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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. 5228

13 **MARK ALAN MARTINEZ**
16207 Sitting Bull Street
Victorville, CA 92395

ACCUSATION

14 Pharmacy Technician Registration
15 No. TCH 29329

16 Respondent.

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 ("Board"), Department of Consumer Affairs.

21 2. On or about May 13, 1999, the Board issued Pharmacy Technician Registration No.
22 TCH 29329, to Mark Alan Martinez ("Respondent"). The Pharmacy Technician Registration was
23 in full force and effect at all times relevant to the charges brought herein and will expire on
24 January 31, 2015, unless renewed.

25 **JURISDICTION**

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

1 4. Section 4300 provides in pertinent part, that every license issued by the Boards is
2 subject to discipline, including suspension or revocation.

3 5. Section 4300.1 states, in pertinent part:

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

9 **STATUTORY PROVISIONS**

10 6. Section 490 states, in pertinent part:

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

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

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

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:

1
2 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous
3 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
4 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
5 to the extent that the use impairs the ability of the person to conduct with safety to the public the
6 practice authorized by the license.

7
8 "(k) The conviction of more than one misdemeanor or any felony involving the use,
9 consumption, or self-administration of any dangerous drug or alcoholic beverage, or any
10 combination of those substances.

11 "(l) The conviction of a crime substantially related to the qualifications, functions, and
12 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
14 substances or of a violation of the statutes of this state regulating controlled substances or
15 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
16 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
17 The board may inquire into the circumstances surrounding the commission of the crime, in order
18 to fix the degree of discipline or, in the case of a conviction not involving controlled substances or
19 dangerous drugs, to determine if the conviction is of an offense substantially related to the
20 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
21 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
22 of this provision. The board may take action when the time for appeal has elapsed, or the
23 judgment of conviction has been affirmed on appeal or when an order granting probation is made
24 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
25 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
26 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
27 indictment."

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1 REGULATORY PROVISIONS

2 8. California Code of Regulations, title 16, section 1770, states, in pertinent part:

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

9 COST RECOVERY

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

14 FIRST CAUSE FOR DISCIPLINE

15 (Conviction of Substantially Related Crimes)

16 10. Respondent is subject to disciplinary action under Code section 4301, subdivision (l),
17 and Code section 490, in conjunction with California Code of Regulations, title 16, section 1770,
18 on the grounds of unprofessional conduct in that Respondent was convicted of crimes
19 substantially related to the qualifications, functions, and duties of a pharmacy technician, as
20 follows:

21 a. On or about May 5, 2014, after pleading *nolo contendere*, Respondent was convicted
22 of one misdemeanor count of violating Vehicle Code section 23153, subdivision (b) [driving with
23 a blood alcohol level of 0.08% or more, by weight, of alcohol in his blood causing injury] and one
24 misdemeanor count of violating Vehicle Code section 20001, subdivision (a) [leaving the scene of
25 an accident] in the criminal proceeding entitled *The People of State of California v. Mark Alan*
26 *Martinez* (Super. Ct. L.A. County, 2014, Case No. 3PK02995). Respondent admitted to special
27 allegations of driving with a blood alcohol level of 0.15% or more, by weight, of alcohol in his
28 blood within the meaning of Vehicle Code section 23578. The court ordered Respondent to serve

1 120 days in Los Angeles County Jail, to enroll in an 18 month second offender alcohol program,
2 and placed him on 4 years probation with terms and conditions.

3 b. The circumstances surrounding the May 5, 2014 conviction are that on or about May
4 18, 2013, Pomona Police Department officers were alerted to a hit and run traffic collision with
5 injuries. An officer responding to the report observed Respondent's vehicle, which had sustained
6 substantial damage, heading away from the scene of the accident at a high rate of speed with its
7 headlights off. The officer conducted a traffic stop and approached Respondent. The officer
8 immediately smelled the odor of an alcoholic beverage emitting from Respondent's breath and
9 person. During questioning, Respondent admitted to consuming a couple of beers. Respondent
10 refused to complete field sobriety tests. The driver of the vehicle that Respondent collided with
11 suffered a laceration and swelling on the upper left side of her head. It was subsequently
12 determined that Respondent's blood-alcohol content was 0.17%.

13 c. On or about October 7, 2009, after pleading guilty, Respondent was convicted of one
14 misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving while
15 having a 0.08% or higher blood alcohol] in the criminal proceeding entitled *The People of the*
16 *State of California v. Mark Alan Martinez* (Super. Ct. L.A. County, 2009, Case No. 9JB08496).
17 Respondent admitted to special allegations of driving with a blood alcohol level of 0.15% or
18 more, by weight, of alcohol in his blood within the meaning of Vehicle Code section 23578. The
19 court ordered Respondent to enroll in a 6 month first offender alcohol program and placed him on
20 3 years probation with terms and conditions.

21 d. The circumstances surrounding the October 7, 2009 conviction are that on or about
22 August 8, 2009, a Covina Police Department officer initiated a traffic enforcement stop after
23 observing Respondent making an unsafe lane change. The officer immediately smelled a strong
24 odor of an alcoholic beverage emitting from Respondent. Respondent was observed to have red,
25 watery, bloodshot eyes, and he was slurring his words. Respondent admitted to drinking four 12-
26 ounce cans of Coors Light beer earlier. Respondent submitted to a series of field sobriety tests
27 but was unable to successfully perform them. It was subsequently determined that Respondent's
28 blood-alcohol content was 0.19%.

1 SECOND CAUSE FOR DISCIPLINE

2 (Alcohol Related Convictions)

3 11. Respondent is subject to disciplinary action under Code section 4301, subdivision (k),
4 on the grounds of unprofessional conduct in that on or about May 5, 2014 and October 7, 2009
5 Respondent sustained misdemeanor criminal convictions involving the consumption of alcoholic
6 beverages. Complainant refers to, and by this reference incorporates, the allegations in Paragraph
7 10, subparagraphs (a) and (c), as though fully set forth herein.

8 THIRD CAUSE FOR DISCIPLINE

9 (Dangerous Use of Alcohol)

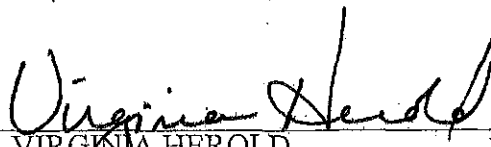
10 12. Respondent is subject to disciplinary action under Code section 4301, subdivision (h),
11 on the grounds of unprofessional conduct in that on or about May 18, 2013 and August 8, 2009,
12 Respondent used alcoholic beverages to an extent or in a manner dangerous or injurious to
13 himself, any person, or the public. Complainant refers to, and by this reference incorporates, the
14 allegations in Paragraph 10, subparagraphs (b) and (d), as though fully set forth herein.

15 PRAYER

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

- 18 1. Revoking or suspending Pharmacy Technician Registration No. TCH 29329, issued to
19 Mark Alan Martinez;
- 20 2. Ordering Mark Alan Martinez to pay the Board the reasonable costs of the
21 investigation and enforcement of this case, pursuant to section 125.3; and
- 22 3. Taking such other and further action as deemed necessary and proper.

23
24 DATED: 2/25/15


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

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