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

12 In the Matter of the Accusation Against:

Case No. 4505

13 **OSCAR YOBANY BONILLA**  
422 S. Chatham Circle, Apt. A  
14 Anaheim, CA 92806

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

15 **Pharmacy Technician Registration**  
No. TCH 116943

16 Respondent.  
17

18  
19 Complainant alleges:

20 **PARTIES**

21 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
22 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

23 2. On or about January 10, 2012, the Board of Pharmacy issued Pharmacy Technician  
24 Registration Number TCH 116943 to Oscar Yobany Bonilla (Respondent). The Pharmacy  
25 Technician Registration was in full force and effect at all times relevant to the charges brought  
26 herein and will expire on May 31, 2013, unless renewed.

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1 This section shall not be construed to apply to any drug diversion program  
2 operated by any agency established under Division 2 (commencing with Section 500)  
of this code, or any initiative act referred to in that division.

3 9. Section 493 of the Code states:

4 Notwithstanding any other provision of law, in a proceeding conducted by a  
5 board within the department pursuant to law to deny an application for a license or to  
6 suspend or revoke a license or otherwise take disciplinary action against a person who  
7 holds a license, upon the ground that the applicant or the licensee has been convicted  
8 of a crime substantially related to the qualifications, functions, and duties of the  
9 licensee in question, the record of conviction of the crime shall be conclusive  
evidence of the fact that the conviction occurred, but only of that fact, and the board  
may inquire into the circumstances surrounding the commission of the crime in order  
to fix the degree of discipline or to determine if the conviction is substantially related  
to the qualifications, functions, and duties of the licensee in question.

10 As used in this section, "license" includes "certificate," "permit," "authority,"  
and "registration."

11 10. Section 4301 of the Code states:

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

15 . . . .

16 (h) The administering to oneself, of any controlled substance, or the use of any  
17 dangerous drug or of alcoholic beverages to the extent or in a manner as to be  
18 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.

19 . . . .

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

22 (l) The conviction of a crime substantially related to the qualifications,  
23 functions, and duties of a licensee under this chapter. The record of conviction of a  
24 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United  
25 States Code regulating controlled substances or of a violation of the statutes of this  
26 state regulating controlled substances or dangerous drugs shall be conclusive  
27 evidence of unprofessional conduct. In all other cases, the record of conviction shall  
28 be conclusive evidence only of the fact that the conviction occurred. The board may  
inquire into the circumstances surrounding the commission of the crime, in order to  
fix the degree of discipline or, in the case of a conviction not involving controlled  
substances or dangerous drugs, to determine if the conviction is of an offense  
substantially related to the qualifications, functions, and duties of a licensee under this  
chapter. A plea or verdict of guilty or a conviction following a plea of nolo  
contendere is deemed to be a conviction within the meaning of this provision. The  
board may take action when the time for appeal has elapsed, or the judgment of

1 conviction has been affirmed on appeal or when an order granting probation is made  
2 suspending the imposition of sentence, irrespective of a subsequent order under  
3 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of  
4 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or  
5 dismissing the accusation, information, or indictment.

6 . . . .

7 (q) Engaging in any conduct that subverts or attempts to subvert an  
8 investigation of the board.

9 . . . .

### 10 REGULATORY PROVISIONS

11 11. California Code of Regulations, title 16, section 1769, states:

12 . . . .

13 (b) When considering the suspension or revocation of a facility or a personal  
14 license on the ground that the licensee or the registrant has been convicted of a crime,  
15 the board, in evaluating the rehabilitation of such person and his present eligibility for  
16 a license will consider the following criteria:

17 (1) Nature and severity of the act(s) or offense(s).

18 (2) Total criminal record.

19 (3) The time that has elapsed since commission of the act(s) or offense(s).

20 (4) Whether the licensee has complied with all terms of parole, probation,  
21 restitution or any other sanctions lawfully imposed against the licensee.

22 (5) Evidence, if any, of rehabilitation submitted by the licensee.

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

24 For the purpose of denial, suspension, or revocation of a personal or facility  
25 license pursuant to Division 1.5 (commencing with Section 475) of the Business and  
26 Professions Code, a crime or act shall be considered substantially related to the  
27 qualifications, functions or duties of a licensee or registrant if to a substantial degree  
28 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.

### 29 COSTS

30 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
31 administrative law judge to direct a licentiate found to have committed a violation or violations of  
32 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
33 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being

1 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
2 included in a stipulated settlement.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(August 9, 2012 Criminal Convictions for DUI With Prior on May 18, 2012)**

5 14. Respondent has subjected his registration to discipline under sections 490 and 4301,  
6 subdivision (l) of the Code in that he was convicted of crimes that are substantially related to the  
7 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

8 a. On or about August 9, 2012, in a criminal proceeding entitled *People of the*  
9 *State of California v. Oscar Yobany Bonilla*, in Orange County Superior Court, case number  
10 12CM05398, Respondent was convicted on his plea of guilty to violating Vehicle Code section  
11 23152, subdivision (a), driving under the influence of alcohol and/or drugs, and Vehicle Code  
12 section 23152, subdivision (b), driving with a blood alcohol concentration (BAC) of .08 or more,  
13 misdemeanors. As to both counts, the court found true the special allegation that Respondent was  
14 previously convicted of violating Vehicle Code section 23152, subdivision (a) within 10 years,  
15 pursuant to Vehicle Code section 23540, as detailed in paragraph 18, below. The court also found  
16 true that Respondent's BAC was .20 or more, an enhancement pursuant to Vehicle Code section  
17 23538, subdivision (b)(2).

18 b. As a result of the convictions, on or about August 9, 2012, Respondent was  
19 granted five years informal probation and was sentenced to 60 days in the Orange County Jail,  
20 with credit for four days. The court authorized Supervised Electronic Confinement with a  
21 SCRAM device.<sup>1</sup> Respondent was further ordered to complete an 18-month Multiple Offender  
22 Alcohol Program and a MADD Victim Impact Panel session, to install an electronic ignition  
23 device on his vehicle for one year, pay fines and fees, and comply with probation terms.

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25 \_\_\_\_\_  
26 <sup>1</sup> The SCRAM device is a tamper-resistant bracelet that a DUI offender wears around  
27 his/her ankle. The SCRAM bracelet tests the DUI offender's sweat for alcohol at least once per  
28 hour. The SCRAM bracelet wirelessly transmits the results at least once per day via the SCRAM  
modem to a regional monitoring center. If the DUI defendant removes the SCRAM bracelet or  
consumes alcohol, the regional monitoring center will notify the court.

1 c. The facts that led to the convictions are that on or about May 18, 2012, at  
2 approximately 1:00 a.m., a patrol officer with the Orange Police Department observed a vehicle,  
3 driven by Respondent, which failed to stop at an intersection controlled by four-way stop signs.  
4 The officer conducted a traffic stop and made contact with Respondent. The officer noted that he  
5 could smell the odor of an alcoholic beverage coming from inside the vehicle, Respondent's eyes  
6 were bloodshot and watery, and his speech was slurred. Respondent admitted to consuming beers  
7 earlier in the evening. Respondent submitted to a series of field sobriety tests which he was  
8 unable to complete as explained and demonstrated by the officer. Respondent attempted to  
9 provide breath samples but he was unable to complete the tests. Respondent was arrested for  
10 driving under the influence. Respondent provided a blood sample which was analyzed with a  
11 BAC of .24 percent.

#### 12 **SECOND CAUSE FOR DISCIPLINE**

##### 13 **(Dangerous Use of Alcohol)**

14 15. Respondent has subjected his registration to disciplinary action under section 4301,  
15 subdivision (h) of the Code for unprofessional conduct in that on or about May 18, 2012,  
16 Respondent operated a motor vehicle while significantly impaired by alcohol, as detailed in  
17 paragraph 14, above.

#### 18 **THIRD CAUSE FOR DISCIPLINE**

##### 19 **(Multiple Alcohol-Related Convictions)**

20 16. Respondent has subjected his registration to disciplinary action under sections 4301,  
21 subdivision (k) of the Code for unprofessional conduct in that on or about August 9, 2012, and  
22 September 29, 2006, Respondent was convicted of violating Vehicle Code section 23152,  
23 subdivision (a) (driving under the influence of alcohol), and Vehicle Code section 23152,  
24 subdivision (b), (driving with a BAC of .08 percent or more), as described in paragraphs 14 and  
25 18.

#### 26 **DISCIPLINARY CONSIDERATIONS**

27 17. To determine the degree of discipline, if any, to be imposed on Respondent, pursuant  
28 to California Code of Regulations, title 16, section 1769, Complainant alleges:

1 a. On or about October 13, 2011, patrol officers with the Orange Police  
2 Department responded to a report of a fight. Two males, one identified as Respondent, ran into a  
3 backyard when the officers approached the residence. In speaking with Respondent, the officer  
4 noted that he had bloodshot and watery eyes, and a strong odor of an alcoholic beverage on his  
5 breath. Respondent had dried blood on his nose, his t-shirt, and his right leg. Respondent was  
6 cited for being drunk in public, and released.

7 b. As a result of the arrest, on or about December 13, 2011, in a criminal  
8 proceeding entitled *People of the State of California v. Oscar Yobany Bonilla*, in Orange County  
9 Superior Court, case number 11CM15731, Respondent pled guilty to violating Penal Code  
10 section 647, subdivision (f), public intoxication. Respondent entered into a 90-day Deferred  
11 Entry of Judgment Agreement with the District Attorney. Respondent was ordered to complete  
12 an educational program, pay court fees and fines, and provide DNA. On or about March 15,  
13 2012, the court allowed Respondent to withdraw his plea of guilty, and the case was dismissed.

14 18. To further determine the degree of discipline, if any, to be imposed on Respondent,  
15 pursuant to California Code of Regulations, title 16, section 1769, Complainant alleges:

16 a. On or about September 29, 2006, in a criminal proceeding entitled *People of the*  
17 *State of California v. Oscar Yobany Bonilla*, in Orange County Superior Court, case number  
18 06CM08058, Respondent was convicted on his plea of guilty to violating Vehicle Code section  
19 23152, subdivision (a), driving under the influence of alcohol and/or drugs, and Vehicle Code  
20 section 23152, subdivision (b), driving with a blood alcohol concentration (BAC) of .08 or more,  
21 misdemeanors. Respondent was 20 years old at the time of the act and convictions.

22 b. As a result of the convictions, on or about September 29, 2006, Respondent was  
23 granted three years informal probation. Respondent was ordered to complete a Youthful Drug  
24 and Alcohol Deterrence Program, a three-month First Offender Alcohol Program and a MADD  
25 Victim's Impact Panel session. Respondent was further ordered to pay fees, fines, and restitution,  
26 and comply with the DUI probation terms. On November 30, 2006, the court found Respondent  
27 in violation of probation; probation was reinstated.

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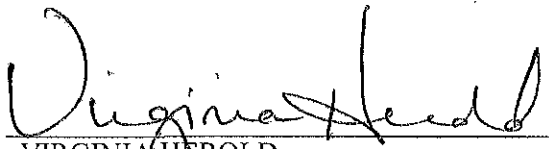
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**PRAYER**

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 116943, issued to Oscar Yobany Bonilla;
2. Ordering Oscar Yobany Bonilla 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;
3. Taking such other and further action as deemed necessary and proper.

DATED: 3/1/13



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

SD2012704532