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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. 5473

13 **KATHERINE MELISSA GARCIA**
14339 Tiara St., Apt. #1
15 Van Nuys, CA 91406

A C C U S A T I O N

16 Pharmacy Technician Registration
No. TCH 138245

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, Department of Consumer Affairs.

21 2. On or about January 15, 2014, the Board of Pharmacy (Board) issued Pharmacy
22 Technician Registration No. TCH 138245 to Katherine Melissa Garcia (Respondent). The
23 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges
24 brought herein and will expire on March 31, 2017, 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.

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STATUTORY PROVISIONS

4. Section 490 states, in pertinent part:

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

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

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken 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 the provisions of Section 1203.4 of the Penal Code.

5. Section 493 states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question. As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

6. Section 4300 provides that every license issued by the Board is subject to discipline, including suspension or revocation.

7. Section 4300.1 states:

The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, 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.

8. Section 4301 states, in pertinent part:

The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or

misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

...

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

...

(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.

REGULATORY PROVISION

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

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 his license or registration in a manner consistent with the public health, safety, or welfare.

COST RECOVERY

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

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2 **FIRST CAUSE FOR DISCIPLINE**

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

4 11. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision
5 (l), in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent
6 was convicted of crimes substantially related to the qualifications, functions or duties of a
7 pharmacy technician. On or about February 25, 2015, Respondent was convicted of one felony
8 count of violating Penal Code section 10851, subdivision (a) [unlawfully driving or taking of a
9 vehicle without consent] in the criminal proceeding entitled *The People of the State of California*
10 *v. Katherine Garcia* (Super. Ct. L.A. County, 2015, No. PA081811). The Court sentenced
11 Respondent to serve 9 days in jail and placed her on 3 years formal probation, with terms and
12 conditions. The circumstances surrounding the conviction are that on or about August 19, 2014,
13 Respondent unlawfully drove and took a 2013 BMW automobile, License Plate 6ZYV298, the
14 personal property of A.B., without consent and with intent to permanently or temporarily deprive
15 the owner of title and possession of vehicle.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Acts Involving Dishonesty, Fraud, or Deceit)**

18 12. Respondent is subject to disciplinary action under section 4301, subdivisions (f), in
19 that Respondent committed acts involving dishonesty, fraud, or deceit. Complainant refers to,
20 and by this reference incorporates the allegations set forth in paragraph 11, as though set forth
21 fully.

22 **PRAAYER**

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

25 1. Revoking or suspending Pharmacy Technician Registration No. TCH 138245, issued
26 to Katherine Melissa Garcia;
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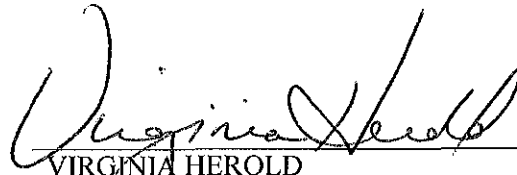
1 2. Ordering Katherine Melissa Garcia to pay the Board of Pharmacy the reasonable costs
2 of the investigation and enforcement of this case, pursuant to Business and Professions Code
3 section 125.3; and

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

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8 DATED: _____

11/4/15



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

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