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| 7 | Attorneys for Complainant | THE . | |
| 8 | BEFORE THE BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA | | |
| 9. | | | |
| 10 | | G N 4050 | |
| 11 | In the Matter of the Accusation Against: | Case No. 4978 | |
| 12 | LILLY JAZMINE CUXIM 1215 Paddington Way | | |
| 13 | San Jose, CA 95127 | ACCUSATION | |
| 14 | Pharmacy Technician License No. TCH 107490 | | |
| 15 | Respondent. | | |
| 16 | Complainant alleges: | | |
| 17 | <u>PARTIE</u> | <u>ES</u> | |
| 18 | 1. Virginia Herold (Complainant) brings th | is Accusation solely in her official capacity | |
| 19 | as the Executive Officer of the Board of Pharmacy, 1 | Department of Consumer Affairs. | |
| 20 | 2. On or about October 13, 2010, the Board | d of Pharmacy issued Pharmacy Technician | |
| 21 | License No. TCH 107490 to Lilly Jazmine Cuxim (Respondent). The License was in force and | | |
| 22 | effect at all times relevant to the charges herein and | will expire on May 31, 2014, unless renewed | |
| 23 | | | |
| 24 | JURISDIC | <u> TION</u> | |
| 25 | 3. This Accusation is brought before the Bo | oard of Pharmacy (Board), Department of | |
| 26 | Consumer Affairs, under the authority of the following laws. All section references are to the | | |
| 27 | Business and Professions Code (Code) unless otherwise indicated. | | |
| 28 | /// | | |

- 4. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].
- 5. Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked.
- 6. Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or suspension of a Board-issued license, 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.

STATUTORY AND REGULATORY PROVISIONS

- 7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action against any holder of a license who is guilty of "unprofessional conduct," defined to include, but not be limited to, any of the following:
- (h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.
- (l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter.
- 8. Section 490 of the Code provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of the license.
 - 9. California Code of Regulations, 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 her license or registration in a manner consistent with the public health, safety, or welfare."

COST RECOVERY

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

FIRST CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime(s))

- 11. Respondent is subject to discipline under section 4301(l) and/or section 490 of the Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of substantially related crime(s), in that on or about September 17, 2013, in the criminal case *People v. Lilly Jazmine Cuxim*, Case No. C1358446 in Santa Clara County Superior Court, Respondent was convicted of violating Vehicle Code section 23152(a) (Driving Under Influence of Alcohol or Drugs), a misdemeanor, with an admitted special allegation that, at the time of her April 21, 2013 arrest, Respondent willfully refused a peace officer's request to submit to, and willfully failed to complete, the chemical test(s) pursuant to Vehicle Code sections 23612 and 23157, within the meaning of Vehicle Code section 23577, subdivision (a). The conviction was entered as follows:
- a. On or about April 21, 2013, officer(s) for the San Jose (CA) Police Department were nearly struck in a marked patrol car by Respondent's vehicle as she failed to stop at a red light. The officer(s) observed Respondent's vehicle make an erratic left turn, nearly driving onto the curb and sidewalk and causing nearby pedestrians to scatter. The officer(s) conducted a traffic stop. Respondent exhibited signs of intoxication, had the odor of alcohol on her breath, and performed poorly on Field Sobriety Exercises (FSEs). A preliminary alcohol screening (PAS) device measured a blood alcohol content of 0.235%. Respondent refused a chemical blood test.

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| b. On or about June 4, 2013, in Case No. C1358446 in Santa Clara County |
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| Superior Court, Respondent was charged with violating Vehicle Code section 23152(a) (Driving |
| Under Influence of Alcohol or Drugs), a misdemeanor, with a special allegation that, at the time |
| of her April 21, 2013 arrest, Respondent willfully refused a peace officer's request to submit to, |
| and willfully failed to complete, the chemical test(s) pursuant to Vehicle Code sections 23612 and |
| 23157, within the meaning of Vehicle Code section 23577, subdivision (a). |

c. On or about September 17, 2013, Respondent pleaded nolo contendere to the single count, and admitted the special allegation. A factual basis was found, and Respondent was convicted. Imposition of sentence was suspended and she was placed on court probation for a period of three (3) years, on terms and conditions including 22 days in county jail (1 day CTS), completion of a 9-month First Offender Program (enrollment within 30 days), and fines and fees.

SECOND CAUSE FOR DISCIPLINE

(Dangerous or Injurious Use of Alcohol)

12. Respondent is subject to discipline under section 4301(h) of the Code, in that as described in paragraph 11, Respondent used alcohol in a dangerous or injurious manner.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

13. Respondent is subject to discipline under section 4301 of the Code in that, as described in paragraphs 11 and 12, Respondent engaged in unprofessional conduct.

PRAYER

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

1. Revoking or suspending Pharmacy Technician License No. TCH 107490, issued to Lilly Jazmine Cuxim (Respondent);

- 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
 - 3. Taking such other and further action as is deemed necessary and proper.

DATED: 2414

VIRGINIA/HEROLD
Executive Officer
Board of Pharmacy

Department of Consumer Affairs

State of California
Complainant

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