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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. 4976

12 **VANESSA MARIE OCHOA,**
13 **aka VANESSA M. OCHOA,**
14 **aka VENESSA MARIE OCHOA,**
15 **aka VENESSA M. OCHOA**
7515 Sheldon Rd., #22103
Elk Grove, CA 95758

ACCUSATION

16 **Pharmacy Technician Registration No. TCH 120043**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

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

24 2. On or about April 16, 2012, the Board issued Pharmacy Technician Registration
25 Number TCH 120043 to Vanessa Marie Ochoa, also known as Vanessa M. Ochoa, Venessa
26 Marie Ochoa, and Venessa M. Ochoa ("Respondent"). The registration was in full force and
27 effect at all times mentioned herein and will expire on September 30, 2015, unless renewed.

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1 **JURISDICTION**

2 3. This Accusation is brought before the Board under the authority of the following
3 laws. All section references are to the Business and Professions Code ("Code") unless otherwise
4 indicated.

5 4. Section 4300, subdivision (a), of the Code states that every license issued by the
6 Board may be suspended or revoked.

7 5. Section 4300.1 of the Code states:

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

14 **STATUTORY PROVISIONS**

15 6. Section 4301 of the Code states, in pertinent part:

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

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

25 (i) The conviction of a crime substantially related to the qualifications,
26 functions, and duties of a licensee under this chapter. The record of conviction of a
27 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
28 States Code regulating controlled substances or of a violation of the statutes of this
state regulating controlled substances or dangerous drugs shall be conclusive
evidence of unprofessional 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.

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REGULATORY PROVISION

7. California Code of Regulations (“CCR”), title 16, section 1770, states:

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

COST RECOVERY

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

FIRST CAUSE FOR DISCIPLINE

(Conviction of Crime)

9. Respondent’s license is subject to disciplinary action under Code section 4301, subdivision (l), on the grounds of unprofessional conduct, in that on or about July 16, 2013, Respondent was convicted on her plea of nolo contendere in the case titled *People v. Venessa Ochoa*, San Joaquin County Superior Court Case No. SI61506A, to violating Vehicle Code section 23152, subdivision b [drove a vehicle while having a blood alcohol level of .08% or more], a misdemeanor. Respondent’s blood alcohol concentration measured .23 percent. The crime is substantially related to the qualifications, functions, and duties of a registered pharmacy technician.

a. The underlying circumstances are as follows: On or about June 6, 2013, a police officer responded to a traffic collision involving Respondent due to running a Stop sign at an intersection of Armstrong Road and Micke Grove Road, in an unincorporated area of San Joaquin County. Respondent admitted to the officer that she had consumed three 12 ounce beers prior to driving her vehicle on public roads. She performed poorly on the Field Sobriety Tests. Respondent’s preliminary alcohol screenings resulted in blood alcohol concentrations of .25 percent and .27 percent.

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Self-Administered Alcohol – Dangerous or Injurious to Self or Others)**

3 10. Respondent’s license is subject to disciplinary action under Code section 4301,
4 subdivision (h), on the grounds of unprofessional conduct, in that on or about on or about June 6,
5 2013, Respondent self-administered alcoholic beverages to the extent or in a manner as to be
6 dangerous or injurious to herself, to others, or to the extent that the use impaired her ability to
7 conduct with safety to the public the practice of registered pharmacy technician. The underlying
8 circumstances are set forth in paragraph 9, and its subpart, above.

9 **DISCIPLINARY CONSIDERATIONS**

10 11. In order to determine the level of discipline to be imposed, Complainant requests the
11 following to be considered:

12 a. On or about July 22, 1998, in the case titled *People v. Vanessa Ochoa*, Santa
13 Clara County Superior Court Case No. C0994869, Respondent was convicted of violating
14 Vehicle Code section 23152, subdivision (b) [driving under the influence of alcohol with a blood
15 alcohol level of .08 percent or above], a misdemeanor.

16 b. On or about May 10, 1999, in the case titled *People v. Vanessa Ochoa*, Santa
17 Clara County Superior Court Case No. C9924693, Respondent was convicted of violating
18 Vehicle Code section 12500, subdivision (a) [driving without a license], a misdemeanor.

19 c. On or about August 15, 2005, in the case titled *People v. Vanessa Ochoa*,
20 Amador County Superior Court Case No. 05CR8442, Respondent was convicted of violating
21 Vehicle Code section 23103, subdivision (a) [reckless driving on the highway], a misdemeanor.

22 **PRAYER**

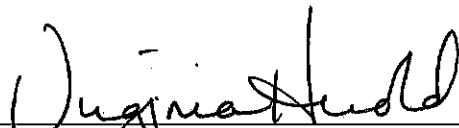
23 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein
24 alleged, and that following the hearing, the Board of Pharmacy issue a decision:

25 1. Revoking or suspending Pharmacy Technician Registration Number TCH 120043
26 issued to Vanessa Marie Ochoa, also known as Vanessa M. Ochoa, Venessa Marie Ochoa, and
27 Venessa M. Ochoa;

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2. Ordering Vanessa Marie Ochoa, also known as Vanessa M. Ochoa, Venessa Marie Ochoa, and Venessa M. Ochoa, to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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

DATED: 3/15/14 
VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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