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10 **BEFORE THE**  
**BOARD OF PHARMACY**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**  
12

13 In the Matter of the Accusation Against:

Case No. 3793

14 **EDGARDO ERNESTO MUNOZ**  
15 **525 Siesta Drive**  
16 **Aptos, CA 95003**  
**Pharmacy Technician No. TCH 72067**

**A C C U S A T I O N**

17 Respondent.  
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20 Complainant alleges:

21 **PARTIES**

22 1. Virginia K. Herold (Complainant) brings this Accusation solely in her official  
23 capacity as the Executive Officer of the Board of Pharmacy.

24 2. On or about September 26, 2006, the Board of Pharmacy issued Pharmacy Technician  
25 Number TCH 72067 to Edgardo Ernesto Munoz (Respondent). The Pharmacy Technician was in  
26 full force and effect at all times relevant to the charges brought in this Accusation and will expire  
27 on December 31, 2011, unless renewed.

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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. . . .”

11 6. Section 490 of the Code states:

12 “A Board may suspend or revoke a license on the ground that the licensee has been  
13 convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties  
14 of the business or profession for which the license was issued. A conviction within the meaning  
15 of this section means a plea or verdict of guilty or a conviction following a plea of nolo  
16 contendere. Any action which a Board is permitted to take following the establishment of a  
17 conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has  
18 been affirmed on appeal, or when an order granting probation is made suspending the imposition  
19 of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal  
20 Code.”

21 7. Title 16, California Code of Regulations, section 1770, states:

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

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1 **COST RECOVERY**

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

6 **DRUGS**

7 9. Percocet is a Schedule II controlled substance pursuant to Health and Safety Code  
8 section 11055, subdivision (b)(1)(N) and a dangerous drug pursuant to Business and Professions  
9 Code section 4022. It is used to control moderate to severe pain.

10 **FIRST CAUSE FOR DISCIPLINE**

11 **(Unprofessional Conduct-Conviction Substantially Related Conduct)**

12 10. Respondent has subjected his license to discipline under sections 490 and 4301,  
13 subdivision (l) in that he was convicted of a crime substantially related to the qualifications,  
14 functions, and duties of his license. On or about July 2, 2008, Respondent was convicted by the  
15 court on his plea of guilty for a violation of Vehicle Code section 23103.5 (reckless driving  
16 involving alcohol) in Sonoma County Superior Court, Case No. SCR0540166, entitled *People v.*  
17 *Munoz, Edgardo Ernesto*. The circumstances of the crime that on or about June 11, 2008,  
18 Respondent unlawfully drove a vehicle while under the influence of alcohol and/or a drug.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Unprofessional Conduct – Use of Alcohol)**

21 11. Paragraph 10 above, is incorporate by reference as if fully set forth.

22 12. Respondent has subjected his license to disciplinary action under section 4301,  
23 subdivision (h) in that on or about June 11, 2008, Respondent consumed alcohol, ingested a  
24 controlled substance and unlawfully drove a vehicle as set forth in paragraph 10, above.

25 **THIRD CAUSE FOR DISCIPLINE**

26 **(Unprofessional Conduct-Conviction Substantially Related Crime)**

27 13. Respondent has subjected his license to disciplinary action under sections 490 and  
28 4301, subdivision (l) in that he was convicted of a crime substantially related to the qualifications,

1 functions, and duties of his license. On or about May 28, 2010, Respondent was convicted by the  
2 court on his plea of nolo contendere of a violation of Vehicle Code section 23152, subdivision (b)  
3 (driving with .08% or more, by weight of alcohol in his blood) in Santa Cruz County Superior  
4 Court, Case No. M52293, entitled *People v. Edgardo Ernesto Munoz*. The circumstances of the  
5 crime are that on or about January 10, 2010, Respondent unlawfully and erratically drove a  
6 vehicle, while he had .08% or more, by weight of alcohol in his blood, and with a prior conviction  
7 as set forth in paragraph 10, above. Respondent admitted to consuming four beers and ingesting  
8 five milligrams of Percocet prior to driving.

9 **FOURTH CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct-Prior Conviction)**

11 14. Paragraphs 10 and 13 above, are incorporated as if fully set forth.

12 15. Respondent has subjected his license to disciplinary action under sections 4301,  
13 subdivision (k) based on the convictions described in paragraphs 10 and 13, above.

14 **FIFTH CAUSE FOR DISCIPLINE**

15 **(Unprofessional Conduct- Use of Alcohol)**

16 16. Paragraph 13 above, is incorporated as if fully set forth.

17 17. Respondent has subjected his license to disciplinary action under section 4301,  
18 subdivision (h) in that on or about January 10, 2010, Respondent consumed alcohol, ingested a  
19 controlled substance and unlawfully drove a vehicle as set forth in paragraph 13, above.

20 **PRAYER**

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

23 1. Revoking or suspending Pharmacy Technician Number TCH 72067; issued to  
24 Edgardo Ernesto Munoz;

25 2. Ordering Edgardo Ernesto Munoz to pay the Board of Pharmacy the reasonable costs  
26 of the investigation and enforcement of this case, pursuant to Business and Professions Code  
27 section 125.3;

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

DATED: 11/2/10

*Virginia K. Herold*  
VIRGINIA K. HEROLD  
Executive Officer  
Board of Pharmacy  
State of California  
*Complainant*

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