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

11 In the Matter of the Accusation Against:

Case No. 4999

12 **MATTHEW JAMES VEINTIMILLA**
13 **2451 W. 248th Street**
Lomita, CA 90717

A C C U S A T I O N

14 **Intern Pharmacist License No. 21434**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about October 6, 2007, the Board of Pharmacy issued Intern Pharmacist
22 License Number 21434 to Matthew James Veintimilla (Respondent). The Intern Pharmacist
23 License was cancelled on June 27, 2013, and has not been renewed.

24 **JURISDICTION**

25 3. This Accusation is brought before the Board 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 unless otherwise indicated.

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1 4. Section 490 of the Code states:

2 "(a) In addition to any other action that a board is permitted to take against a licensee, a
3 board may suspend or revoke a license on the ground that the licensee has been convicted of a
4 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
5 or profession for which the license was issued.

6 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
7 discipline a licensee for conviction of a crime that is independent of the authority granted under
8 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
9 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 verdict of guilty or a
11 conviction following a plea of nolo contendere. Any action that a board is permitted to take
12 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
13 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
14 made suspending the imposition of sentence, irrespective of a subsequent order under the
15 provisions of Section 1203.4 of the Penal Code.

16 “(d) The Legislature hereby finds and declares that the application of this section has been
17 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th
18 554, and that the holding in that case has placed a significant number of statutes and regulations
19 in question, resulting in potential harm to the consumers of California from licensees who have
20 been convicted of crimes. Therefore, the Legislature finds and declares that this section
21 establishes an independent basis for a board to impose discipline upon a licensee, and that the
22 amendments to this section made by Chapter 33 of the Statutes of 2008 do not constitute a change
23 to, but rather are declaratory of, existing law.”

24 5. Section 118, subdivision (b), of the Code provides that the
25 suspension/expiration/surrender/cancellation of a license shall not deprive the
26 Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period
27 within which the license may be renewed, restored, reissued or reinstated.

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

13

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

18 “(p) Actions or conduct that would have warranted denial of a license.”

19 **REGULATORY PROVISIONS**

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

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

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1 **COST RECOVERY**

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

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Substantially Related Conviction)**

8 11. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision
9 (l) of the Code, in conjunction with California Code of Regulation, title 16, section 1770, in that
10 Respondent was convicted of crimes substantially related to the qualifications, functions or duties
11 of an intern pharmacist.

12 12. On or about August 16, 2013, after pleading nolo contendere, Respondent was
13 convicted of one (1) misdemeanor count of violating Vehicle Code section 23152, subdivision (a)
14 [driving under the influence of alcohol] and one (1) misdemeanor count of violating Vehicle Code
15 section 23152, subdivision (b) [driving with a blood-alcohol content level greater than or equal to
16 .08%] in the criminal proceeding entitled *The People of the State of California v. Matthew James*
17 *Veintimilla* (Super. Ct. Kern County, 2013, No. BM817669A). Respondent was sentenced to 150
18 days in jail, 52 weeks of alcohol counseling, ordered to pay a fine and placed on summary
19 probation for a period of 3 years with terms and conditions. The circumstances are as follows:

20 13. On or about February 2, 2013, a California Highway Patrol Officer responded to a call
21 of a possible DUI driver that was driving on the wrong side of the road. The officer observed
22 Respondent's vehicle stop on a dirt shoulder of the road. As the officer made contact with
23 Respondent, he detected the odor of an alcoholic beverage emitting from within the vehicle.
24 Also, the officer observed that Respondent's eyes were red and smell the odor of an alcoholic
25 beverage emitting from Respondent breath and person. In addition, Respondent was unable to
26 satisfactorily perform the Field Sobriety Tests.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Substantially Related Conviction)**

3 14. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision
4 (I) of the Code, in conjunction with California Code of Regulation, title 16, section 1770, in that
5 Respondent was convicted of crimes substantially related to the qualifications, functions or duties
6 of an intern pharmacist.

7 15. On or about August 16, 2013, after pleading nolo contendere, Respondent was
8 convicted of one (1) misdemeanor count of violating Vehicle Code section 23152, subdivision (a)
9 [driving under the influence of alcohol] and one (1) misdemeanor count of violating Vehicle Code
10 section 23152, subdivision (b) [driving with a blood-alcohol content level greater than or equal to
11 .08%] in the criminal proceeding entitled *The People of the State of California v. Matthew James*
12 *Veintimilla* (Super. Ct. Kern County, 2013, No. BM819026A). Respondent was sentenced to 150
13 days in jail, 52 weeks of alcohol counseling, ordered to pay a fine and placed on summary
14 probation for a period of 3 years with terms and conditions. The circumstances are as follows:

15 16. On or about February 13, 2013, a California Highway Patrol Officer responded to a
16 call of a traffic collision with property damage. The officer contacted Respondent and
17 immediately observed objective signs of intoxication. Respondent admitted that he was driving
18 during the collision. The officer noticed that Respondent's speech was slow and slurred.
19 Respondent admitted to the officer that he had consumed four (4), twelve ounce beers. In
20 addition, Respondent was unable to satisfactorily perform the Field Sobriety Tests. Respondent
21 submitted to breath test which yielded results of 0.151% and 0.154% respectively.

22 **THIRD CAUSE FOR DISCIPLINE**

23 **(Substantially Related Conviction)**

24 17. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision
25 (I) of the Code, in conjunction with California Code of Regulation, title 16, section 1770, in that
26 Respondent was convicted of crimes substantially related to the qualifications, functions or duties
27 of an intern pharmacist.

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1 18. On or about August 16, 2013, after pleading nolo contendere, Respondent was
2 convicted of one (1) misdemeanor count of violating Vehicle Code section 23152, subdivision (a)
3 [driving under the influence of alcohol] and one (1) misdemeanor count of violating Vehicle Code
4 section 23152, subdivision (b) [driving with a blood-alcohol content level greater than or equal to
5 .08%] in the criminal proceeding entitled *The People of the State of California v. Matthew James*
6 *Veintimilla* (Super. Ct. Kern County, 2013, No. BM819413A). Respondent was sentenced to 150
7 days in jail, 52 weeks of alcohol counseling, ordered to pay a fine and placed on summary
8 probation for a period of 3 years with terms and conditions. The circumstances are as follows:

9 19. On or about March 10, 2013, a California Highway Patrol Officer observed
10 Respondent's vehicle travel with a left front spare tire that was flat and was driving on the rim.
11 The officer conducted an enforcement stop of Respondent's vehicle. The officer contacted
12 Respondent and requested his driver's license, proof of vehicle insurance and vehicle registration.
13 Respondent failed to produce any of the items requested. The officer noticed objective signs of
14 alcohol intoxication and asked Respondent if he had consumed alcoholic beverage prior to
15 driving. Respondent admitted to the officer that he had consumed three (3) Firestone IPAs prior
16 to driving. Respondent was unable to satisfactorily perform the Field Sobriety Tests. Respondent
17 submitted to breath test which yielded results of 0.15% and 0.14% respectively. Respondent
18 submitted to a blood test that resulted in a blood-alcohol content level of 0.15%.

19 **FOURTH CAUSE FOR DISCIPLINE**

20 **(Substantially Related Conviction)**

21 20. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision
22 (l) of the Code, in conjunction with California Code of Regulation, title 16, section 1770, in that
23 Respondent was convicted of crimes substantially related to the qualifications, functions or duties
24 of an intern pharmacist.

25 21. On or about August 16, 2013, after pleading nolo contendere, Respondent was
26 convicted of one (1) misdemeanor count of violating Vehicle Code section 23152, subdivision (a)
27 [driving under the influence of alcohol] and one (1) misdemeanor count of violating Vehicle Code
28 section 23152, subdivision (b) [driving with a blood-alcohol content level greater than or equal to

1 .08%], one (1) misdemeanor count of violating Vehicle Code section 20002, subdivision (a) [hit
2 and run resulting in property damage], one (1) misdemeanor count of violating Penal Code
3 section 594, subdivision (b)(1) [vandalism \$400 or more], one (1) misdemeanor count of violating
4 Penal Code section 148, subdivision (a)(1) [obstruct/resist/etc public/peace officer/emergency
5 med te] and one (1) misdemeanor count of violating Penal Code section 241, subdivision (c)
6 [assault on peace officer/firefighter] in the criminal proceeding entitled *The People of the State of*
7 *California v. Matthew James Veintimilla* (Super. Ct. Kern County, 2013, No. BM819857A).
8 Respondent was sentenced to 730 days in jail, ordered to pay a fine and placed on summary
9 probation for a period of 3 years with terms and conditions. The circumstances are as follows:

10 22. On or about March 25, 2013, the Bakersfield Police Department received a report of a
11 hit and run. At the same time a called was received and reported an unknown subject was forcing
12 entry into their residence. Officers arrived at the residence and located Respondent inside the
13 residence and had to use force to take him into custody. The officer observed Respondent's 1995
14 green Geo Prizm, which had moderate front end damage. The officer located silver paint transfer
15 on the front passenger side bumper and fender and had small pieces of red brick on the front
16 bumper and hood area. The officer inspected Respondent's vehicle and observed the keys were
17 still in the ignition, in the position and there was vomit on the driver's seat and driver's side door.
18 The officer inspected victim's 2004 silver Chrysler Pacifica and located minor damage to the rear
19 driver's side bumper and quarter panel of the vehicle. There was green paint transfer on the rear
20 bumper and quarter panel of victim's vehicle. The officer inspected the victim's brick mailbox
21 and observed that it had been knocked out of the ground and partially destroyed. The color of the
22 brick was identical to the red brick fragments located on Respondent's vehicle.

23 23. The officer contacted Respondent and noticed he had red bloodshot watery eyes,
24 slurred speech and the odor of alcoholic beverages on his breath. Respondent admitted to the
25 officer that he had consumed "a few beers" prior to driving. Respondent was unable to
26 satisfactorily perform the Field Sobriety Tests. Respondent submitted to breath test which yielded
27 a blood alcohol content of 0.13%.

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1 **SEVENTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct-Violation of Licensing Chapter)**

3 27. Respondent is subject to disciplinary action under section 4301, subdivision (o) of the
4 Code, in that Respondent committed acts of unprofessional conduct and / or violated provisions
5 of the licensing chapter. Complainant refers to, and by this reference incorporates, the allegations
6 set forth in paragraphs 11 through 26, as though set forth fully.

7 **EIGHTH CAUSE FOR DISCIPLINE**

8 **(Unprofessional Conduct-Committed Acts that would Warrant Denial of License)**

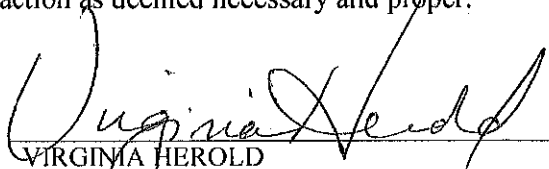
9 27. Respondent is subject to disciplinary action under section 4301, subdivision (p) of the
10 Code, in that Respondent's actions or conduct would have warranted denial of a license.
11 Complainant refers to, and by this reference incorporates, the allegations set forth in paragraphs
12 11 through 26 , as though set forth fully.

13 **PRAYER**

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

- 16 1. Revoking or suspending Intern Pharmacist License Number 21434, issued to Matthew
- 17 James Veintimilla;
- 18 2. Ordering Matthew James Veintimilla to pay the Board of Pharmacy the reasonable
- 19 costs of the investigation and enforcement of this case, pursuant to Business and Professions Code
- 20 section 125.3; and
- 21 3. Taking such other and further action as deemed necessary and proper.

22
23 DATED: 7/14/14

24 
25 VIRGINIA HEROLD
26 Executive Officer
27 Board of Pharmacy
28 Department of Consumer Affairs
State of California
Complainant

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