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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:

Case No. 4604

12 **CHARMAINE GWENESHA AUSTIN**  
13 3427 W. 59th Place  
Los Angeles, CA 90043

**ACCUSATION**

14 Pharmacy Technician Registration No. TCH 27758

15 Respondent.

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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 4, 1998, the Board issued Pharmacy Technician Registration  
23 No. TCH 27758 to Charmaine Gwenesha Austin (Respondent). The Pharmacy Technician  
24 Registration was in full force and effect at all times relevant to the charges brought herein and  
25 will expire on July 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), provides that the suspension, expiration, surrender or  
3 cancellation of a license shall not deprive the Board of 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 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or

1 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and  
2 whether the act is a felony or misdemeanor or not.

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

5 . . . .

6 "(l) The conviction of a crime substantially related to the qualifications, functions, and  
7 duties of a licensee under this chapter. . . ."

8 **REGULATORY PROVISION**

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

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

16 **COST RECOVERY**

17 9. Section 125.3 provides that the Board may request the administrative law judge to  
18 direct a licentiate found to have committed a violation or violations of the licensing act to pay a  
19 sum not to exceed the reasonable costs of the investigation and enforcement of the case.

20 **FIRST CAUSE FOR DISCIPLINE**

21 **(Conviction of a Substantially Related Crime)**

22 10. Respondent is subject to disciplinary action under sections 490, 4300 and 4301,  
23 subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, on the  
24 grounds of unprofessional conduct, in that Respondent was convicted of substantially related  
25 crimes, as follows:

26 a. On or about June 15, 2012, after pleading guilty, Respondent was convicted of one  
27 interlineated felony count of violating Penal Code section 550(b)(1) [false insurance claim] in the  
28 criminal proceeding entitled *The People of the State of California v. Charmaine Gwenesha Austin*

1 (Super. Ct. Orange County, 2011, No. 11CF1566). The Court sentenced Respondent to 120 days  
2 jail, placed her on three (3) years probation, and ordered her to pay \$10,000.00 restitution to State  
3 Farm Insurance Company.

4 b. The circumstances underlying the conviction are that on or about October 23, 2009,  
5 admittedly, Respondent knowingly submitted to State Farm Insurance a false statement for  
6 payment of a health care benefit under an insurance policy.

7 c. On or about October 6, 2004, Respondent was convicted of one misdemeanor count  
8 of violating Vehicle Code section 12500(a) [drive without a license] in the criminal proceeding  
9 entitled *The People of the State of California v. Charmaine Gwenesha Austin* (Super. Ct. Los  
10 Angeles County, 2001, No. 1WL16701). The Court placed Respondent on 12 months probation.

11 d. The circumstances underlying the conviction occurred on or about November 1,  
12 2011, where respondent was arrested for driving without a valid driver's license.

13 e. On or about October 11, 2001, after pleading nolo contendere, Respondent was  
14 convicted of one misdemeanor count of violating Vehicle code section 23152(b) [drive with an  
15 equal to or greater than 0.08% blood alcohol content (BAC)] in the criminal proceeding entitled  
16 *The People of the State of California v. Charmaine Gwenesha Austin* (Super. Ct. Los Angeles  
17 County, 2001, No. 1IW02389). The Court placed Respondent on 36 months probation with  
18 certain terms and conditions.

19 f. The circumstances underlying the conviction occurred on or about August 6, 2001,  
20 where respondent was arrested for driving with a BAC of 0.08% or higher.

## 21 **SECOND CAUSE FOR DISCIPLINE**

### 22 **(False Documents)**

23 11. Respondent is subject to disciplinary action under sections 4300 and 4301,  
24 subdivision (g), on the grounds of unprofessional conduct, in that on or about October 23, 2009,  
25 Respondent knowingly made a false document supporting a claim for payment under an insurance  
26 policy. Complainant refers to and by this reference incorporates the allegations set forth above in  
27 paragraph 10, subparagraphs a and b, inclusive, as though set forth fully.

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**THIRD CAUSE FOR DISCIPLINE**

**(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

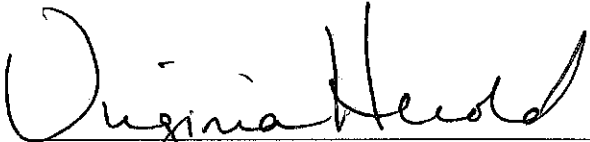
12. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (f), on the grounds of unprofessional conduct, in that Respondent committed acts involving moral turpitude, dishonest, fraud, deceit, or corruption. Complainant refers to and by this reference incorporates the allegations set forth above in paragraphs 10 and 11, inclusive, as though set forth fully.

**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 No. TCH 27758, issued to Charmaine Gwenesha Austin;
2. Ordering Charmaine Gwenesha Austin to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 5/3/14



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

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