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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. 4035

13 **ARMANDO BANUELOS**
2744 E. Brookside Street
14 Ontario, CA 91761

ACCUSATION

15 Pharmacy Technician Registration No. TCH
16 98676

Respondent.

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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 April 14, 2010, the Board of Pharmacy (Board) issued Pharmacy
23 Technician Registration No. TCH 98676 to Armando Banuelos (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 May 31, 2013, unless renewed.

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1 **JURISDICTION**

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

5 **STATUTORY PROVISIONS**

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

10 5. Section 490 provides, in pertinent part:

11 "(a) In addition to any other action that a board is permitted to take against a licensee, a
12 board may suspend or revoke a license on the ground that the licensee has been convicted of a
13 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
14 or profession for which the license was issued.

15 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
16 discipline a licensee for conviction of a crime that is independent of the authority granted under
17 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
18 of the business or profession for which the licensee's license was issued.

19 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
20 conviction following a plea of nolo contendere. Any action that a board is permitted to take
21 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
22 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
23 made suspending the imposition of sentence, irrespective of a subsequent order under the
24 provisions of Section 1203.4 of the Penal Code."

25 6. Section 4300 provides, in pertinent part, that every license issued by the Board is
26 subject to discipline, including suspension or revocation.

27 7. Section 4301 provides, in pertinent part:

28 "The board shall take action against any holder of a license who is guilty of unprofessional

1 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
2 Unprofessional conduct shall include, but is not limited to, any of the following:

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

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

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26 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
27 violation of or conspiring to violate any provision or term of this chapter or of the applicable
28 federal and state laws and regulations governing pharmacy, including regulations established by

1 the board or by any other state or federal regulatory agency."

2 **REGULATORY PROVISIONS**

3 8. California Code of Regulations, title 16, section 1770, provides, in pertinent part:

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

10 **COST RECOVERY**

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

15 **FIRST CAUSE FOR DISCIPLINE**

16 **(Conviction of a Substantially-Related Crime)**

17 10. Respondent is subject to disciplinary action under sections 490, and 4301, subdivision
18 (l), in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent
19 has been convicted of a crime substantially related to the qualifications, functions or duties of a
20 pharmacy technician, as follows:

21 a. On or about November 09, 2010, after pleading *nolo contendere*, Respondent was
22 convicted of one felony count of violating Penal Code section 236 [false imprisonment by
23 violence], in the criminal proceeding entitled *The People of the State of California v. Armando*
24 *Banuelos* (Super. Ct. Fresno County, 2010, No. F10903181). The court sentenced Respondent to
25 90 days in jail, placed him on probation for a period of 2 years, and fined him. The circumstances
26 surrounding the conviction are that on or about October 10, 2009, a Fresno State Police Officer,
27 while on duty, was dispatched to a Holiday Inn Express Hotel, located in the city of Fresno,
28 regarding a sexual assault that occurred approximately one hour before the call was reported.

1 Respondent was later identified by the victim, as being the individual male who, while inside an
2 elevator, touched her breasts, buttocks, and vaginal area against her will for sexual gratification
3 and arousal. Respondent physically pushed the victim and held her inside the elevator against her
4 will. Respondent was subsequently convicted of violating Penal Code section 236 [false
5 imprisonment by violence.]

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit)**

8 11. Respondent is subject to disciplinary action under section 4301, subdivision (f), in
9 that Respondent was convicted of a crime involving a dishonest act on or about November 09,
10 2010. Complainant refers to and incorporates all the allegations contained in paragraph 10 above,
11 subparagraph (a), inclusive, as though set forth fully.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Unprofessional Conduct)**

14 12. Respondent is subject to disciplinary action under sections 4300 and 4301,
15 subdivision (o), on the grounds of unprofessional conduct, in that Respondent committed an act
16 and was convicted of a crime on or about November 09, 2010, that violated the pharmacy act.
17 Complainant refers to and incorporates all the allegations contained in paragraph 10 above,
18 subparagraph (a), inclusive, as though set forth fully.

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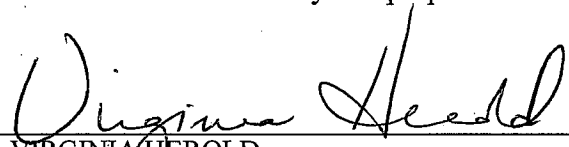
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PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 98676, issued to Armando Banuelos;
2. Ordering Armando Banuelos to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 7/10/12



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

LA2011600562