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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. 4786

12 **GOVITO NEUPTALY GARCIA**  
1146 W. 10<sup>th</sup> Street  
13 San Bernardino, CA 92411

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

14 **Pharmacy Technician Registration No. TCH**  
15 **106664**

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about February 24, 2011, the Board issued Pharmacy Technician Registration No.  
23 TCH 106664 to Govito Neuptaly Garcia (Respondent). The Pharmacy Technician Registration was  
24 in full force and effect at all times relevant to the charges brought herein and will expire on March 31,  
25 2014, 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**

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2       4.     Section 118, subdivision (b), of the Code provides that the suspension, or expiration, or  
3 surrender, or cancellation of a license shall not deprive the Board, or Registrar, or Director of  
4 jurisdiction to proceed with a disciplinary action during the period within which the license may be  
5 renewed, restored, reissued or 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 board  
8 may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the  
9 crime is substantially related to the qualifications, functions, or duties of the business or profession  
10 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 of  
14 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 following  
17 the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment  
18 of conviction has been affirmed on appeal, or when an order granting probation is made suspending  
19 the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4  
20 of the Penal Code. "

21       6.     Section 492 of the Code states:

22       "Notwithstanding any other provision of law, successful completion of any diversion program  
23 under the Penal Code, or successful completion of an alcohol and drug problem assessment program  
24 under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle  
25 Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with  
26 Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary  
27 action against a licensee or from denying a license for professional misconduct, notwithstanding that  
28 evidence of that misconduct may be recorded in a record pertaining to an arrest.

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

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

6 8. Section 4300.1 states:

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

12 9. Section 4301 states, in pertinent part:

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

16 . . . .

17 "(h) The administering to oneself, of any controlled substance, or the use of any  
18 dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious  
19 to oneself, to a person holding a license under this chapter, or to any other person or to the public, or  
20 to the extent that the use impairs the ability of the person to conduct with safety to the public the  
21 practice authorized by the license.

22 . . . .

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

26 "(l) The conviction of a crime substantially related to the qualifications, functions,  
27 and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
28 (commencing with Section 801) of Title 21 of the United States Code regulating controlled

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

14 . . . .

15 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or  
16 abetting the violation of or conspiring to violate any provision or term of this chapter or of the  
17 applicable federal and state laws and regulations governing pharmacy, including regulations  
18 established by the board or by any other state or federal regulatory agency."

19 **REGULATORY PROVISIONS**

20 10. California Code of Regulations, title 16, section 1770, states:

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

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1 **COST RECOVERY**

2 11. Section 125.3 provides, in pertinent part, that the Board may request the administrative  
3 law judge to direct a licentiate found to have committed a violation or violations of the licensing act  
4 to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with  
5 failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case  
6 settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

7 **FIRST CAUSE FOR DISCIPLINE**

8 **(Conviction of Substantially Related Crimes)**

9 12. Respondent has subjected his pharmacy technician registration to discipline under Code  
10 section 490, Code section 4301 (l), and (o), in accordance with California Code of Regulations, Title  
11 16, section 1770, for unprofessional conduct because Respondent was convicted of crimes  
12 substantially related to the qualifications, functions or duties of a pharmacy technician which to a  
13 substantial degree evidence his present and potential unfitness to practice in a manner consistent with  
14 the public health, safety, or welfare. The conviction is as follows:

15 a. On or about December 6, 2012, after pleading guilty, Respondent was convicted of one  
16 misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving while having  
17 0.08% or more, by weight, of alcohol in his blood] in the criminal proceeding entitled *The People of*  
18 *the State of California v. Govito Neuptaly Garcia* (Super. Ct. San Bernardino County, 2012, No.  
19 TSB1202573.) The Court sentenced Respondent to three (3) years summary probation, ordered him  
20 to serve one (1) day in San Bernardino County Jail, finish an alcohol program, and pay fines and fees.

21 b. On or about September 28, 2012, a California Highway Patrol officer stopped  
22 Respondent's car after the officer saw Respondent run a red light. While speaking to Respondent, the  
23 officer noticed Respondent emitted a strong odor of alcohol, had red watery eyes, and slurred speech.  
24 The officer asked Respondent if he had consumed any alcoholic beverages prior to driving.  
25 Respondent stated, "Yes, I had two Dos XX." During the booking procedure, Respondent submitted  
26 to a breath test that resulted in a breath alcohol content level of 0.15% on the first and second reading.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Conviction of Substantially Related Crimes)**

3 13. Respondent has subjected his pharmacy technician registration to discipline under Code  
4 section 490, Code section 4301 (l), and (o), in accordance with California Code of Regulations, Title  
5 16, section 1770, for unprofessional conduct because Respondent was convicted of crimes  
6 substantially related to the qualifications, functions or duties of a pharmacy technician which to a  
7 substantial degree evidence his present and potential unfitness to practice in a manner consistent with  
8 the public health, safety, or welfare. The conviction is as follows:

9 a. On or about March 25, 2013, after pleading guilty, Respondent was convicted of one  
10 misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving while having  
11 0.08% or more, by weight, of alcohol in his blood] in the criminal proceeding entitled *The People of*  
12 *the State of California v. Govito Neuptaly Garcia* (Super. Ct. San Bernardino County, 2013, No.  
13 TSB1300426.) The Court sentenced Respondent to three (3) years summary probation, ordered him  
14 to serve two (2) days in San Bernardino County Jail, finish a nine (9) month alcohol program, and  
15 ordered to him to pay fines and fees.

16 b. The circumstances surrounding the conviction are that on or about November 30, 2012,  
17 the Colton Police Department responded to a call of two men involved in an altercation with security  
18 guards outside of a nightclub. Dispatch notified the officers that the two men had gotten into a gold  
19 Nissan and sped away from the night club. While en route to the call, an officer spotted a gold Nissan,  
20 which Respondent was driving, swerving left and right. Respondent, then, made a U-turn in front of  
21 two other cars, causing the two cars to brake suddenly. Respondent began accelerating, reaching a  
22 speed of 65 miles per hour on city streets. The officer activated his lights and sirens. Respondent  
23 accelerated and attempted to flee from the police. Respondent finally pulled his car over. The officer  
24 removed Respondent and his front seat passenger from the car. The officer observed that Respondent  
25 and his passenger were not wearing shirts. In addition, Respondent and his passenger were injured,  
26 and had their faces, arms, and hands covered with blood. Respondent had a strong odor of alcohol on  
27 his breath and person. Respondent was unable to walk on his own power. Respondent admitted to the  
28 officer that earlier in the night he had been kicked out of the nightclub and was involved in an

1 altercation with the security guards at the night club. He stated he had four (4) Dos Equis prior to  
2 driving his car. During the booking procedure, Respondent submitted to a blood test that resulted in a  
3 blood alcohol content level of 0.22%.

4 **THIRD CAUSE FOR DISCIPLINE**

5 **(Convictions Involving Alcohol)**

6 14. Respondent is subject to disciplinary action under section 4300 and 4301, subdivision (k),  
7 on the grounds of unprofessional conduct, in that Respondent was convicted of crimes involving the  
8 consumption of alcohol. Complainant refers to and by this reference incorporates the allegations set  
9 forth above in paragraphs 12 and 13, inclusive, as though set forth fully.

10 **FOURTH CAUSE FOR DISCIPLINE**

11 **(Dangerous Use of Alcohol)**

12 15. Respondent is subject to disciplinary action under section 4300 and 4301, subdivision (h),  
13 on the grounds of unprofessional conduct, in that on or about September 28, 2012, and November 30,  
14 2012, Respondent used alcohol to an extent or in a manner dangerous or injurious to himself or others  
15 when he operated a vehicle while having 0.08% and more of alcohol in his blood. Complainant refers  
16 to and by this reference incorporates the allegations set forth above in paragraphs 12 and 13,  
17 inclusive, as though set forth fully.

18 **DISCIPLINARY CONSIDERATIONS**

19 16. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant,  
20 as follows:

21 a. On or about August 26, 2009, Respondent was convicted of one misdemeanor count of  
22 violating Vehicle Code section 14601.2, subdivision (a) [driving when privilege suspended or  
23 revoked for driving under the influence of alcoholic beverage or drug] in the criminal proceeding  
24 entitled *The People of the State of California v. Govito Garcia* (Super. Ct. Los Angeles County, 2009,  
25 No. 911097G.) The Court sentenced Respondent to three (3) years summary probation, ordered him  
26 to serve thirty-one (31) days in San Bernardino County Jail , and pay fines and fees.

27 b. The circumstances surrounding the conviction are that on or about May 7, 2009,  
28 Respondent drove a vehicle while his driving privileges were suspended or revoked.


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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 issue a decision:

1. Revoking or suspending Pharmacy Technician Registration No. TCH 106664, issued to Govito Neuptaly Garcia
2. Ordering Govito Neuptaly Garcia 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: 2/18/14

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

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