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7 *Attorneys for Complainant*

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

11 In the Matter of the Statement of Issues
12 Against:

Case No. 4101

13 **CRISTINA GARCIA**
14 740 N. Pacific Avenue
San Pedro, CA 90731

STATEMENT OF ISSUES

15 Applicant for Pharmacy Technician
16 Registration

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

- 21 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official
22 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 23 2. On or about June 16, 2010, the Board of Pharmacy (Board), received an application
24 for Pharmacy Technician Registration from Cristina Garcia (Respondent). On or about June 1,
25 2010, Respondent certified under penalty of perjury to the truthfulness of all statements, answers,
26 and representations in the application. The Board denied the application on March 1, 2011.

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1 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
2 or profession for which the license was issued.

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

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

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

15 7. Section 4301 provides, in pertinent part:

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

19

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

23

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

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"(j) The violation of any of the statutes of this state, or any other state, or of the United States regulating controlled substances and dangerous drugs.

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

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

1 c. On or about November 21, 2007, after pleading *nolo contendere*, Respondent was
2 convicted of one misdemeanor count of violating Vehicle Code section 20002, subdivision (a)
3 [driving a vehicle causing damage to any property]; and one misdemeanor count of violating
4 Vehicle Code section 12500, subdivision (a) [driving while driver's license is suspended or
5 revoked], in the criminal proceedings entitled *The People of the State of California v. Cristina*
6 *Garcia* (Super.Ct. Los Angeles County, 2007, No. 7WW01940). The Court sentenced
7 Respondent to serve 8 days total in jail, placed her on probation for a period of 36 months, and
8 fined her. The circumstances surrounding the conviction are that on or about March 10, 2007,
9 after investigating a vehicle collision, Respondent was identified as the driver who fled the scene
10 of an earlier collision. Respondent admitted to being the driver of the vehicle that fled the scene.
11 Respondent was subsequently convicted of violating Vehicle Code section 20002, subdivision (a)
12 [driving a vehicle causing damage to any property; and Vehicle Code section 12500, subdivision
13 (a) [driving while driver's license is suspended or revoked.]

14 d. On or about August 11, 2006, after pleading *nolo contendere*, Respondent was
15 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b)
16 [driving while having 0.08% and more, by weight, of alcohol in her blood], in the criminal
17 proceedings entitled *The People of the State of California v. Cristina Garcia* (Super.Ct. Los
18 Angeles County, 2006, No. 6DY04203). The Court sentenced Respondent to 2 days in Jail,
19 placed her on probation for a period of 36 months, and fined her. The circumstances surrounding
20 the conviction are that on or about May 19, 2006, during a routine traffic stop by the Downey
21 Police Department, Respondent was stopped because she had spun out of control making a left
22 turn. The officer observed Respondent to have bloodshot, watery eyes, and a strong smell of an
23 alcoholic beverage coming from her breath. Respondent admitted to having four shots of tequila.
24 Respondent agreed to a series of field sobriety test which she failed to complete satisfactorily.
25 Respondent was subsequently given two alcohol breath tests, with results of .18 BAC and .19
26 BAC.

27 e. On or about April 27, 2005, after pleading *nolo contendere*, Respondent was
28 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b)

1 [driving while having 0.08% and more, by weight, of alcohol in her blood], in the criminal
2 proceedings entitled *The People of the State of California v. Cristina Garcia* (Super.Ct. Los
3 Angeles County, 2005, No. 5VN01517). The Court sentenced Respondent to 13 days in Jail,
4 placed her probation for a period of 36 months and fined her. The circumstances surrounding the
5 conviction are that on or about April 2, 2005, Respondent unlawfully drove a vehicle while
6 having 0.08% and more, by weight, of alcohol in her blood.

7 **SECOND CAUSE FOR DENIAL OF APPLICATION**

8 **(Acts Warranting Denial of Licensure)**

9 10. Respondent's application is subject to denial under sections 4301, subdivision (p) and
10 480, subdivision (a)(3)(A) and (a)(3)(B), in that Respondent committed acts which if done by a
11 licentiate of the business and profession in question, would be grounds for suspension or
12 revocation of her license.

13 a. Respondent was convicted of crimes substantially related to the qualifications,
14 functions or duties of a pharmacy technician which to a substantial degree evidence her present or
15 potential unfitness to perform the functions authorized by his license in a manner consistent with
16 the public health, safety, or welfare, in violation of sections 4031, subdivision (l), and 490, in
17 conjunction with California Code of Regulations, title 16, section 1770. Complainant refers to,
18 and by this reference incorporates, the allegations set forth above in paragraph 9, subparagraphs
19 (a) and (e), inclusive, as though set forth fully.

20 b. On or about December 9, 2008 and December 7, 2008, Respondent committed acts
21 involving moral turpitude, dishonesty, fraud, or deceit in violation of section 4301, subdivision
22 (f). Complainant refers to, and by this reference incorporates, the allegations set forth above in
23 paragraph 9, subparagraphs (a), (b) and (c), inclusive, as though set forth fully.

24 c. Respondent used alcoholic beverages to an extent or in a manner dangerous or
25 injurious to herself, another person, or the public, in violation of section 4301, subdivision (h).
26 Complainant refers to, and by this reference incorporates, the allegations set forth above in
27 paragraph 9, subparagraphs (d) and (e), inclusive, as though set forth fully.

28 d. Respondent was convicted of crimes involving the consumption of alcoholic

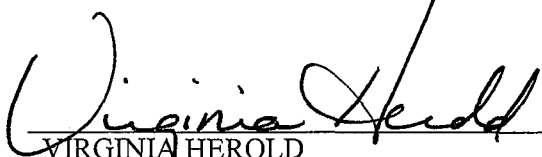
1 beverages, in violation of section 4301, subdivision (k). Complainant refers to, and by this
2 reference incorporates, the allegations set forth above in paragraph 9, subparagraphs (d) and (e),
3 inclusive, as though set forth fully.

4 **PRAYER**

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

- 7 1. Denying the application of Cristina Garcia for registration as a Pharmacy Technician;
8 and
9 2. Taking such other and further action as deemed necessary and proper.

10
11 DATED: 5/4/12



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

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