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

12 In the Matter of the Accusation Against:

Case No. 5902

13 **BRIANNA LINA HERNANDEZ**

14 **Pharmacy Technician Registration Applicant**

STATEMENT OF ISSUES

Respondent.

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16 Virginia Herold ("Complainant") alleges:

17 **PARTIES**

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

20 2. On or about December 3, 2015, the Board received an application for a pharmacy
21 technician registration from Brianna Lina Hernandez ("Respondent"). On or about November 30,
22 2015, Respondent certified under penalty of perjury to the truthfulness of all statements, answers,
23 and representations in the application. The Board denied the application on May 27, 2016.

24 **JURISDICTION**

25 3. Pursuant to Business and Professions Code ("Code") section 485(b), on or about May
26 27, 2016, Respondent's application was denied and she was notified of the right to a hearing to
27 appeal the denial.

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1 4. On or about June 29, 2016, the Board received Respondent's request for a hearing to
2 appeal the denial of her application.

3 **STATUTORY PROVISIONS**

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

5 (c) The board may refuse a license to any applicant guilty of unprofessional
6 conduct.

7 6. Code section 4301 states, in pertinent part:

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

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

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

18 (l) The conviction of a crime substantially related to the qualifications,
19 functions, and duties of a licensee under this chapter. The record of conviction of a
20 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
21 States Code regulating controlled substances or of a violation of the statutes of this
22 state regulating controlled substances or dangerous drugs shall be conclusive
23 evidence of unprofessional conduct. In all other cases, the record of conviction shall
24 be conclusive evidence only of the fact that the conviction occurred. The board may
25 inquire into the circumstances surrounding the commission of the crime, in order to
26 fix the degree of discipline or, in the case of a conviction not involving controlled
27 substances or dangerous drugs, to determine if the conviction is of an offense
28 substantially related to the qualifications, functions, and duties of a licensee under this
chapter. A plea or verdict of guilty or a conviction following a plea of nolo
contendere is deemed to be a conviction within the meaning of this provision. The
board may take action when the time for appeal has elapsed, or the judgment of
conviction has been affirmed on appeal or when an order granting probation is made
suspending the imposition of sentence, irrespective of a subsequent order under
Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
dismissing the accusation, information, or indictment.

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1 7. Code section 480 states, in pertinent part:

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

4 (1) Been convicted of a crime. A conviction within the meaning of this section
5 means a plea or verdict of guilty or a conviction following a plea of nolo contendere.
6 Any action that a board is permitted to take following the establishment of a
7 conviction may be taken 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 the
10 provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

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

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

11 **FIRST CAUSE FOR DENIAL OF APPLICATION**

12 **(Conviction of a Crime)**

13 8. Respondent's application is subject to denial under Code section 480(a)(1), in that on
14 or about May 21, 2015, in the case of *People v. Brianna Lina Hernandez* (Super. Ct. Sacramento
15 County, 2015, Case No. 15M01910), Respondent was convicted by the Court on her plea of nolo
16 contendere of violating Vehicle Code section 23152(b) (driving a vehicle with a blood alcohol
17 level of .08% or higher), a misdemeanor, with an enhancement of Vehicle Code section 23578
18 (driving a vehicle with a blood alcohol level of .15% or higher). The circumstances of the crime
19 were that on or about January 10, 2015, Respondent drove a vehicle while having a blood alcohol
20 level of 0.21% and collided with another vehicle. The crime is substantially related to the
21 qualifications, functions or duties of a pharmacy technician.

22 **SECOND CAUSE FOR DENIAL OF APPLICATION**

23 **(Committed Acts Which If Done By A Licentiate)**

24 9. Respondent's application is subject to denial under Code section 480(a)(3)(A), in that
25 she committed acts which if done by a licentiate of the profession would constitute grounds for
26 discipline under Code section 4301(l) (conviction of a crime). The conduct described above in
27 paragraph 8, would also constitute grounds for discipline under Code sections 4301(h) (used
28 alcohol to an extent or in a manner dangerous or injurious to herself and the public).

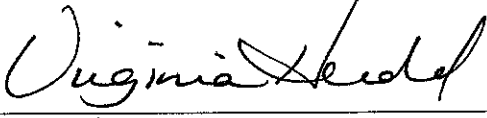
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PRAYER

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

1. Denying the application of Brianna Lina Hernandez for a Pharmacy Technician Registration; and,
2. Taking such other and further action as deemed necessary and proper.

DATED: 12/15/16



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

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