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

12 In the Matter of the Accusation Against:

Case No. 5203

13 **JOHN DAVID GARCIA**
4538 East 52nd Place
14 Maywood, CA 90870

A C C U S A T I O N

15 Pharmacy Technician Registration
No. TCH 113645

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
21 as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.
22 2. On or about August 3, 2011, the Board issued Pharmacy Technician Registration No.
23 TCH 113645 to John David Garcia (Respondent). The Pharmacy Technician Registration was in
24 full force and effect at all times relevant to the charges brought herein and will expire on
25 September 30, 2014, unless renewed.

26 **JURISDICTION**

- 27 3. This Accusation is brought before the Board under the authority of the following
28 laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

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2 4. Section 490 states, in pertinent part:

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

7 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
8 discipline a licensee for conviction of a crime that is independent of the authority granted under
9 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
10 of the business or profession for which the licensee's license was issued.

11 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
12 conviction following a plea of nolo contendere. Any action that a board is permitted to take
13 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
14 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
15 made suspending the imposition of sentence, irrespective of a subsequent order under the
16 provisions of Section 1203.4 of the Penal Code."

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

19 6. Section 4300.1 states:

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

25 7. Section 4301 states, in pertinent part:

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

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"(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. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United 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.

....

"(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable

1 federal and state laws and regulations governing pharmacy, including regulations established by
2 the board or by any other state or federal regulatory agency."

3 **REGULATORY PROVISIONS**

4 8. California Code of Regulations, title 16, section 1770, states:

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

11 **COST RECOVERY**

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

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(Conviction of a Substantially Related Crime)**

20 14. Respondent is subject to disciplinary action under sections 490, 4300, and 4301,
21 subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, on the
22 grounds of unprofessional conduct, in that Respondent was convicted of a crime substantially
23 related to the qualifications, functions, and duties of a pharmacy technician, as follows:

24 a. On or about February 26, 2014, after pleading nolo contendere, Respondent was
25 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b)
26 [driving while having 0.08% or more, by weight, of alcohol in his blood] in the criminal
27 proceeding entitled *The People of the State of California v. John David Garcia* (Super. Ct. L.A.
28 County, 2014, No. 3BF06190.) Respondent admitted the charged enhancement that he had a

1 0.20% or more, by weight, of alcohol in his blood within the meaning of Vehicle Code section
2 23556. The Court sentenced Respondent to serve one day in Los Angeles County Jail, ordered
3 him to enroll in a 9-month first offender alcohol program, and placed him on 36 months
4 probation, with terms and conditions.

5 b. The circumstances surrounding the conviction are that on or about November 9, 2013,
6 the Whittier Police Department responded to a traffic collision. When the officer arrived,
7 Respondent was standing on the sidewalk and having difficulty maintaining his balance. The
8 officer detected a strong odor of an alcoholic beverage and Respondent was observed to have
9 bloodshot, watery eyes. Respondent submitted to series of field sobriety tests, which he was
10 unable to perform successfully. During the booking procedure, Respondent submitted to a blood
11 test that resulted in a blood alcohol content level of 0.30%.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Dangerous Use of Alcohol)**

14 10. Respondent is subject to disciplinary action under section 4301, subdivision (h), in
15 that on or about November 9, 2013, Respondent used alcoholic beverage to an extent or in a
16 manner dangerous or injurious to himself, another person, or the public when he operated a
17 vehicle while having 0.30% of alcohol in his blood. Complainant refers to, and by this reference
18 incorporates, the allegations set forth above in paragraphs 9, subparagraph (b), as though set forth
19 fully.

20 **THIRD CAUSE FOR DISCIPLINE**

21 **(Unprofessional Conduct / Violation of Licensing Chapter)**

22 11. Respondent is subject to disciplinary action under section 4301, (o), in that
23 Respondent committed acts of unprofessional conduct and / or violated provisions of the licensing
24 chapter. Complainant refers to, and by this reference incorporates, the allegations set forth above
25 in paragraphs 9-10, inclusive, as though set forth fully.

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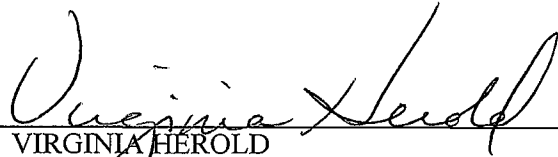
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PRAYER

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 113645, issued to John David Garcia;
2. Ordering John David 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: 11/15/14



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

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mc (5/27/14)