her blood].

10 **SECOND CAUSE FOR DENIAL OF APPLICATION**

11 **(Act Warranting Denial of Licensure)**

12 10. Respondent's application is subject to denial under Sections 4301, subdivision (p) and
13 480, subdivisions (a)(3)A) and (a)(3)(B), in that Respondent committed acts which if done by a
14 licentiate of the business and profession in question, would be grounds for suspension or
15 revocation of his license as follows:

16 a. Respondent was convicted of crimes substantially related to the qualifications,
17 functions, or duties of a pharmacy technician which to a substantial degree evidence her present
18 or potential unfitness to perform the functions authorized by her license in a manner consistent
19 with the public health, safety, or welfare, in violation of Sections 4301, subdivision (l), and 490,
20 in conjunction with California Code of Regulations, title 16, section 1770. Complainant refers to,
21 and by this reference incorporates, the allegations set forth above in Paragraph 9, subparagraphs
22 (a) through (d), inclusive, as though set forth fully.

23 b. Respondent used alcoholic beverages to an extent or in a manner dangerous or
24 injurious to herself, another person, or the public, in violation of Section 4301, subdivision (h).
25 Complainant refers to, and by this reference incorporates, the allegations set forth above in
26 Paragraph 9, subparagraphs (a) through (d), inclusive, as though set forth fully.

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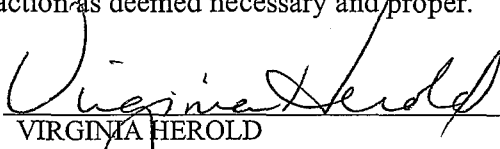
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PRAYER

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

1. Denying the application of Respondent Cinthia Zamora Hernandez aka Cindy H. Zamora for Registration as a Pharmacy Technician; and
2. Taking such other and further action as deemed necessary and proper.

DATED: 5/29/12



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

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