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

11 In the Matter of the Accusation Against:  
12 **JOLEEN MARIE ACOSTA**  
10208 Belcher Street  
13 Downey, CA 90242  
14 Pharmacy Technician Registration No. TCH  
35403  
15  
16 Respondent.

Case No. 4306

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

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 (Board).  
22 2. On or about December 11, 2000, the Board issued Pharmacy Technician Registration  
23 No. TCH 35403 to Joleen Marie Acosta (Respondent). The Pharmacy Technician Registration  
24 was in full force and effect at all times relevant to the charges brought herein and will expire on  
25 January 31, 2014, unless renewed.

26 **JURISDICTION**

- 27 3. This Accusation is brought before the Board, under the authority of the following  
28 laws. All section references are to the Business and Professions Code unless otherwise indicated.

1 STATUTORY PROVISIONS

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

6 5. Section 490 states, in pertinent part:

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

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

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

21 6. Section 4300, subdivision (a), states that "[e]very license issued may be suspended or  
22 revoked."

23 7. Section 4301 states, in pertinent part:

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

27 . . . .

28 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous

1 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to  
2 oneself, to a person holding a license under this chapter, or to any other person or to the public, or  
3 to the extent that the use impairs the ability of the person to conduct with safety to the public the  
4 practice authorized by the license.

5 . . . .

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

23 . . . .

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

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1 **REGULATORY PROVISION**

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

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

9 **COST RECOVERY**

10 9. Section 125.3 states, in pertinent part, that the 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 **(Conviction of a Substantially-Related Crime- Alcohol Conviction)**

16 10. Respondent is subject to disciplinary action under sections 490, 4300 and 4301,  
17 subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, in that  
18 Respondent was convicted of a crime substantially related to the qualifications, functions, or  
19 duties of a registered pharmacy technician which to a substantial degree evidence her present or  
20 potential unfitness to perform the functions authorized by her registration in a manner consistent  
21 with the public health, safety, or welfare, as follows:

22 a. On or about March 01, 2012, after pleading *guilty*, Respondent was convicted of one  
23 misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving while  
24 having 0.08%, or more, by weight, of alcohol in her blood], in the criminal proceeding entitled  
25 *The People of the State of California v. Joleen Marie Acosta* (Super. Ct. Los Angeles County,  
26 2012, No. 2WW00513). The court placed Respondent on probation for a period of 36 months,  
27 and fined her. The circumstances surrounding the conviction are that on or about January 08,  
28 2012, a Whittier Police Department Officer, while on duty, during a routine traffic stop, stopped

1 Respondent for driving over the speed limit, and lane straddling, in violation of Vehicle Code  
2 sections 22350 and 21658 (a). The officer made contact with the officer and smelled a strong  
3 odor of alcohol coming from the vehicle. The officer also observed Respondent to have  
4 bloodshot watery eyes, and slurred speech. The officer observed Respondent stumble as she  
5 exited the vehicle, holding onto the vehicle for support. The Respondent admitted to the officer  
6 that she had, "Five or Six Beers to drink." She also stated to the officer, that she could feel the  
7 effects of the alcohol. The Respondent was subsequently arrested and agreed to a blood test with  
8 a result of 0.25% BAC.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Dangerous Use of Alcohol)**

11 11. Respondent is subject to disciplinary action under section 4301, subdivision (h), on  
12 the grounds of unprofessional conduct, in that Respondent used drugs and / or alcohol to an extent  
13 or in a manner dangerous or injurious to herself, any other person, or the public, or to the extent  
14 that such use impairs her ability to conduct with safety to the public the practice authorized by her  
15 license. Complainant refers to, and by this reference incorporates, the allegations set forth above  
16 in paragraph 10, subparagraph (a), inclusive, as though set forth fully.

17 **PRAYER**

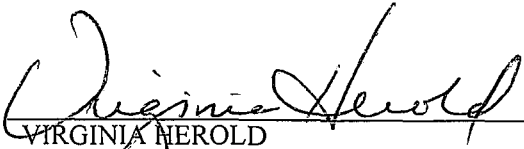
18 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
19 and that following the hearing, the Board issue a decision:

- 20 1. Revoking or suspending Pharmacy Technician Registration No. TCH 35403, issued  
21 to Joleen Marie Acosta;
- 22 2. Ordering Joleen Marie Acosta to pay the Board the reasonable costs of the  
23 investigation and enforcement of this case, pursuant to Business and Professions Code section  
24 125.3; and

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

DATED: 6/12/13 

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

LA2012506738  
accusation.rtf  
4/13/ sc