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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:
12 **ALMA DELIA GARCIA**
a.k.a. Alma Garcia
13 163 Sherry Court,
Los Banos, CA 93635
14
15 **Pharmacy Technician Registration No.**
TCH 77837
16
17 Respondent.

Case No. 4518
ACCUSATION

18 Complainant Virginia Herold alleges:

19 **PARTIES**

- 20 1. Complainant brings this accusation solely in her official capacity as the executive
21 officer of the Board of Pharmacy, Department of Consumer Affairs.
22 2. On or about April 7, 2008, the board issued Pharmacy Technician Registration No.
23 TCH 77837 to respondent Alma Delia Garcia, a.k.a. Alma Garcia. This pharmacy technician
24 registration expired on October 31, 2013, was canceled on February 2, 2014, and has not been
25 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.

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4. Section 4300 states in 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.”

5. Section 4300.1 states:

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

STATUTORY AND REGULATORY AUTHORITY

6. Section 490, subdivision (a), states:

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

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

...

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

4 ...

5 “(h) The administering to oneself, of any controlled substance, or the use of any
6 dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or
7 injurious to oneself, to a person holding a license under this chapter, or to any other person or to
8 the public, or to the extent that the use impairs the ability of the person to conduct with safety to
9 the public the practice authorized by the license.

10 ...

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

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

1 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
2 indictment.”

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

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, subdivision (a), states:

12 “Except as otherwise provided by law, in any order issued in resolution of a disciplinary
13 proceeding before any board within the department or before the Osteopathic Medical Board,
14 upon request of the entity bringing the proceeding, the administrative law judge may direct a
15 licentiate found to have committed a violation or violations of the licensing act to pay a sum not
16 to exceed the reasonable costs of the investigation and enforcement of the case.”

17 **FACTUAL BACKGROUNDS AND CAUSES FOR DISCIPLINE**

18 **2012 Petty Theft**

19 10. On February 3, 2012, respondent was arrested for making fraudulent cashier
20 transactions totaling \$169.99 while employed at WalMart. On October 9, 2013, in *People v.*
21 *Alma Garcia, a.k.a. Alma Delia Garcia*, Santa Clara County Superior Court Case No. F1241762,
22 respondent pled no contest to petty theft/embezzlement by an employee (Pen. Code, §§ 484/488),
23 a misdemeanor. The court suspended imposition of sentence and placed respondent on two years’
24 court probation. Terms and conditions of probation included 10 days’ incarceration.

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**First Cause for Discipline
(Conviction)
(Business and Professions Code section 490, subdivision (a))**

11. The allegations in paragraph 10 are realleged and incorporated by reference as if fully set forth.

12. Respondent has subjected her pharmacy technician registration to discipline for being convicted of a crime substantially related to the qualifications, functions, and duties of a licensee (Bus. & Prof. Code, § 490, subd. (a)). Respondent pled no contest to petty theft/embezzlement by an employee (Pen. Code, §§ 484/488), a misdemeanor.

**Second Cause for Discipline
(Unprofessional Conduct: Committing an Act Involving Moral Turpitude, Dishonesty,
Fraud, Deceit, or Corruption)
(Business and Professions Code section 4301, subdivision (f))**

13. The allegations in paragraph 10 are realleged and incorporated by reference as if fully set forth.

14. Respondent has subjected her pharmacy technician registration to discipline for the unprofessional conduct of committing an act involving moral turpitude, dishonesty, fraud, deceit, or corruption (Bus. & Prof. Code, § 4301, subd. (f)). Respondent pled no contest to petty theft/embezzlement by an employee (Pen. Code, §§ 484/488), a misdemeanor.

**Third Cause for Discipline
(Unprofessional Conduct: Conviction)
(Business and Professions Code section 4301, subdivision (I))**

15. The allegations in paragraph 10 are realleged and incorporated by reference as if fully set forth.

16. Respondent has subjected her pharmacy technician registration to discipline for the unprofessional conduct of being convicted of a crime substantially related to the qualifications, functions, and duties of a licensee (Bus. & Prof. Code, § 4301, subd. (I)). Respondent pled no contest to petty theft/embezzlement by an employee (Pen. Code, §§ 484/488), a misdemeanor.

May 2014 DUI

17. On May 17, 2014, respondent was arrested for driving under the influence of alcohol, driving while her license was suspended, and for giving a false name to a police officer.

1 On August 14, 2014, in *People v. Alma Garcia, a.k.a. Alma Delia Garcia*, Santa Clara County
2 Superior Court Case No. F1451587, respondent pled no contest to driving under the influence of
3 alcohol (Veh. Code, § 23152, subd. (a)), a misdemeanor; driving when her license was suspended
4 or revoked (Veh. Code, § 14601.1, subd. (a)), a misdemeanor; and giving a false name to a peace
5 officer (Pen. Code, § 148.9), a misdemeanor. The court suspended imposition of sentence and
6 placed respondent on three years' court probation. Terms and conditions of probation included
7 30 days' incarceration.

8 **Fourth Cause for Discipline**
9 **(Conviction)**
10 **(Business and Professions Code section 490, subdivision (a))**

11 18. The allegations in paragraph 17 are realleged and incorporated by reference as if
12 fully set forth.

13 19. Respondent has subjected her pharmacy technician registration to discipline for
14 being convicted of crimes substantially related to the qualifications, functions, and duties of a
15 licensee (Bus. & Prof. Code, § 490, subd. (a)). On August 14, 2014, in Santa Clara County
16 Superior Court Case No. F1451587, respondent pled no contest to driving under the influence of
17 alcohol (Veh. Code, § 23152, subd. (a)), a misdemeanor; and giving a false name to a peace
18 officer (Pen. Code, § 148.9), a misdemeanor.

19 **Fifth Cause for Discipline**
20 **(Unprofessional Conduct: Committing an Act Involving Moral Turpitude, Dishonesty,**
21 **Fraud, Deceit, or Corruption)**
22 **(Business and Professions Code section 4301, subdivision (f))**

23 20. The allegations in paragraph 17 are realleged and incorporated by reference as if
24 fully set forth.

25 21. Respondent has subjected her pharmacy technician registration to discipline for the
26 unprofessional conduct of committing an act involving moral turpitude, dishonesty, fraud, deceit,
27 or corruption (Bus. & Prof. Code, § 4301, subd. (f)). On August 14, 2014, in Santa Clara County
28 Superior Court Case No. F1451587, respondent pled no contest to giving a false name to a peace
officer (Pen. Code, § 148.9), a misdemeanor.

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**Sixth Cause for Discipline
(Unprofessional Conduct: Dangerous or Injurious Use of Alcoholic Beverages)
(Business and Professions Code section 4301, subdivision (h))**

22. The allegations in paragraph 17 are realleged and incorporated by reference as if fully set forth.

23. Respondent has subjected her pharmacy technician registration to discipline for the unprofessional conduct of using alcoholic beverages to the extent or in a manner as to be dangerous or injurious to herself, any other person, or to the public, or to the extent that the use impairs her ability to conduct with safety to the public the practice authorized by her license (Bus. & Prof. Code, § 4301, subd. (h)). On August 14, 2014, in Santa Clara County Superior Court Case No. F1451587, respondent pled no contest to driving under the influence of alcohol (Veh. Code, § 23152, subd. (a)), a misdemeanor.

**Seventh Cause for Discipline
(Unprofessional Conduct: Conviction)
(Business and Professions Code section 4301, subdivision (I))**

24. The allegations in paragraph 17 are realleged and incorporated by reference as if fully set forth.

25. Respondent has subjected her pharmacy technician registration to discipline for the unprofessional conduct of being convicted of crimes substantially related to the qualifications, functions, and duties of a licensee (Bus. & Prof. Code, § 4301, subd. (I)). On August 14, 2014, in Santa Clara County Superior Court Case No. F1451587, respondent pled no contest to driving under the influence of alcohol (Veh. Code, § 23152, subd. (a)), a misdemeanor; and giving a false name to a peace officer (Pen. Code, § 148.9), a misdemeanor.

July 2014 DUI

26. On July 23, 2014, respondent was arrested for driving under the influence of alcohol, and for driving while her license was suspended or revoked. She refused to submit to a chemical test to determine her blood alcohol content. On January 21, 2015, in *People v. Alma Garcia, a.k.a Alma Delia Garcia*, Santa Clara County Superior Court Case No. C1491839, she pled no contest to driving under the influence of alcohol (Veh. Code, § 23152, subd. (a)), a misdemeanor; and driving when her privilege was suspended or revoked for refusal to take a

1 chemical test, preliminary alcohol screening test, or driving with a blood alcohol content of 0.08
2 percent or more (Veh. Code, § 14601.5, subd. (a)), a misdemeanor. Respondent also admitted
3 being convicted of driving under the influence of alcohol (Veh. Code, § 23152, subd. (a)) in Santa
4 Clara County Superior Court Case No. F1451587. The court suspended imposition of sentence
5 and placed respondent on three years' court probation. Terms of probation included installing an
6 ignition interlock device and 45 days' incarceration.

7 **Eighth Cause for Discipline**
8 **(Conviction)**
9 **(Business and Professions Code section 490, subdivision (a))**

10 27. The allegations in paragraph 26 are realleged and incorporated by reference as if
11 fully set forth.

12 28. Respondent has subjected her pharmacy technician registration to discipline for
13 being convicted of a crime substantially related to the qualifications, functions, and duties of a
14 licensee (Bus. & Prof. Code, § 490, subd. (a)). On January 21, 2015, in Santa Clara County
15 Superior Court Case No. C1491839, respondent pled no contest to driving under the influence of
16 alcohol (Veh. Code, § 23152, subd. (a)), a misdemeanor.

17 **Ninth Cause for Discipline**
18 **(Unprofessional Conduct: Dangerous or Injurious Use of Alcoholic Beverages)**
19 **(Business and Professions Code section 4301, subdivision (h))**

20 29. The allegations in paragraph 26 are realleged and incorporated by reference as if
21 fully set forth.

22 30. Respondent has subjected her pharmacy technician registration to discipline for the
23 unprofessional conduct of using alcoholic beverages to the extent or in a manner as to be
24 dangerous or injurious to herself, any other person, or to the public, or to the extent that the use
25 impairs her ability to conduct with safety to the public the practice authorized by her license (Bus.
26 & Prof. Code, § 4301, subd. (h)). On January 21, 2015, in Santa Clara County Superior Court
27 Case No. C1491839, respondent pled no contest to driving under the influence of alcohol (Veh.
28 Code, § 23152, subd. (a)), a misdemeanor.

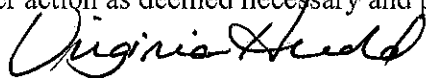
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Professions Code section 125.3 to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case; and

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

DATED: 10/6/17



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

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