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6	Telephone: (213) 897-2660 Facsimile: (213) 897-2804				
7	Attorneys for Complainant				
8	BEFORE THE BOARD OF PHARMACY				
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA				
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11		tter of the Accusation Against:	Case-No. 4740		
12	ROSANNA GUTIERREZA C C U S A T I O N1339 E. La Deney Drive		ACCUSATION		
13	Ontario, CA 91764				
14	Pharmacy Technician Registration No. TCH 100088				
15		Respondent.			
16					
17	Complainant alleges:				
18	PARTIES				
19	1.	Virginia Herold (Complainant) bring	gs this Accusation solely in her official capacity		
20	as the Exe	cutive Officer of the Board of Pharma	cy, Department of Consumer Affairs.		
21	2. On or about August 24, 2010, the Board of Pharmacy issued Pharmacy Technician				
22	Registration No. TCH 100088 to Rosanna Gutierrez (Respondent). The Pharmacy Technician				
23	Registration was in full force and effect at all times relevant to the charges brought herein and				
24	will expire on April 30, 2014, unless renewed.				
25]	JURISI	DICTION		
26	3.	This Accusation is brought before the	e Board under the authority of the following		
27	laws. All section references are to the Business and Professions Code unless otherwise indicated.				
28	4. Section 4300.1 grants the Board jurisdiction to discipline expired licenses.				
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1	<u>STATUTES</u>
2	5. Section 490 in pertinent part authorizes licensing boards to discipline licensees for
3	convictions substantially-related to the licensed profession:
4	"(a) In addition to any other action that a board is permitted to take
5	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
6	was issued.
7	(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
8 9	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.
10	(c) A conviction within the meaning of this section means a plea or
11	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
12	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
13	imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."
14	6. Section 4301 in pertinent part specifically authorizes this Board to discipline
15	licensees for substantially-related crimes:
16	"The board shall take action against any holder of a license who is guilty
17	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:
18	
19	(1) The conviction of a crime substantially related to the qualifications,
20	functions, and duties of a licensee under this chapter. The record of conviction of a
21	violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this
22	state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall
23	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
24	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
25	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
26	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
27	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
28	Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
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1	dismissing the accusation, information, or indictment."		
2	BOARD REGULATIONS		
3	7. California Code of Regulations, title 16, section 1770 provides criteria for		
4	determining when a conviction is substantially related to a Board-licensed profession:		
5	"For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially		
6			
7	related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant		
8	to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare."		
9	COST RECOVERY		
10	8. Section 125.3 states, in pertinent part, that the Board may request the administrative		
11	law judge to direct a licentiate found to have committed a violation or violations of the licensing		
12	act to pay a sum not to exceed the case's reasonable costs of the investigation and enforcement.		
13	CAUSE FOR DISCIPLINE		
14	(Conviction of a Substantially Related Crime)		
15	9. Respondent is subject to disciplinary action under sections 490 and 4301 subdivision		
16	(l) in conjunction with California Code of Regulations, title 16, section 1770 because she was		
17	convicted of misdemeanor carrying of a concealed weapon, a crime substantially related to the		
18	qualifications, functions or duties of a pharmacy technician.		
19	10. On or about January 11, 2013, after pleading nolo contendere, Respondent was		
20	convicted of one misdemeanor count of violating Penal code section 25400, subsection (c)(6)(b)		
21	[carrying a concealed weapon] in the criminal proceeding entitled People v. Rosanna Gutierrez		
22	(Super. Ct. San Bernardino County, 2013, No. MWV1203794.) The Court sentenced her to serve		
23	45 days in San Bernardino County Jail and 36 months' probation.		
24	11. The circumstances surrounding the conviction are that on May 29, 2012, the Ontario		
25	Police Department received an anonymous tip that someone was attempting to sell an assault rifle		
26	out of her car. The responding officer found Respondent in her car, obtained her consent to		
27	search it, and found an Olympic Arms .223 caliber assault rifle and a loaded thirty round		
28	magazine wrapped in a towel in the trunk along with a small amount of marijuana.		
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	Accusation		

1	12. Respondent told the arresting officer she was trying to give away an ex-boyfriend's		
2	gun that she had kept at her house for several months. She later wrote to the Board saying she		
3	had obtained the gun that night when she took it away from someone she was dating who had		
4	been drunk and belligerent at a party.		
5	PRAYER		
6	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,		
7	and that following the hearing, the Board issue a decision:		
8	1. Revoking or suspending Pharmacy Technician Registration No. TCH 100088, issued		
9	to Rosanna Gutierrez;		
10	2. Ordering Rosanna Gutierrez to pay the Board the reasonable costs of the investigation		
11	and enforcement of this case, pursuant to section 125.3; and		
12	3. Taking such other and further action as deemed necessary and proper.		
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14	DATED: 2/15/14 Ungina thed		
15	VIRGINIA HEROLD Executive Officer		
16	Board of Pharmacy Department of Consumer Affairs		
17	State of California Complainant		
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