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7	Attorneys for Complainant	RE THE
8	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS	
9	STATE OF COLIFORNIA	
10	In the Metter of the Armedian Arian	
11	In the Matter of the Accusation Against:	Case No. 6030
	SERENA LUCILLE BARKER 504 West 232nd Street	
. 12	Carson, CA 90745	ACCUSATION
13	Pharmacy Technician Registration No. TCH 100005	
14	Respondent.	
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. 17	Complainant alleges:	
18	<u>PARTIES</u>	
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 June 29, 2010, the Board of Pharmacy issued Pharmacy Technician	
22	Registration Number TCH 100005 to Serena Lucille Barker (Respondent). The Pharmacy	
23	Technician Registration was in full force and effect at all times relevant to the charges brought	
24	herein and will expire on August 31, 2017, unless renewed.	
25	<u>JURISDICTION</u>	
26	3. This Accusation is brought before the Board of Pharmacy (Board), Department of	
27	Consumer Affairs, under the authority of the following laws. All section references are to the	
28	Business and Professions Code (Code) unless otherwise indicated.	

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- Section 4300 provides in pertinent part, that every license issued by the Boards is 4. subject to discipline, including suspension or revocation.
  - 5. Section 4300.1 of the Code 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."

### **STATUTORY PROVISIONS**

Section 4301 of the Code 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 issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

(I)<sup>22</sup> 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

suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of

judgment of conviction has been affirmed on appeal or when an order granting probation is made

of this provision. The board may take action when the time for appeal has elapsed, or the

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."

- 7. Section 4311 of the Code states:
- "(a) Any license issued by the board, or the holder thereof, shall be suspended automatically during any time that the person is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board, immediately upon receipt of a certified copy of a record of a criminal conviction, shall determine whether the person has been automatically suspended by virtue of incarceration pursuant to a felony conviction and, if so, the duration of that suspension. The board shall notify the person so suspended of the suspension and that the person has a right to request a hearing, solely as to whether he or she is incarcerated pursuant to a felony conviction, in writing at that person's address of record with the board and at the facility in which the person is incarcerated.

### **REGULATORY PROVISIONS**

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

"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

9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate 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, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

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#### **CAUSE FOR DISCIPLINE**

### (Conviction of a Substantially Related Crime)

- 10. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (1), in conjunction with California Code of Regulations, title 16, section 1770, on the grounds of unprofessional conduct, in that Respondent was convicted of a substantially related crime. The circumstances are as follows:
- a. On or about October 21, 2016, Respondent was convicted of one felony count of violating Penal Code section 245, subdivision (a)(1) [assault with a deadly weapon] enhanced per Penal Code section 12022.7, subdivision (a), in the criminal proceeding entitled, *The People of the State of California v. Serena Barker* (Super. Ct., L.A. County, 2016, No. NA104208). As part of a negotiated plea, the court dismissed one felony count of violating Penal Code section 213, subdivision (b) [attempted robbery] and one felony count of violating Penal Code section 245, subdivision (a)(1) [assault with a deadly weapon]. The Court sentenced Respondent to one year in county jail, and placed her on five years formal probation. The Court also ordered her to perform 60 days of CalTrans community labor, and complete an 8-week Anger Management Program.
- b. The circumstances surrounding the conviction are that on or about May 16, 2016, the Los Angeles Police Department responded to an assault with a deadly weapon call. An argument between Respondent and victim, (Respondent's mother), resulted in a physical altercation during which Respondent assaulted her mother with a handgun. Respondent admitted to officers that the gun belonged to her and she possessed it at the time of the altercation for protection.

## **DISCIPLINARY CONSIDERATIONS**

11. In order to determine the degree of discipline (if any) to be imposed on Respondent, Complainant alleges that on or about March 29, 2010, Respondent was convicted of one misdemeanor count of violating Vehicle Code section 23103 [wet reckless] in the criminal proceeding entitled *The People of the State of California v. Serena Lucille Barker* (Super. Ct. Los Angeles County, 2010, No. 0LTO3464). The Court sentenced Respondent to three years probation, serve 8 days in jail, and pay fees and fines. The Court also ordered Respondent to complete an alcohol and drug education program.

#### **PRAYER**

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

- 1. Revoking or suspending Pharmacy Technician Registration Number TCH 100005, issued to Serena Lucille Barker;
- 2. Ordering Serena Lucille Barker to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,
  - 3. Taking such other and further action as deemed necessary and proper.

3/3/7

VIRGINIA HEROLD

Executive Officer Board of Pharmacy

Department of Consumer Affairs

State of California Complainant

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