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

11 In the Matter of the Accusation Against:

Case No. 3963

12 **GUSTAVO ANDREW CASILLAS**
13 **4221 E. MCKENZIE AVE.**
FRESNO, CA 93702

A C C U S A T I O N

14 **Pharmacy Technician Registration**
15 **No. TCH 87998**

16 Respondent.

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 **Pharmacy Technician Registration**

22 2. On or about January 13, 2009, the Board of Pharmacy issued Pharmacy Technician
23 License Number TCH 87998 to Gustavo Andrew Casillas (Respondent). The Pharmacy
24 Technician License was in full force and effect at all times relevant to the charges brought herein
25 and will expire on July 31, 2012, unless renewed.

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JURISDICTION

3. Section 4300 of the Business and Professions Code ("Code") 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.

(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure."

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

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.

STATUTORY PROVISIONS

5. Code section 4301 states:

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.

...

1 (k) The conviction of more than one misdemeanor or any felony
2 involving the use, consumption, or self-administration of any dangerous drug or
3 alcoholic beverage, or any combination of those substances.

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

23 COST RECOVERY

24 6. Code section 125.3 states, in pertinent part, that the Board may request the
25 administrative law judge to direct a licensee found to have committed a violation or violations of
26 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
27 enforcement of the case.

28 FIRST CAUSE FOR DISCIPLINE

(Criminal Convictions)

7. Respondent is subject to discipline pursuant to Code section 4301, subdivision (l), on
the grounds of unprofessional conduct, in that Respondent has been convicted of the following
crimes that are substantially related to the qualifications, functions, and duties of a registered
pharmacy technician:

a. On August 3, 2009, in the Superior Court, County of Fresno, California, in the matter
entitled *People vs. Gustavo Andrew Casillas*, Case No. M0900183, Respondent was convicted by
the court following his plea of no contest (e.g. "nolo contendere") to a violation of Vehicle Code
section 23152, subdivision (b) (driving with a blood alcohol level of .08% or more), a
misdemeanor. The circumstances of the crime are that on May 23, 2009, Respondent was

1 arrested for driving under the influence of alcohol, following a traffic collision. Respondent's
2 blood alcohol level measured .10%. On or about April 25, 2010, Respondent violated probation
3 by being arrested for a second DUI offense, as more particularly set forth in subparagraph b,
4 below.

5 b. On September 21, 2010, in the Superior Court, County of Fresno, California, in the
6 matter entitled *People vs. Gustavo Andrew Casillas*, Case No. M1001068, Respondent was
7 convicted by the court following his plea of no contest to a violation of Vehicle Code section
8 23152, subdivision (b) (driving with a blood alcohol level of .08% or more), a misdemeanor. The
9 circumstances of the crime are that on May 25, 2010, Respondent was arrested for driving under
10 the influence of alcohol, following a traffic stop. Respondent's blood alcohol level measured
11 .12%. On or about June 6, 2010, Respondent violated probation by being arrested for a third DUI
12 offense, as more particularly set forth in subparagraph c, below.

13 c. On September 21, 2010, in the Superior Court, County of Fresno, California, in the
14 matter entitled *People vs. Gustavo Andrew Casillas*, Case No. M10919724, Respondent was
15 convicted by the court following his plea of no contest to a violation of Vehicle Code section
16 23152, subdivision (a) (driving under the influence of alcohol), a misdemeanor. The
17 circumstances of the crime are that on June 6, 2010, Respondent was arrested for driving under
18 the influence of alcohol, following a traffic stop. Respondent's blood alcohol level measured
19 .156 and .148%, respectively.

20 **SECOND CAUSE FOR DISCIPLINE**
21 **(Use of Alcoholic Beverages to an Extent or Manner**
22 **Dangerous or Injurious to Himself or Others)**

23 8. Respondent is subject to discipline pursuant to Code section 4301, subdivision (h), on
24 the grounds of unprofessional conduct, in that on or about May 23, 2009, April 25, 2010, and
25 June 6, 2010, Respondent used alcoholic beverages to an extent or in a manner dangerous or
26 injurious to himself or others as more particularly set forth in paragraph 7, subparagraphs a
27 through c, above.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Multiple Convictions Involving the Use of Alcoholic Beverages)**

3 9. Respondent is subject to discipline pursuant to Code section 4301, subdivision (k), on the
4 grounds that he has been convicted of more than one misdemeanor involving the use,
5 consumption, or self-administration of alcoholic beverages, as more particularly set forth in
6 paragraph 7, subparagraphs a through c, above.

7
8 **PRAYER**

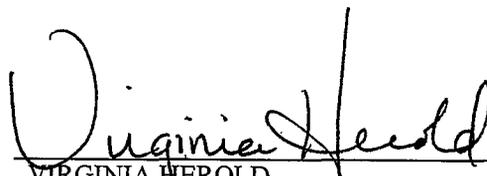
9 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
10 and that following the hearing, the Board of Pharmacy issue a decision:

11 1. Revoking or suspending Pharmacy Technician Registration Number TCH 87998
12 issued to Gustavo Andrew Casillas;

13 2. Ordering Gustavo Andrew Casillas to pay the Board of Pharmacy the reasonable
14 costs of the investigation and enforcement of this case, pursuant to Business and Professions
15 Code section 125.3; and,

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

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18
19 DATED: 9/23/11



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