

**BEFORE THE  
BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

JUANITA RAE GARCIA,

Pharmacy Technician Registration No. TCH  
86079,

Respondent.

Case No. 5657

OAH No. 2016030438

**DECISION AND ORDER**

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective at 5:00 p.m. on June 17, 2016.

It is so ORDERED on May 18, 2016.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
Amy Gutierrez, Pharm.D.  
Board President

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**PROPOSED DECISION**

This matter was heard before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, on April 4, 2016, in Sacramento, California.

David E. Brice, Deputy Attorney General, represented Virginia Herold (complainant), Executive Officer, Board of Pharmacy (Board), Department of Consumer Affairs.

Juanita Rae Garcia (respondent) represented herself.

Evidence was received, the record was closed, and the matter was submitted for decision on April 4, 2016.

**FACTUAL FINDINGS**

1. On September 2, 2008, the Board issued Pharmacy Technician Registration Number TCH 86079 (registration) to respondent. Respondent's registration was in full force and effect at all times relevant to the allegations set forth in the Accusation, and will expire on February 28, 2018, unless renewed or revoked. Complainant seeks to discipline respondent's registration based upon her driving under the influence (DUI) conviction described below.

*Respondent's Conviction*

2. On April 21, 2015, in the Sacramento County Superior Court, Case No. 15M04732, respondent, on a plea of nolo contendere, was convicted of violating Vehicle Code section 23152, subdivision (b), driving a vehicle while having a blood alcohol

concentration (BAC) of .08 percent or more, a misdemeanor. In addition, respondent admitted that she drove a vehicle with a BAC of .15 percent or more within the meaning of Vehicle Code section 23578, and that she had a prior conviction within 10 years under Vehicle Code section 23103.5. Respondent was placed on four years of informal probation. She was ordered to complete a DUI program, and to pay fines and fees.

3. The incident underlying respondent's April 21, 2015 conviction occurred on April 1, 2015, at a Jack In The Box. At around midnight, the restaurant called the California Highway Patrol (CHP) about an unruly customer at the drive-in window. When the CHP officer arrived, he smelled a strong odor of an alcoholic beverage emitting from respondent, and her eyes were red and watery. As the officer began to question respondent, she held up her phone and stated that he was being recorded. Respondent argued with the officer when he told her she could not make a phone call while performing the field sobriety tests. Respondent refused to cooperate with the officer. She told the officer that she drank wine and then went to get food, and that she only drove a short distance. When her blood was being drawn at the jail, she pulled the needle from her arm and stated "you have enough of my blood." Respondent struggled with the CHP officer and was "belligerent" with the nurse. Respondent's BAC was measured at .21 percent.

#### *Prior Citation*

4. On June 28, 2013, the Board issued Citation No. CI 2011 51848 against respondent based upon her prior arrest on March 18, 2012, and her conviction on March 12, 2013, under Vehicle Code section 23103.5 for reckless driving (a "wet and reckless"). Respondent was fined \$200. Her BAC on March 18, 2012, was measured at .09 percent. Respondent paid the \$200 fine to the Board.

#### *Evidence of Rehabilitation and Mitigation*

5. Respondent is a single mother of two boys, one of whom is disabled. She testified that the past year has not been a good year for her. There were three deaths in her family, including her mother. As a result of her April 21, 2015 conviction, she served four days in jail and was required to perform seven days of community service and to attend an 18-month DUI program. In order to get her driver's license back, she was required to install an interlock device in her vehicle for one year. That device will remain in her vehicle until July 2016.

6. Respondent completed all her court-ordered community service by performing assigned tasks at the Sheriff's office. She is currently attending her 18-month DUI program. As part of this program, she attends a two-hour class and meets with a counselor for a 15-minute face-to-face session every other week. She will complete her DUI program in October 2016. She submitted documentation verifying her attendance in this program.

7. For eight years, respondent worked at Raley's. She started in 2003 as a clerk. When she received her registration in 2008, she began working as a pharmacy technician. Since 2012, she has worked as a pharmacy technician at Health Net. She began working for

Health Net in its call center. In 2014, she was assigned to medication therapy management. Her duties in this position are mostly administrative. She monitors members' opioid use and sends letters regarding concerns or problems. In her current position, she does not handle any drugs, but is required to have a pharmacy technician registration and to know about drugs and their use. She does not talk directly to members, but does talk to physicians. Her boss is aware of her convictions.

8. Respondent is currently taking online college classes through Ashford University in an effort to obtain a bachelor's degree in Health and Human Services. She is thinking about becoming a social worker someday.

9. Respondent admitted that she drank and drove on April 1, 2015, before she was arrested. She recognized that she made a "poor decision" to drive after drinking, and was grateful that she did not cause a serious accident or injure anyone. She asserted that she will never drink to "that extent" again, but she has not completely stopped drinking. She testified that the last time she drank was on New Year's Eve. She had a glass of wine at midnight while she was at home. She does not participate in Alcoholics Anonymous. She does not believe that she has a drinking problem. She asserted that she had never "misbehaved" at work and had never been reprimanded. She has a support system of friends and neighbors who help take care of her children. She believes that her DUI conviction caused her to change for the better.

#### *Discussion*

10. In California Code of Regulations, title 16, section 1769, subdivision (c), the Board has set forth criteria for evaluating the rehabilitation of a licensee or registrant who has been convicted of a crime. These criteria include:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) Evidence, if any, of rehabilitation submitted by the licensee.

11. About one year ago, respondent was convicted of driving under the influence of alcohol. Her BAC of .21 percent was more than twice the legal limit. She did not cooperate with the CHP officer at the time of her arrest. Her 2015 DUI conviction occurred about two years after her March 12, 2013 reckless driving conviction involving alcohol. She is scheduled to remain on informal probation until April 2019.

12. At the hearing, respondent offered evidence of rehabilitation. She is complying with the terms and conditions of her criminal probation. She completed all her court-ordered community service and is currently attending an 18-month DUI program. There was no evidence that she had any additional convictions other than the two addressed above. There was also no evidence that she has ever been under the influence at work. It appears that she is fulfilling her familial responsibilities to her children, and that she has a support system in place to assist her as needed. She is taking online classes in an effort to obtain a bachelor's degree in Health and Human Services. In her current employment, she does not have access to controlled substances. She testified in a candid and direct fashion. She took responsibility for her criminal conduct. She recognized the danger that she put both herself and the public in by drinking and driving.

13. When all the evidence is considered, it would be consistent with public health, safety and welfare to place respondent on probation for five years under the terms and conditions set forth below.

#### *Costs*

14. Complainant has requested that respondent be ordered to pay the costs of investigation in the amount of \$28 for certified court records, and the costs of prosecution in the amount of \$1,197.50, for the services provided by the Attorney General's office in prosecuting this matter, for total costs of \$1,225.50. The costs of prosecution were supported by a Certification of Costs and Declaration of the Deputy Attorney General. Attached to the certification was a computer printout of the tasks the Attorney General's office performed, the amount of time spent performing these tasks, and the amounts charged. Respondent did not object to the costs requested by complainant. Complainant established that the requested costs are reasonable in light of the allegations and issues in this matter.

15. Respondent testified that, given her difficult financial circumstances, she is not currently able to pay the requested costs. She is "totally responsible" for the support of her two children. In addition to rent and other living expenses, she also has to pay the costs associated with her DUI, including the DUI program, the interlock device, and court fees. Complainant's request for costs is addressed in the Legal Conclusions below.

### LEGAL CONCLUSIONS

1. Business and Professions Code section 4301 provides that the Board "shall take action against any holder of a license who is guilty of unprofessional conduct."<sup>1</sup> Subdivision (l) of that section defines "unprofessional conduct" to include the "conviction of a crime substantially related to the qualifications, functions, and duties of a licensee." California Code of Regulations, title 16, section 1770 provides that, "a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or

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<sup>1</sup> Business and Professions Code section 4032 defines "license" to include "any license, permit, registration, certificate, or exemption" issued by the Board.

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.”

2. Respondent’s DUI conviction evidenced her present or potential unfitness to perform the functions authorized by her registration in a manner consistent with the public health, safety, and welfare. (*Sulla v. Board of Registered Nursing* (2012) 205 Cal.App.4th 1195.) As the court in *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 770, explained:

Convictions involving alcohol consumption reflect a lack of sound professional and personal judgment that is relevant to a physician’s fitness and competence to practice medicine. Alcohol consumption quickly affects normal driving ability, and driving under the influence of alcohol threatens personal safety and places the safety of the public in jeopardy. It further shows a disregard of medical knowledge concerning the effects of alcohol on vision, reaction time, motor skills, judgment, coordination and memory, and the ability to judge speed, dimensions, and distance. [Citation.]

Driving while under the influence of alcohol also shows an inability or unwillingness to obey the legal prohibition against drinking and driving and constitutes a serious breach of a duty owed to society.

The court’s reasoning in *Griffiths* applies in this case. Consequently, respondent’s April 21, 2015 DUI conviction is substantially related to the qualifications, functions, and duties of a pharmacy technician, and constitutes cause to discipline respondent’s registration under Business and Professions Code section 4301, subdivision (l).

3. Business and Professions Code section 4301, subdivision (h), defines “unprofessional conduct” to include “the use of ... of alcoholic beverages to the extent or in a manner as to be 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.” On April 1, 2015, respondent used alcoholic beverages to an extent and in a manner to be dangerous to herself and others. Complainant therefore established cause to discipline respondent’s registration under Business and Professions Code section 4301, subdivision (h).

4. Business and Professions Code section 4301, subdivision (k), defines “unprofessional conduct” to include 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.” Complainant established cause to discipline respondent’s registration under Business and Professions Code section 4301,

subdivision (k), when her April 21, 2015 DUI conviction is considered in conjunction with her March 12, 2013 wet and reckless conviction.

5. As set forth in Findings 12 and 13, respondent submitted sufficient evidence of rehabilitation to demonstrate that it would be consistent with the public health, safety and welfare to allow her to retain her registration on a probationary basis subject to the terms and conditions set forth below.

6. Pursuant to Business and Professions Code section 125.3, a licensee found to have violated a licensing act may be ordered to pay the reasonable costs of investigation and prosecution of a case. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include: (a) whether the licensee has been successful at hearing in getting charges dismissed or reduced; (b) the licensee's subjective good faith belief in the merits of her position; (c) whether the licensee has raised a colorable challenge to the proposed discipline; (d) the financial ability of the licensee to pay; and (e) whether the scope of the investigation was appropriate in light of the alleged misconduct.

7. As set forth in Findings 14 and 15, complainant seeks \$1,225.50 in costs. When all the *Zuckerman* factors are considered, this cost amount is reasonable. Given respondent's financial inability to pay all these costs at this time, respondent should be permitted to pay them over the term of her probation according to a reasonable payment plan approved by the Board or its designee.

## ORDER

Pharmacy Technician Registration Number TCH 86079 issued to respondent Juanita Rae Garcia is revoked. The revocation is stayed and respondent is placed on probation for five (5) years upon the following terms and conditions:

1. **Certification Prior to Resuming Work.** Respondent shall be automatically suspended from working as a pharmacy technician until she is certified as defined by Business and Professions Code section 4202, subdivision (a)(4), and provides satisfactory proof of certification to the Board. Respondent shall not resume working as a pharmacy technician until notified by the Board. Failure to achieve certification within one (1) year shall be considered a violation of probation. Respondent shall not resume working as a pharmacy technician until notified by the Board.

During suspension, respondent shall not enter any pharmacy area or any portion of any other Board licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer, or assist any licensee of the Board. Respondent shall

not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances. Respondent shall not resume work until notified by the Board.

Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises by the Board in which he or she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

2. **Obey All Laws.** Respondent shall obey all state and federal laws and regulations. Respondent shall report any of the following occurrences to the Board, in writing, within seventy-two (72) hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's pharmacy technician registration or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance. Failure to timely report any such occurrence shall be considered a violation of probation.

3. **Report to the Board.** Respondent shall report to the Board quarterly, on a schedule as directed by the Board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the Board.

4. **Interview with the Board.** Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the Board or its designee, at such intervals and locations as are determined by the Board or its designee. Failure to appear for any scheduled interview without prior notification to Board staff, or failure to appear at two (2) or more scheduled interviews with the Board or its designee during the period of probation, shall be considered a violation of probation.



5. **Cooperate with Board Staff.** Respondent shall cooperate with the Board's inspection program and with the Board's monitoring and investigation of respondent's compliance with the terms and conditions of her probation. Failure to cooperate shall be considered a violation of probation.

6. **Notice to Employers.** During the period of probation, respondent shall notify all present and prospective employers of the decision in this case and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the Board in writing acknowledging that the listed individual(s) has/have read the decision in this case and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the Board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify her direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the decision in this case in advance of the respondent commencing work at each pharmacy. A record of this notification must be provided to the Board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause her direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that she has read the decision in this case and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the Board.

Failure to timely notify present or prospective employer(s) or to cause that/those employer(s) to submit timely acknowledgements to the Board shall be considered a violation of probation.

"Employment" within the meaning of this provision shall include any full-time, part-time, temporary or relief service or pharmacy management service as a pharmacy technician or in any position for which a pharmacy technician license is a requirement or criterion for employment, whether respondent is considered an employee, independent contractor or volunteer.

7. **Reimbursement of Board Costs.** As a condition precedent to successful completion of probation, respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$1,225.50. Respondent shall make said payments according to a schedule approved by the Board or its designee. There shall be no deviation from this

schedule absent prior written approval by the Board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

The filing of bankruptcy by respondent shall not relieve respondent of her responsibility to reimburse the Board its costs of investigation and prosecution.

8. **Probation Monitoring Costs.** Respondent shall pay any costs associated with probation monitoring as determined by the Board each and every year of probation. Such costs shall be payable to the Board on a schedule as directed by the Board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

9. **Status of License.** Respondent shall, at all times while on probation, maintain an active, current pharmacy technician license with the Board, including any period during which suspension or probation is tolled. Failure to maintain an active, current license shall be considered a violation of probation.

If respondent's pharmacy technician license expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof due to tolling or otherwise, upon renewal or reapplication respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

10. **License Surrender While on Probation/Suspension.** Following the effective date of this decision, should respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender her pharmacy technician license to the Board for surrender. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the respondent's license history with the Board.

Upon acceptance of the surrender, respondent shall relinquish her pharmacy technician license to the Board within ten (10) days of notification by the Board that the surrender is accepted. Respondent may not reapply for any license, permit, or registration from the Board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

11. **Notification of a Change in Name, Residence Address, Mailing Address or Employment.** Respondent shall notify the Board in writing within ten (10) days of any change of employment. Said notification shall include the reasons for leaving, the address of the new employer, the name of the supervisor and owner, and the work schedule if known. Respondent shall further notify the Board in writing within ten (10) days of a change in name, residence address and mailing address, or phone number.

Failure to timely notify the Board of any change in employer(s), name(s), address(es), or phone number(s) shall be considered a violation of probation.

12. **Tolling of Probation.** Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of 40 hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation.

Should respondent, regardless of residency, for any reason (including vacation) cease working as a pharmacy technician for a minimum of 40 hours per calendar month in California, respondent must notify the Board in writing within ten (10) days of cessation of work and must further notify the Board in writing within ten (10) days of the resumption of the work. Any failure to provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for respondent's probation to remain tolled pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding thirty-six (36) months.

"Cessation of work" means calendar month during which respondent is not working for at least 40 hours as a pharmacy technician, as defined in Business and Professions Code section 4115. "Resumption of work" means any calendar month during which respondent is working as a pharmacy technician for at least 40 hours as a pharmacy technician as defined by Business and Professions Code section 4115.

13. **Violation of Probation.** If respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over respondent, and probation shall automatically be extended, until all terms and conditions have been satisfied or the Board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

If respondent violates probation in any respect, the Board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed against respondent during probation, the Board shall have continuing jurisdiction, and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

14. **Completion of Probation.** Upon written notice by the Board indicating successful completion of probation, respondent's pharmacy technician license will be fully restored.

15. **No Ownership of Licensed Premises.** Respondent shall not own, have any legal or beneficial interest in, or serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the Board. Respondent shall sell or transfer any legal or beneficial interest in any entity licensed by the Board within ninety (90) days following the effective date of this decision and shall immediately thereafter provide written proof thereof to the Board. Failure to timely divest any legal or beneficial interest(s) or provide documentation thereof shall be considered a violation of probation.

16. **Attend Substance Abuse Recovery Relapse Prevention and Support Groups.** Within thirty (30) days of the effective date of this decision, respondent shall begin regular attendance at a recognized and established substance abuse recovery support group in California, (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been approved by the Board or its designee. Respondent must attend at least one group meeting per week unless otherwise directed by the Board or its designee. Respondent shall continue regular attendance and submit signed and dated documentation confirming attendance with each quarterly report for the duration of probation. Failure to attend or submit documentation thereof shall be considered a violation of probation.

17. **Random Drug Screening.** Respondent, at her own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug screening program as directed by the Board or its designee. Respondent may be required to participate in testing for the entire probation period and the frequency of testing will be determined by the Board or its designee. At all times respondent shall fully cooperate with the Board or its designee, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the Board or its designee may direct. Failure to timely submit to testing as directed shall be considered a violation of probation. Upon request of the Board or its designee, respondent shall provide documentation from a licensed practitioner that the prescription for a detected drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall be considered a violation of probation and shall result in the automatic suspension of work by respondent. Respondent may not resume work as a pharmacy technician until notified by the Board in writing.

During suspension, respondent shall not enter any pharmacy area or any portion of or any other Board licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer, or assist any licensee of the Board. Respondent shall not have access to or control the ordering, manufacturing or dispensing of dangerous drugs

and devices or controlled substances. Respondent shall not resume work until notified by the Board.

Respondent shall not direct, control or perform any aspect of the practice of pharmacy. Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises in which he or she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

18. **Work Site Monitor.** Within ten (10) days of the effective date of this decision, respondent shall identify a work site monitor, for prior approval by the Board, who shall be responsible for supervising respondent during working hours. Respondent shall be responsible for ensuring that the work site monitor reports in writing to the Board quarterly. Should the designated work site monitor determine at any time during the probationary period that respondent has not maintained sobriety, she shall notify the Board immediately, either orally or in writing as directed. Should respondent change employment, a new work site monitor must be designated, for prior approval by the Board, within ten (10) days of commencing new employment. Failure to identify an acceptable initial or replacement work site monitor, or to ensure quarterly reports are submitted to the Board, shall be considered a violation of probation.

19. **Notification of Departure.** Prior to leaving the probationary geographic area designated by the Board or its designee for a period greater than twenty-four (24) hours, respondent shall notify the Board verbally and in writing of the dates of departure and return. Failure to comply with this provision shall be considered a violation of probation.

20. **Abstain from Drugs and Alcohol Use.** Respondent shall completely abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon request of the Board or its designee, respondent shall provide documentation from the licensed practitioner that the prescription for the drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Respondent shall ensure that she is not in the same physical location as individuals who are using illicit substances even if respondent is not personally ingesting the drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia not supported by the documentation timely provided, and/or any physical proximity to persons using illicit substances, shall be considered a violation of probation.

DATED: April 14, 2016

DocuSigned by:  
*Karen Brandt*  
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KAREN J. BRANDT  
Administrative Law Judge  
Office of Administrative Hearings

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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. 5657

13 **JUANITA RAE GARCIA**  
1233 Dealynn Street, #1  
Sacramento, CA 95825

**ACCUSATION**

14 **Pharmacy Technician Registration No. TCH 86079**

15 Respondent.

16  
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 ("Board"), Department of Consumer Affairs.

21 2. On or about September 2, 2008, the Board issued Pharmacy Technician Registration  
22 Number TCH 86079 to Juanita Rae Garcia ("Respondent"). The pharmacy technician registration  
23 was in full force and effect at all times relevant to the charges brought herein and will expire on  
24 February 29, 2016, unless renewed.

25 **JURISDICTION/STATUTORY PROVISIONS**

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.

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4. Section 4300 states, in pertinent part:

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

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

(1) Suspending judgment.

(2) Placing him or her upon probation.

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

(4) Revoking his or her license.

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

5. Section 4300.1 states:

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

6. Section 4301 states, in pertinent part:

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:

....

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

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

### 9 COST RECOVERY

10 7. Section 125.3 provides, in pertinent part, that a Board may request the administrative  
11 law judge to direct a licentiate found to have committed a violation or violations of the licensing  
12 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the  
13 case.

### 14 FIRST CAUSE FOR DISCIPLINE

#### 15 (Criminal Conviction)

16 8. Respondent is subject to disciplinary action pursuant to section 4301, subdivision (l),  
17 in that on or about April 21, 2015, Respondent was convicted on her plea of nolo contendere of  
18 violating Vehicle Code section 23152, subdivision (b) (driving a vehicle while having a blood  
19 alcohol of 0.08% or more), a crime substantially related to the qualifications, functions, and  
20 duties of a pharmacy technician. Respondent admitted that she had a blood alcohol of 0.15  
21 percent or more, within the meaning of Vehicle Code section 23578 (the court noted on the  
22 Minute Order/Plea form that Respondent's blood alcohol was .21 percent), and that the current  
23 offense occurred within ten years of a separate violation of Vehicle Code section 23103.5, which  
24 resulted in a conviction. The circumstances of the crime are as follows: On or about April 1,  
25 2015, a California Highway Patrol officer received a radio call of a driving under the influence  
26 turnover from the Sacramento County Sheriff's Department ("SCSD"). The officer immediately  
27 responded to the scene and observed the suspect vehicle stopped at the drive through window at  
28 Jack-in-the-box. The officer observed a solo female, later identified as Respondent, behind the



1 wheel of the vehicle. Respondent exited the vehicle and was directed to walk across the parking  
2 lot to the officer's location. Respondent appeared unsteady on her feet as she walked. The  
3 officer made contact with Respondent and could smell the strong odor of an alcoholic beverage  
4 emitting from her person. Also, Respondent's eyes were red and watery. Respondent had her  
5 cell phone up and told the officer that he was being recorded. The officer told Respondent that he  
6 needed to do a DUI evaluation on her and to put her phone down. Respondent began to argue,  
7 then clinched her left fist as the officer attempted to have her put the phone down. The officer  
8 took a hold of Respondent's hand and placed her in a control hold. The officer's partner assisted  
9 him by taking Respondent's other hand as they struggled to get her into custody. Respondent was  
10 eventually placed into custody and arrested for DUI. Respondent refused to sit in the officer's  
11 patrol vehicle and with the assistance of the officer's partner, was placed in the rear seat. While  
12 en route to the Sacramento County Jail, Respondent admitted several times that she drank wine  
13 and drove her vehicle while drunk. Respondent refused to sit down once she was inside the jail  
14 and was uncooperative with the phlebotomist while her blood sample was being taken. The  
15 above incidents occurred while Respondent was on probation for her conviction of March 12,  
16 2013, set forth in paragraph 11 below.

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Use of Alcoholic Beverages to an Extent or in a Manner**

19 **Dangerous or Injurious to Oneself, Others and the Public)**

20 9. Respondent is subject to disciplinary action pursuant to section 4301, subdivision (h),  
21 for unprofessional conduct, in that Respondent used alcoholic beverages to an extent or in a  
22 manner dangerous or injurious to herself, others, and the public, as set forth in paragraph 8 above.

23 **THIRD CAUSE FOR DISCIPLINE**

24 **(Conviction of More than one Misdemeanor**

25 **Involving the Consumption of Alcoholic beverages)**

26 10. Respondent is subject to disciplinary action pursuant to section 4301, subdivision (k),  
27 for unprofessional conduct, in that Respondent has been convicted of more than one misdemeanor

28 ///

1 involving the consumption of alcoholic beverages, as set forth in paragraphs 8 above and 11  
2 below.

3 **MATTERS IN AGGRAVATION**

4 11. To determine the degree of discipline to be assessed against Respondent, if any,  
5 Complainant alleges as follows: On or about June 28, 2013, the Board issued Citation and Fine  
6 No. CI 2011 51848 against Respondent for violating section 4301, subdivisions (h) (use of  
7 alcoholic beverages to an extent or in a manner dangerous or injurious to oneself, others and the  
8 public) and (l) (conviction of a crime substantially related to the qualifications, functions and  
9 duties of a pharmacy technician). The Board ordered Respondent to pay a fine of \$200 by July  
10 28, 2013. Respondent paid the fine on or about July 14, 2014. On or about March 12, 2013, in  
11 Sacramento County Superior Court, Case No. 12T05850, Respondent pled nolo contendere to  
12 violating Vehicle Code section 23103.5 (reckless driving, alcohol related), a misdemeanor. The  
13 court noted on the Minute Order/Plea form that Respondent's blood alcohol was .09 percent at the  
14 time of the incident. The imposition of Respondent's sentence was suspended and Respondent  
15 was placed on probation for 3 years on certain conditions, including that she obey all laws and not  
16 drive a motor vehicle with any drugs or any measurable amount of alcohol in her system.

17 **PRAYER**

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

- 20 1. Revoking or suspending Pharmacy Technician Registration Number TCH 86079,  
21 issued to Juanita Rae Garcia;
- 22 2. Ordering Juanita Rae Garcia to pay the Board of Pharmacy the reasonable costs of the  
23 investigation and enforcement of this case, pursuant to Business and Professions Code section  
24 125.3;

25 ///

26 ///

27 ///

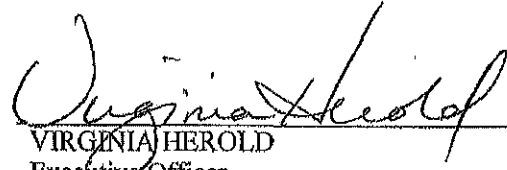
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3. Taking such other and further action as deemed necessary and proper.

DATED:

1/22/16



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

SA2015105648