and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at her address of record. Her address of record was and is 1339 E. La Deney Dr., Ontario, CA 91764.

- 4. Service of the Accusation was legally effective under Government Code section 11505 subdivision (c) and Business & Professions Code section 124.
  - 5. Government Code section 11506 states, in pertinent part:
  - (c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.
- 6. Respondent failed to file a Notice of Defense within 15 days after service upon her of the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 4740.
  - 7. California Government Code section 11520 states, in pertinent part:
  - (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.
- 8. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the Board's offices regarding the allegations contained in Accusation No. 4740, finds that the charges and allegations in Accusation No. 4740, are separately and severally, found to be true and correct by clear and convincing evidence.
- 9. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement is \$1,070 as of May 6, 2014.

### **DETERMINATION OF ISSUES**

- 1. Based on the foregoing findings of fact, Respondent Rosanna Gutierrez has subjected her Pharmacy Technician Registration No. TCH 100088 to discipline.
  - 2. The agency has jurisdiction to adjudicate this case by default.

(a) Business and Professions Code sections 490, 4300, and 4301 subdivision (l) in conjunction with California Code of Regulations, title 16, section 1770, on the grounds of unprofessional conduct, in that Respondent was convicted of a crime substantially related to the qualifications, functions or duties of a pharmacy technician, because on or about January 11, 2013, Respondent was convicted of one misdemeanor count of violating Penal code section 25400, subsection (c)(6)(b) [carrying a concealed weapon] in the criminal proceeding entitled *People v. Rosanna Gutierrez* (Super. Ct. San Bernardino County, 2013, No. MWV1203794.

|| ///

12 | ///

1

2

3

4

5

6

7

8

9

10

11

13 | ///

14 | ///

15 | //

16 | ///

17 | ///

18 //

19 ///

20 ///

· | | · · ·

21 | ///

22 | ///

23 | ///

24 || //

25 | ///

26 | ///

27 | //

28 | ///

# **ORDER** 1 IT IS ORDERED that Pharmacy Technician Registration No. TCH 100088 issued to 2 3 Respondent Rosanna Gutierrez is revoked. Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a 4 written motion requesting that the Decision be vacated and stating the grounds relied on within 5 seven days after service of the Decision on Respondent. The agency in its discretion may vacate 6 the Decision and grant a hearing on a showing of good cause, as defined in the statute. 7 8 This Decision shall become effective on September 26, 2014. It is so ORDERED August 27, 2014. 9 10 **BOARD OF PHARMACY** DEPARTMENT OF CONSUMER AFFAIRS 11 STATE OF CALIFORNIA 12 Wusi 13 By 14 **Board President** 51518061.DOC DOJ Matter ID:LA2013509641 15 Attachment: 16 Exhibit A: Accusation 17 18 19 20 21 22 23 24 25 26 27

28

Exhibit A

Accusation

1 2 3 4 5 6 7	KAMALA D. HARRIS Attorney General of California KAREN B. CHAPPELLE Supervising Deputy Attorney General GEOFF WARD Deputy Attorney General State Bar No. 246437 300 So. Spring Street, Suite 1702 Los Angeles, CA 90013 Telephone: (213) 897-2660 Facsimile: (213) 897-2804 Attorneys for Complainant	RE THE
8. 9	BOARD OF DEPARTMENT OF C	PHARMACY CONSUMER AFFAIRS CALIFORNIA
10	In the Matter of the Accusation Against:	Case No. 4740
12	ROSANNA GUTIERREZ 1339 E. La Deney Drive	ACCUSATION
13 14	Ontario, CA 91764  Pharmacy Technician Registration No. TCH	
15.	100088 Respondent.	
16		<b>)</b>
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, Department of Consumer Affairs.	
21	2. On or about August 24, 2010, the Board of Pharmacy issued Pharmacy Technician	
22	Registration No. TCH 100088 to Rosanna Gutierrez (Respondent). The Pharmacy Technician	
23	Registration was in full force and effect at all times relevant to the charges brought herein and	
24	will expire on April 30, 2014, unless renewed.	
25	JURISDICTION	
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.	
28	4. Section 4300.1 grants the Board jurisdiction to discipline expired licenses.	
	II.	

Accusation

#### **STATUTES**

5. Section 490 in pertinent part authorizes licensing boards to discipline licensees for convictions substantially-related to the licensed profession:

2

3

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

- "(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.
- (b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.
- (c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken 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 the provisions of Section 1203.4 of the Penal Code."
- 6. Section 4301 in pertinent part specifically authorizes this Board to discipline licensees for substantially-related crimes:

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

(1) 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 substances or dangerous drugs, to determine if the conviction is of an offense 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."

2.5

. 27

# **BOARD REGULATIONS**

7. California Code of Regulations, title 16, section 1770 provides criteria for determining when a conviction is substantially related to a Board-licensed profession:

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

## COST RECOVERY

8. Section 125.3 states, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the case's reasonable costs of the investigation and enforcement.

#### CAUSE FOR DISCIPLINE

# (Conviction of a Substantially Related Crime)

- 9. Respondent is subject to disciplinary action under sections 490 and 4301 subdivision (l) in conjunction with California Code of Regulations, title 16, section 1770 because she was convicted of misdemeanor carrying of a concealed weapon, a crime substantially related to the qualifications, functions or duties of a pharmacy technician.
- 10. On or about January 11, 2013, after pleading nolo contendere, Respondent was convicted of one misdemeanor count of violating Penal code section 25400, subsection (c)(6)(b) [carrying a concealed weapon] in the criminal proceeding entitled *People v. Rosanna Gutierrez* (Super. Ct. San Bernardino County, 2013, No. MWV1203794.) The Court sentenced her to serve 45 days in San Bernardino County Jail and 36 months' probation.
- 11. The circumstances surrounding the conviction are that on May 29, 2012, the Ontario Police Department received an anonymous tip that someone was attempting to sell an assault rifle out of her car. The responding officer found Respondent in her car, obtained her consent to search it, and found an Olympic Arms .223 caliber assault rifle and a loaded thirty round magazine wrapped in a towel in the trunk along with a small amount of marijuana.

- (1	[ · · · · · · · · · · · · · · · · · · ·	
1	12. Respondent told the arresting officer she was trying to give away an ex-boyfriend's	
.2	gun that she had kept at her house for several months. She later wrote to the Board saying she	
3	had obtained the gun that night when she took it away from someone she was dating who had	
4	been drunk and belligerent at a party.	
5	PRAYER	
6	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,	
7	and that following the hearing, the Board issue a decision;	
8	1. Revoking or suspending Pharmacy Technician Registration No. TCH 100088, issued	
9	to Rosanna Gutierrez;	
10	2. Ordering Rosanna Gutierrez to pay the Board the reasonable costs of the investigation	
11	and enforcement of this case, pursuant to section 125.3; and	
12	3. Taking such other and further action as deemed necessary and proper.	
13		
14	DATED: 2/15/14 Dugina Sud	
15	VIRGINIA HEROLD  Executive Officer	
16	Board of Pharmacy Department of Consumer Affairs	
17	State of California  Complainant	
18	Отрынын	
10	**	
19		
20		
20		
20 21		
20 21 22		
<ul><li>20</li><li>21</li><li>22</li><li>23</li></ul>	LA2013509641 51339467_3.doc	
20 21 22 23 24 25 26		
<ul><li>20</li><li>21</li><li>22</li><li>23</li><li>24</li><li>25</li><li>26</li><li>27</li></ul>		
20 21 22 23 24 25 26		

Accusation