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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. 5467

12 **EDGAR MONTES**  
9851 Gentle Ben Ct.  
13 Stockton, California 95209

**A C C U S A T I O N**

14 **Pharmacy Technician Registration Number**  
15 **No. TCH 130390**

Respondent number.

17 Virginia Herold ("Complainant") alleges:

18 **PARTIES**

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

21 2. On or about February 11, 2013, the Board of Pharmacy issued Pharmacy Technician  
22 Registration Number TCH 130390 to Edgar Montes ("Respondent"). The pharmacy technician  
23 registration number was in full force and effect at all times relevant to the charges brought herein  
24 and will expire on September 30, 2016, unless renewed.

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1 JURISDICTION

2 3. Business and Professions Code ("Code") section 4300 states, in pertinent part:

3 (a) Every license issued may be suspended or revoked.

4 (b) The board shall discipline the holder of any license issued by the board,  
5 whose default has been entered or whose case has been heard by the board and found  
6 guilty, by any of the following methods:

6 (1) Suspending judgment.

7 (2) Placing him or her upon probation.

8 (3) Suspending his or her right to practice for a period not exceeding one year.

9 (4) Revoking his or her license.

10 (5) Taking any other action in relation to disciplining him or her as the board in  
11 its discretion may deem proper . . .

12 4. Code section 4300.1 states:

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

17 STATUTORY AND REGULATORY PROVISIONS

18 5. Code section 4301 states, in pertinent part:

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

22 (a) Gross immorality.

23 (f) The commission of any act involving moral turpitude, dishonesty, fraud,  
24 deceit, or corruption, whether the act is committed in the course of relations as a  
25 licensee or otherwise, and whether the act is a felony or misdemeanor or not.

26 (l) The conviction of a crime substantially related to the qualifications,  
27 functions, and duties of a licensee under this chapter. The record of conviction of a  
28 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

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

12 6. California Code of Regulations, title 16, section 1770, states:

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

#### 20 COST RECOVERY

21 7. Code section 125.3 provides, in pertinent part, that the Board may request the  
22 administrative law judge to direct a licentiate found to have committed a violation or violations of  
23 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
24 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being  
25 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
26 included in a stipulated settlement.

#### 27 FIRST CAUSE FOR DISCIPLINE

28 (Criminal Conviction)

8. Respondent is subject to disciplinary action pursuant to Code section 4301(l), on the  
grounds of unprofessional conduct, in that Respondent committed crimes that are substantially  
related to the qualifications, functions, and duties of a licensed pharmacy technician, as follows:

a. On or about August 14, 2013, in a criminal proceeding entitled *People v. Edgar*  
*Montes*, Superior Court of California, County of San Bernardino, Case No. TVA1301036,  
Respondent was convicted by the court on his plea of no contest to violating Vehicle Code  
section 20002(a) (driver's duty where property damaged by vehicle), a misdemeanor. The  
circumstances of the crime are that on or about April 7, 2013, an officer with the Fontana Police

1 Department responded to report of a hit and run traffic collision. The victim, who had two  
2 children in her vehicle, gave the officer the license plate number of the driver who hit her. The  
3 officer located Respondent, who admitted that he collided with the victim's vehicle. Respondent  
4 stated that he panicked and left the scene of the accident.

5 b. On or about March 10, 2015, in a criminal proceeding entitled *People v. Edgar*  
6 *Montes*, Superior Court of California, County of San Joaquin, Case No. SF130580A, Respondent  
7 was convicted by the court on his plea of no contest to violating Penal Code section 148(a)  
8 (willfully resisting, delaying, or obstructing a peace officer), a misdemeanor; and, guilty to  
9 violating Penal Code section 288.4(b) (arrange and appear at a meeting with a person believed to  
10 be a minor for the purpose of lewd and lascivious behavior), a felony. The circumstances of the  
11 crime are that between on or about December 15, 2014, and January 21, 2015, Respondent made  
12 arrangements to meet a female for the purpose of committing a sexual offense, in that it was  
13 represented to him that she was a minor. Specifically, in an effort to deter child sexual predators,  
14 on or about December 15, 2014, a detective with the Stockton Police Department posted an  
15 advertisement on Craigslist.org using the photograph of a female undercover officer (a "decoy")  
16 posing as an 18 year old female. In or around the month of January 2015, Respondent exchanged  
17 text messages with the detective/decoy. Respondent was informed in a text message that he was  
18 texting a 13 year old girl who hadn't had sex before. Among other things, Respondent suggested  
19 that the decoy practice oral copulation and "play with herself". On or about January 21, 2015,  
20 Respondent texted the detective/decoy to meet that night to have sex. When Respondent arrived  
21 at the arranged meeting place, the decoy approached his passenger-side window and started  
22 conversing. Officers with the Stockton Police Department converged on Respondent to make an  
23 arrest. Respondent refused to open the driver's side door as ordered. Officers grabbed him,  
24 dragged him out of the vehicle, and placed him on the ground. Respondent refused to show his  
25 hands and appeared to struggle to stand up. In a subsequent interview with Stockton Police  
26 Department detectives, Respondent explained that he intended to have sexual intercourse and oral  
27 sex with a 13 year old girl and stated that it should be alright to have sex with a 13 year old girl if  
28 she wants to, even though it is illegal.



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

DATED: 9/4/15 Virginia Herold

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

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