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

12 In the Matter of the Accusation Against:

Case No. 4728

13 **GINA RENEE D'AMATO**  
710 E. Claraday St. #14  
Glendora, CA 91740

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

14 Pharmacy Technician Registration  
15 No. TCH 93921

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about September 9, 2009, the Board of Pharmacy (Board) issued Pharmacy  
23 Technician Registration No. TCH 93921 to Gina Renee D'Amato (Respondent). The Pharmacy  
24 Technician Registration was in full force and effect at all times relevant to the charges brought  
25 herein and will expire on April 30, 2015, unless renewed.

26 **JURISDICTION**

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

**STATUTORY PROVISIONS**

4. Section 490 states, in pertinent part:

"(a) 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.

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

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

5. Section 4300 provides in pertinent part, that every license issued by the Boards is subject to discipline, including suspension or revocation.

6. 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."

7. Section 4301 states, in pertinent part:

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

1 . . . .

2 "(j) The violation of any of the statutes of this state, or any other state, or of the United  
3 States regulating controlled substances and dangerous drugs.

4 . . . .

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

22 **REGULATORY PROVISIONS**

23 8. California Code of Regulations, title 16, section 1770 states, in pertinent part:

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

1 licensee or registrant to perform the functions authorized by his license or registration in a manner  
2 consistent with the public health, safety, or welfare."

3 **COST RECOVERY**

4 9. Section 125.3 states, in pertinent part, that the Board may request the administrative  
5 law judge to direct a licentiate found to have committed a violation or violations of the licensing  
6 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the  
7 case.

8 10. **CONTROLLED SUBSTANCE**

9 a. "Cocaine (base)," is a Schedule I controlled substance as designated by Health and  
10 Safety Code Section 11054, subdivision (f)(l) and is categorized as dangerous drug pursuant to  
11 Business and Professions Code Section 4022.

12 b. "Marijuana," is a Schedule I controlled substance as defined in Health and Safety Code  
13 section 11054, subdivision (d)(13).

14 **FIRST CAUSE FOR DISCIPLINE**

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

16 11. Respondent is subject to disciplinary action under Code sections 4301, subdivision (l)  
17 and 490, 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, and  
19 duties of a pharmacy technician, as follows:

20 a. On or about April 9, 2012, Respondent was convicted of one misdemeanor count of  
21 violating Vehicle Code section 12500, subdivision (a) [driving without a license] in the criminal  
22 proceeding entitled *The People of the State of California v. Gina Renee Damato* (Super. Ct. Los  
23 Angeles County, 2011, No. 1JB10703 ). The Court placed Respondent on 12 months probation,  
24 with terms and conditions.

25 b. The circumstances surrounding the conviction are that on or about November 9, 2011,  
26 Respondent was stopped by the Los Angeles County Sheriff's Department. A records check  
27 revealed that Respondent was driving with a suspended license and that she had an outstanding  
28 warrant.

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**SECOND CAUSE FOR DISCIPLINE**

**(Illegal Possession of a Controlled Substance)**

12. Respondent is subject to disciplinary action under Code section 4301, subdivision (j), on the grounds of unprofessional conduct, in that Respondent was found to be in illegal possession of a controlled substance, as follows:

a. On or about December 13, 2007, Los Angeles County Sheriff's officers observed a car parked suspiciously. When they approached the vehicle, they could smell Marijuana. Respondent was asked to exit the vehicle. Upon her exit, the officer discovered rock cocaine in Respondent's possession. They also found a cocaine pipe in Respondent's jacket pocket. In the criminal proceeding entitled *The People of the State of California v. Gina Renee Damato* (Super. Ct. Los Angeles County, 2008, GA072431), Respondent was arrested and charged with one felony count of violating Health and Safety Code section 11350, subdivision (a) [possession of a controlled substance] and one misdemeanor count of violating Health and Safety Code section 11364, subdivision (a) [possession of a smoking device]. On or about January 31, 2012, the court ordered Respondent to attend 2-12 Step meetings per week. On or about April 2, 2012, the counts were dismissed pursuant to Penal Code section 1385.

**PRAYER**

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

- 1. Revoking or suspending Pharmacy Technician Registration No. TCH 93921, issued to Gina Renee D'Amato
- 2. Ordering Gina Renee D'Amato to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and

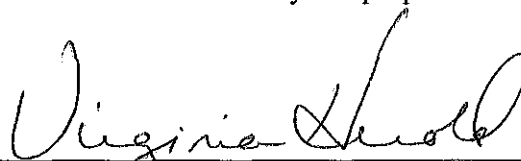
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3. Taking such other and further action as deemed necessary and proper.

DATED:

6/16/14



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

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