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

11  
12 In the Matter of the Accusation Against:

Case No. 4952

13 **RICHARD E. GUILLEN**  
14 **3598 Mustard Seed Lane**  
**El Centro, CA 92243**

**ACCUSATION**

15 **Pharmacy Technician Registration**  
16 **No. TCH 58328**

17 Respondent.

18  
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about September 1, 2004, the Board of Pharmacy issued Pharmacy Technician  
24 Registration Number TCH 58328 to Richard E. Guillen (Respondent). A temporary Pharmacy  
25 Technician Registration was issued for 150 days pursuant to section 17520 of the Family Code.  
26 The Pharmacy Technician Registration was in full force and effect at all times relevant to the  
27 charges brought herein and will expire on February 28, 2014, unless renewed.

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## JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 4300, subdivision (a) of the Code states "Every license issued may be suspended or revoked."

5. Section 4300.1 of the Code 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.

6. Section 490.5 of the Code states: "A board may suspend a license pursuant to Section 17520 of the Family Code if a licensee is not in compliance with a child support order or judgment."

## STATUTORY PROVISIONS

7. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

- (a) Considering the denial of a license by the board under Section 480; or
- (b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

8. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

9. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a

1 license, upon the ground that the applicant or the licensee has been convicted of a crime  
2 substantially related to the qualifications, functions, and duties of the licensee in  
3 question, the record of conviction of the crime shall be conclusive evidence of the fact  
4 that the conviction occurred, but only of that fact, and the board may inquire into the  
5 circumstances surrounding the commission of the crime in order to fix the degree of  
6 discipline or to determine if the conviction is substantially related to the qualifications,  
7 functions, and duties of the licensee in question.

8 As used in this section, "license" includes "certificate," "permit," "authority," and  
9 "registration."

10 10. Section 4301 of the Code states:

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

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

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

23 (l) The conviction of a crime substantially related to the qualifications, functions,  
24 and duties of a licensee under this chapter. The record of conviction of a violation of  
25 Chapter 13 (commencing with Section 801) of Title 21 of the United States Code  
26 regulating controlled substances or of a violation of the statutes of this state regulating  
27 controlled substances or dangerous drugs shall be conclusive evidence of unprofessional  
28 conduct. In all other cases, the record of conviction shall 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 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 chapter. A plea or verdict of guilty or a  
conviction following a plea of nolo 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 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 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 dismissing the accusation, information, or indictment.

1 a. On or about June 28, 2013, in a criminal proceeding entitled *People of the State*  
2 *of California v. Richard Edward Guillen*, in Imperial County Superior Court, case number  
3 ECM35087, Respondent was convicted on his plea of no contest to violating Vehicle Code  
4 section 23103, subdivision (a), alcohol-related reckless driving, a count substituted in place of the  
5 original counts of violating Vehicle Code section 23152, subdivision (a), driving under the  
6 influence of alcohol/drugs, and Vehicle Code section 23152, subdivision (b), driving with a blood  
7 alcohol concentration (BAC) of .08 or more, pursuant to Vehicle Code section 23103.5.

8 b. As a result of the conviction, on or about June 28, 2013, Respondent was  
9 granted three years summary probation, and ordered to pay fines and fees, and comply with DUI  
10 probation terms.

11 c. The facts that led to the conviction are that at approximately 1:38 in the  
12 morning, on or about September 1, 2011, officers with the California Highway Patrol (CHP) were  
13 on patrol when they observed the El Centro Police Department on a traffic stop with Respondent  
14 on an Interstate 5 off-ramp. The El Centro police officer requested that the CHP officers conduct  
15 a DUI investigation. Upon contact with Respondent, the CHP officers observed that there was a  
16 strong odor of an alcoholic beverage on Respondent's breath, his eyes were red and watery, his  
17 speech was thick and slurred, he was unsteady on his feet, and his demeanor was volatile.  
18 Respondent was administered a series of field sobriety tests which he was unable to perform as  
19 explained and demonstrated by the officers. Respondent was arrested for driving under the  
20 influence. During booking he provided two breath samples which were analyzed with a BAC of  
21 .23 and .24 percent, respectively.

22 **SECOND CAUSE FOR DISCIPLINE**

23 **(June 28, 2013 Criminal Conviction for Alcohol-Related Reckless Driving on October 11, 2012)**

24 15. Respondent has subjected his registration to discipline under sections 490 and 4301,  
25 subdivision (l) of the Code in that he was convicted of a crime that is substantially related to the  
26 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

27 a. On or about June 28, 2013, in a criminal proceeding entitled *People of the State*  
28 *of California v. Richard Edward Guillen*, in Imperial County Superior Court, case number

1 ECM37626, Respondent was convicted on his plea of no contest to violating Vehicle Code  
2 section 23103, subdivision (a), alcohol-related reckless driving, a count substituted in place of the  
3 original counts of violating Vehicle Code section 23152, subdivision (a), driving under the  
4 influence of alcohol/drugs, and Vehicle Code section 23152, subdivision (b), driving with a blood  
5 alcohol concentration (BAC) of .08 or more, pursuant to Vehicle Code section 23103.5.

6 b. As a result of the conviction, on or about June 28, 2013, Respondent was  
7 granted three years summary probation, and ordered to pay fines and fees, and comply with DUI  
8 probation terms.

9 c. The facts that led to the conviction are that on or about October 11, 2012, at  
10 approximately 2:15 in the morning, CHP officers observed a vehicle driven by Respondent

11 drifting in and out of his lane of travel. After conducting a traffic stop, the CHP officers made  
12 contact with Respondent and observed that there was a strong odor of an alcoholic beverage on  
13 Respondent's breath, his eyes were red and watery, and his speech was slurred. Respondent was  
14 administered a series of field sobriety tests which he was unable to perform as explained and  
15 demonstrated by the officers. Respondent was arrested for driving under the influence.  
16 Respondent provided two breath samples which were analyzed by the PEBT device with a BAC  
17 of .17 and .16 percent, respectively.

### 18 THIRD CAUSE FOR DISCIPLINE

#### 19 **(June 28, 2013 Criminal Conviction for Corporal Injury to a Spouse on June 16, 2013)**

20 16. Respondent has subjected his registration to discipline under sections 490 and 4301,  
21 subdivision (l) of the Code in that he was convicted of a crime that is substantially related to the  
22 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

23 a. On or about June 28, 2013, in a criminal proceeding entitled *People of the State*  
24 *of California v. Richard Edward Guillen*, in Imperial County Superior Court, case number  
25 JCF31186, Respondent was convicted on his plea of no contest to violating Penal Code section  
26 273.5, subdivision (a), corporal injury to a spouse/cohabitant/child's parent, a felony. Pursuant to  
27 a plea agreement, the court dismissed an additional count of violating Penal Code section 273.6,  
28 subdivision (a), disobeying a domestic relations court order, a felony.

1 b. As a result of the conviction, on or about July 26, 2013, Respondent was  
2 granted three years formal probation, and sentenced to serve 365 days in Turning Point (a  
3 residential treatment program). He was given credit for 12 days. Respondent was ordered to pay  
4 fees, fines, and restitution, complete a 52-week certified Anger Management counseling/  
5 educational program, attend AA meetings at least twice weekly, abstain from the use or  
6 possession of alcohol and all illegal drugs, submit to a Fourth Amendment waiver, and comply  
7 with further terms of felony probation.

8 c. The facts that led to the conviction are that on or about the afternoon of June  
9 16, 2013, the El Centro Police Department was dispatched to investigate a report of a battery.  
10 While enroute to the location, an officer observed a male fitting the description of Respondent  
11 walking down the road. The officer made contact with Respondent; during a pat down search he  
12 observed that Respondent had an odor of an alcoholic beverage emitting from his person.  
13 Respondent admitted he had been drinking. Respondent was detained while the officers met with  
14 the victim. The victim stated that Respondent had come to her residence and they got into an  
15 argument about his visitation with their two minor children. After walking outside, Respondent  
16 grabbed the victim by the neck and pressed her against a garage door while choking her and  
17 hitting her on the right side of her head. When she attempted to flee, Respondent grabbed the  
18 victim by her hair and threw her to the ground, where she fell face first. After asking family  
19 members to call the police, Respondent left the scene. The victim was bleeding from a one-inch  
20 cut on her chin, and she had blood on her shirt and arms. There was an active protective order  
21 against Respondent. Respondent was arrested.

22 **FOURTH CAUSE FOR DISCIPLINE**

23 **(Dangerous Use of Alcohol)**

24 17. Respondent has subjected his registration to disciplinary action under section 4301,  
25 subdivision (h) of the Code for unprofessional conduct in that he used alcohol in a dangerous  
26 manner. On or about September 1, 2011, Respondent operated a motor vehicle with a BAC of  
27 .23/.24 percent, and on October 11, 2012, he operated a motor vehicle with a BAC of .16/.17  
28 percent, as described in paragraphs 14 and 15, above.

1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Multiple Alcohol-Related Convictions)**

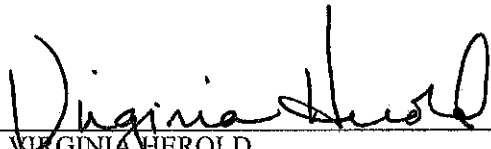
3 18. Respondent has subjected his registration to disciplinary action under sections 4301,  
4 subdivision (k) of the Code for unprofessional conduct in that on or about June 28, 2013,  
5 Respondent was convicted of two separate violations of Vehicle Code section 23103, subdivision  
6 (a), alcohol-related reckless driving, as described in paragraphs 14 and 15, above.

7 **PRAYER**

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

- 10 1. Revoking or suspending Pharmacy Technician Registration Number TCH 58328,  
11 issued to Richard E. Guillen;
- 12 2. Ordering Richard E. Guillen to pay the Board of Pharmacy the reasonable costs of the  
13 investigation and enforcement of this case, pursuant to Business and Professions Code section  
14 125.3;
- 15 3. Taking such other and further action as deemed necessary and proper.

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17  
18 DATED: 2/15/14

  
19 VIRGINIA HEROLD  
20 Executive Officer  
21 Board of Pharmacy  
22 Department of Consumer Affairs  
23 State of California  
24 Complainant

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