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

11 In the Matter of the Accusation Against:

Case No. 3612

12 **MARLENE RAMONA RAMIREZ**  
13 **8651 Camelia Drive**  
14 **Riverside, CA 96049**

**ACCUSATION**

15 **Pharmacy Technician Registration**  
16 **No. TCH 52404**

Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

22 2. On or about January 7, 2004, the Board of Pharmacy issued Pharmacy Technician  
23 Registration Number TCH 52404 to Marlene Ramona Ramirez (Respondent). The Pharmacy  
24 Technician Registration was in full force and effect at all times relevant to the charges brought  
25 herein and will expire on January 31, 2012, unless renewed.

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28 ///

JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 118, subdivision (b), of the Code provides that the suspension/expiration/surrender/cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 4300 of the Code states:

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

STATUTORY PROVISIONS

6. Section 480 of the Code states:

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

"(1) Been convicted of a crime. 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.

"(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

"(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.

1           “(b) Notwithstanding any other provision of this code, no person shall be denied a license  
2 solely on the basis that he or she has been convicted of a felony if he or she has obtained a  
3 certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of  
4 Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has  
5 met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate  
6 the rehabilitation of a person when considering the denial of a license under subdivision (a) of  
7 Section 482.

8           “(c) A board may deny a license regulated by this code on the ground that the applicant  
9 knowingly made a false statement of fact required to be revealed in the application for the  
10 license.”

11           7. Section 482 of the Code states:

12           "Each board under the provisions of this code shall develop criteria to evaluate the  
13 rehabilitation of a person when:

14                   "(a) Considering the denial of a license by the board under Section 480; or

15                   "(b) Considering suspension or revocation of a license under Section 490.

16           "Each board shall take into account all competent evidence of rehabilitation furnished by  
17 the applicant or licensee."

18           8. Section 490 of the Code provides, in pertinent part, that a board may suspend or  
19 revoke a license on the ground that the licensee has been convicted of a crime substantially  
20 related to the qualifications, functions, or duties of the business or profession for which the  
21 license was issued.

22           9. Section 493 of the Code states:

23           "Notwithstanding any other provision of law, in a proceeding conducted by a board within  
24 the department pursuant to law to deny an application for a license or to suspend or revoke a  
25 license or otherwise take disciplinary action against a person who holds a license, upon the  
26 ground that the applicant or the licensee has been convicted of a crime substantially related to the  
27 qualifications, functions, and duties of the licensee in question, the record of conviction of the  
28 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,

1 and the board may inquire into the circumstances surrounding the commission of the crime in  
2 order to fix the degree of discipline or to determine if the conviction is substantially related to the  
3 qualifications, functions, and duties of the licensee in question.

4 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and  
5 'registration.'"

6 10. Section 4301 of the Code states:

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

10 ". . . .

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

14 ". . . .

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

1 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
2 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
3 indictment.

4 "....

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

#### 6 REGULATORY PROVISIONS

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

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

14 12. California Code of Regulations, title 16, section 1769, states:

15 "....

16 "(b) When considering the suspension or revocation of a facility or a personal license on the  
17 ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating  
18 the rehabilitation of such person and his present eligibility for a license will consider the  
19 following criteria:

20 "(1) Nature and severity of the act(s) or offense(s).

21 "(2) Total criminal record.

22 "(3) The time that has elapsed since commission of the act(s) or offense(s).

23 "(4) Whether the licensee has complied with all terms of parole, probation, restitution or  
24 any other sanctions lawfully imposed against the licensee.

25 "(5) Evidence, if any, of rehabilitation submitted by the licensee."

#### 26 COST RECOVERY

27 Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
28 administrative law judge to direct a licentiate found to have committed a violation or violations of

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
2 enforcement of the case.

3 FIRST CAUSE FOR DISCIPLINE

4 (December 8, 2008, Conviction for Malicious Disturbance on July 20, 2008)

5 13. Respondent is subject to disciplinary action under sections 490 and 4301,  
6 subdivision (1) of the Codes in that she was convicted of a crime substantially related to the  
7 qualifications, duties, and functions as a pharmacy technician. The circumstances are as follows:

8 a. On September 11, 2008, in Riverside County Superior Court, case number  
9 RIM519395, Respondent was charged with Count 1, a misdemeanor violation of Vehicle Code  
10 section 664-23152, subdivision (a), attempted driving under the influence of a drug or alcohol,  
11 and Count 2, a misdemeanor violation of Vehicle Code section 664-23152, subdivision (b),  
12 attempted DUI, Alcohol/0.08 percent. On December 8, 2008, the complaint was amended to add  
13 Count 3, a misdemeanor violation of Penal Code section 415, subdivision (2), malicious  
14 disturbance. On December 8, 2008, Respondent pled guilty to Count 3 and was granted three  
15 years of summary probation, sentenced to serve 6 days in the county jail with credit of 1 day for  
16 time served, and to pay a fine of \$1763.40. Counts 1 and 2 were dismissed.

17 b. The facts that led to the conviction are that on July 20, 2008, an investigator working  
18 in plain clothes capacity for the California Department of Alcoholic Beverage Control (ABC) was  
19 patrolling a parking lot/structure located at 3737 Main Street, Riverside, California. This parking  
20 structure is known for minor drinking and drug use and is used by patrons of an ABC licensed  
21 premises known as Trilussa. The investigator observed two females walking in the parking  
22 structure talking and laughing loudly. They were standing in front of cars that were attempting to  
23 leave. They also argued with a male in the structure. The investigator observed that they were  
24 swaying and staggering as they walked. The investigator also observed that one female, later  
25 identified as Respondent, had blood shot watery eyes and a flushed face. Respondent was  
26 observed getting into the driver's side of a vehicle and starting it. A second investigator then  
27 approached the vehicle and had Respondent turn off the engine and exit the vehicle. The  
28 investigator requested that Respondent perform field sobriety tests (FSTs). Respondent failed to

1 perform the tests as demonstrated. Based on failing the FSTs, the objective signs and symptoms  
2 of intoxication, Respondent was arrested by the Riverside Sheriff's Department for violation of  
3 Vehicle Code section 23152, subdivision (a), DUI. Respondent was transported and booked into  
4 custody at Robert Presley Detention Center (Riverside County Jail).

5 SECOND CAUSE FOR DISCIPLINE

6 (September 18, 2008, Conviction for Assault With Deadly Weapon on December 29, 2007)

7 14. Respondent is subject to disciplinary action under Code sections 490 and 4301,  
8 subdivision (1) in that she was convicted of a crime that is substantially related to the  
9 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

10 a. On December 31, 2007, in San Bernardino County Superior Court case number  
11 FCH7000638, Respondent was charged with Count 1, a felony violation of Penal Code section  
12 245, subdivision (a)(1), assault with deadly weapon with a special allegation of personally  
13 inflicting great bodily injury. On September 18, 2008, the complaint was amended to add  
14 Count 2, a felony violation of Penal Code section 245, subdivision (a)(1), assault with deadly  
15 weapon: great bodily injury likely. On September 18, 2008, Respondent pled nolo contendere to  
16 Count 2 and Count 1 was dismissed. On October 21, 2008, Respondent was granted three years  
17 of supervised probation, sentenced to serve 60 days in county jail with credit for 6 days served,  
18 required to participate in a counseling program, and pay restitution of \$6,899.51.

19 b. The facts that led to the conviction are that on December 29, 2007, an officer with the  
20 Chino Police Department responded to a bar on a report of a fight between two females. Upon  
21 arrival, the officer identified a female subject, the victim, whose face was bleeding. The victim  
22 stated she was dancing when someone hit her with an unknown object, but did not know who hit  
23 her. One witness reported that she saw Respondent hit the victim in a face with a bottle.  
24 Respondent stated that a female had pushed her on the dance floor and she defended herself by  
25 fighting back and taking the female to the ground. The victim was taken to a hospital. The  
26 officer spoke with the doctor who treated the victim, who stated the victim had a cut above her  
27 left eyebrow that required three stitches, a cut on the upper left side of her nose that required three  
28 stitches, and a cut to her middle left finger which required four stitches. The doctor believed the

1 middle finger cut was consistent with that of a glass-type cut or that her finger could have  
2 possibly been cut by glass.

3 THIRD CAUSE FOR DISCIPLINE

4 (Unprofessional Conduct – Moral Turpitude)

5 15. Respondent is subject to disciplinary action for unprofessional conduct under Code  
6 section 4301, subdivision (f), in that Respondent's assault with a deadly weapon constitutes moral  
7 turpitude, as is detailed in paragraph 14, above.

8 FOURTH CAUSE FOR DISCIPLINE

9 (Conduct That Would Have Warranted Denial of a License)

10 16. Respondent is subject to disciplinary action under Code section 4301, subdivision (p)  
11 in that on December 29, 2007, and July 20, 2008, Respondent violated Penal Code sections 415,  
12 subdivision (2), malicious disturbance, and 245, subdivision (a)(1), assault with a deadly weapon,  
13 great bodily injury likely. Such egregious conduct would have warranted the denial of a  
14 pharmacy technician registration under Code section 480, subdivisions (a)(1) and (a)(2).

15 PRAYER

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

18 1. Revoking or suspending Pharmacy Technician Registration Number TCH 52404,  
19 issued to Marlene Ramona Ramirez;

20 2. Ordering Marlene Ramona Ramirez to pay the Board of Pharmacy the reasonable  
21 costs of the investigation and enforcement of this case, pursuant to Business and Professions  
22 Code section 125.3;

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

24 DATED: 5/6/10

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

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