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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. 4400

12 **ANTONIO MADRID**
403 Ruby Ave
13 Redlands, CA 92374

A C C U S A T I O N

14 Pharmacy Technician Registration No. TCH 79877

15 Respondent.

16
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 2. On or about January 7, 2008, the Board of Pharmacy (Board) issued Pharmacy
22 Technician Registration No. TCH 79877 to Antonio Madrid (Respondent). The Pharmacy
23 Technician Registration was in full force and effect at all times relevant to the charges brought
24 herein and will expire on June 30, 2013, unless renewed.

25 **JURISDICTION**

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

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1 4. Section 4300.1 states:

2 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by
3 operation of law or by order or decision of the board or a court of law, the placement of a license
4 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
5 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
6 proceeding against, the licensee or to render a decision suspending or revoking the license."

7 **STATUTORY PROVISIONS**

8 5. Section 118, subdivision (b) provides, in pertinent part that the expiration of a license
9 shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period
10 within which the license may be renewed, restored, reissued or reinstated.

11 6. Section 490 states, in pertinent part:

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

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

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

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

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1. 8. Section 4301 states, in pertinent part:

2 "The board shall take action against any holder of a license who is guilty of unprofessional
3 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

4 Unprofessional conduct shall include, but is not limited to, any of the following:

5 "The board shall take action against any holder of a license who is guilty of unprofessional
6 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

7 Unprofessional conduct shall include, but is not limited to, any of the following:

8

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

12 "(g) Knowingly making or signing any certificate or other document that falsely
13 represents the existence or nonexistence of a state of facts.

14

15 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous
16 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
17 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
18 to the extent that the use impairs the ability of the person to conduct with safety to the public the
19 practice authorized by the license.

20

21 "(l) The conviction of a crime substantially related to the qualifications, functions, and
22 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
23 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
24 substances or of a violation of the statutes of this state regulating controlled substances or
25 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
26 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
27 The board may inquire into the circumstances surrounding the commission of the crime, in order
28 to fix the degree of discipline or, in the case of a conviction not involving controlled substances

1 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
2 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
3 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
4 of this provision. The board may take action when the time for appeal has elapsed, or the
5 judgment of conviction has been affirmed on appeal or when an order granting probation is made
6 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
7 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
8 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
9 indictment.

10

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

15 **REGULATORY PROVISIONS**

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

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

23 **COST RECOVERY**

24 10. Section 125.3 of the Code states, in pertinent part, that the Board may request the
25 administrative law judge to direct a licentiate 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.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Convictions of Substantially Related Crime)**

3 11. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and
4 490, in conjunction with California Code of Regulations, title 16, section 1770, in that
5 Respondent has been convicted of a crime substantially related to the qualifications, functions or
6 duties of a pharmacy technician. On or about April 16, 1996, Respondent was convicted of one
7 misdemeanor count of violating Penal Code section 484, subdivision (a) [petty theft] in the
8 criminal proceeding entitled *The People of the State of California v. Antonio Madrid* (Super. Ct.
9 Los Angeles County, 1996, No. 6CR00215). The Court sentenced Respondent to serve 5 days in
10 Los Angeles County Jail and placed him on 12 months probation, with terms and conditions. The
11 circumstances surrounding the conviction are that on or about April 15, 1996, Respondent entered
12 a Thrifty's Store in Los Angeles, CA. He was observed taking an item and attempting to leave
13 the store without paying for it. Respondent was detained and a bottle of whiskey that he had
14 concealed in his front waistband was recovered.

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Acts Involving Dishonesty, Fraud, or Deceit)**

17 12. Respondent is subject to disciplinary action under section 4301, subdivision (f), in
18 that on or about April 15, 1996, Respondent committed acts involving dishonesty, fraud, or deceit
19 with the intent to substantially benefit himself, or substantially injure another. Complainant refers
20 to, and by this reference incorporates, the allegations set forth above in paragraph 10, as though
21 set forth fully.

22 **THIRD CAUSE FOR DISCIPLINE**

23 **(Dangerous Use of Alcohol)**

24 12. Respondent is subject to disciplinary action under section 4301, subdivision (h), in
25 that Respondent used alcoholic beverage to an extent or in a manner dangerous or injurious to
26 himself, another person, or the public, as follows:

27 a. On or about June 11, 2011, during an investigation by the California Highway Patrol,
28 Respondent was contacted. While speaking to Respondent the officer detected a strong odor of

1 an alcoholic beverage emitting from his breath. He was observed to have red watery eyes. When
2 asked if he had consumed alcohol, Respondent admitted to having consumed a pint of beer earlier
3 that night. While at the scene, Respondent submitted to two Preliminary Alcohol Screening Tests
4 that resulted in a breath alcohol content level of 0.17% on both readings. On or about October 12,
5 2011, a criminal case was filed against Respondent, charging him with one misdemeanor count of
6 violating Vehicle Code section 23152, subdivision (a) [driving under the influence of alcohol or
7 drugs], one misdemeanor count of Vehicle Code section 23152, subdivision (b) [driving while
8 having 0.08% or more, by weight, of alcohol in his blood], and one misdemeanor count of
9 Vehicle Code section 14601.2, subdivision (a) [driving while driving privileges are suspended or
10 revoked with knowledge] in the criminal proceeding *The People of the State of California v.*
11 *Antonio Madrid* (Super. Ct. Los Angeles County, 2011, No. 1GN03794). Respondent failed to
12 appear on November 1, 2011 and the Court issued an arrest warrant for \$26,000. As of January
13 10, 2013, the warrant is still outstanding.

14 **FOURTH CAUSE FOR DISCIPLINE**

15 **(Knowingly Made a False Statement of Fact to Licensing Authority)**

16 13. Respondent is subject to disciplinary action under section 4301, subdivision (g), in
17 that on or about October 23, 2007, Respondent knowingly made a false statement of fact to the
18 Board by failing to disclose his 1996 conviction on his initial application for licensure.
19 Complainant refers to, and by this reference incorporates, the allegations set forth above in
20 paragraph 10, as though set forth fully.

21 **DISCIPLINARY CONSIDERATIONS**

22 14. In Order to determine the degree of discipline, if any to be imposed on Respondent,
23 Complainant alleges, as follows:

24 a. On or about February 8, 2011, after pleading nolo contendere, Respondent was
25 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (a)
26 [driving under the influence of alcohol or drugs] in the criminal proceeding entitled *The People of*
27 *the State of California v. Antonio Madrid* (Super. Ct. San Bernardino County, 2011, No.
28 TWV1002562). The Court ordered pronouncement of judgment withheld and conditional and

1 revocable release granted for a period of 36 months, with terms and conditions. The
2 circumstances surrounding the conviction are that on or about August 29, 2010, Respondent
3 drove a vehicle while under the influence of alcohol or drugs and was arrested.

4 b. On or about February 16, 2011, the Board issued a warning letter to Respondent as a
5 result of the events in connection with that which is set forth in paragraph 14(a) above.

6 **PRAYER**

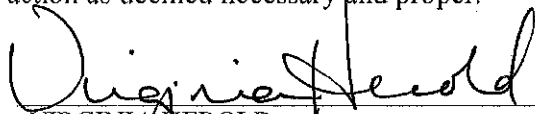
7 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
8 and that following the hearing, the Board issue a decision:

9 1. Revoking or suspending Pharmacy Technician Registration No. TCH 79877, issued
10 to Antonio Madrid;

11 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
12 enforcement of this case, pursuant to section 125.3; and

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

14 DATED: 7/22/13


15 VIRGINIA HEROLD
16 Executive Officer
17 Board of Pharmacy
18 Department of Consumer Affairs
19 State of California
20 Complainant

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