

1 KAMALA D. HARRIS
Attorney General of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 JEFFREY M. PHILLIPS
Deputy Attorney General
4 State Bar No. 154990
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-6292
Facsimile: (916) 327-8643
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 Accusation Against:

Case No. 3707

12 **ELIZABETH A. MENDOZA**
13 **8594 N. Colfax**
14 **Fresno, CA 93720**
15 **Pharmacy Technician Registration**
16 **No. TCH 766**

A C C U S A T I O N

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 **Pharmacy Technician Registration**

22 2. On or about October 19, 2002, the Board issued Pharmacy Technician Registration
23 Number TCH 766 to Elizabeth A. Mendoza ("Respondent"). The pharmacy technician
24 registration was in full force and effect at all times relevant to the charges brought herein and will
25 expire on March 31, 2012, unless renewed.

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JURISDICTION

3. Section 4300 of the Business and Professions Code ("Code") states, in pertinent part:

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

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

(1) Suspending judgment.

(2) Placing him or her upon probation.

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

(4) Revoking his or her license.

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

(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure."

4. 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.

STATUTORY PROVISION

5. Code section 4301 states:

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:

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

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

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

23 COST RECOVERY

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

28 FIRST CAUSE FOR DISCIPLINE

(Criminal Convictions)

7. Respondent is subject to discipline pursuant to Code section 4301, subdivision (l), on
the grounds of unprofessional conduct, in that Respondent has been convicted of the following
crimes that are substantially related to the qualifications, functions, and duties of a registered
pharmacy technician:

a. On September 24, 2007, in the Superior Court, County of Fresno, California, in the
matter entitled *People vs. Elizabeth Ann Mendoza* (2007), Case No. M07001717 M A,
Respondent was convicted by the court following her plea of nolo contendere to a violation of
Vehicle Code section 23152, subdivision (a) (driving under the influence of alcohol), a
misdemeanor. The circumstances of the crime are that on July 6, 2007, Respondent was arrested

1 for driving under the influence of alcohol, following a traffic stop. Respondent's blood alcohol
2 level measured .14%. Respondent was placed on probation for a period of three years. On or
3 about December 21, 2008, Respondent violated probation by being arrested for a second DUI
4 offense, as more particularly set forth in subparagraph b, below.

5 b. On June 30, 2009, in the Superior Court, County of Fresno, California, in the matter
6 entitled *People vs. Elizabeth Ann Mendoza* (2009), Case No. F09901807, Respondent was
7 convicted by the court following her plea of no contest to a violation of Vehicle Code section
8 23152, subdivision (b) (driving with a blood alcohol level of .08% or more, causing injury with a
9 prior DUI), a felony. The circumstances of the crime are that on December 21, 2008, Respondent
10 was arrested for driving under the influence of alcohol, following a traffic collision caused by
11 Respondent. Respondent's blood alcohol level measured .15%.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Use Alcoholic Beverages to an Extent or in a Manner Dangerous or Injurious**
14 **to Herself or Others)**

15 8. Respondent is subject to discipline pursuant to Code section 4301, subdivision (h), on
16 the grounds of unprofessional conduct, in that on or about July 6, 2007, and December 21, 2008,
17 Respondent used alcoholic beverages to an extent or in a manner dangerous or injurious to herself
18 or others as more particularly set forth in paragraph 7, subparagraphs a and b, above.

19 **THIRD CAUSE FOR DISCIPLINE**

20 **(Conviction of a Felony Involving the Use of Alcoholic Beverages)**

21 9. Respondent is subject to discipline pursuant to Code section 4301, subdivision (k), on
22 the grounds of unprofessional conduct, in that on or about June 30, 2009, Respondent was
23 convicted of a felony involving her use of alcoholic beverages, as more particularly set forth in
24 paragraphs 7, subparagraph b, above, and paragraph 8, above.

25 **PRAYER**

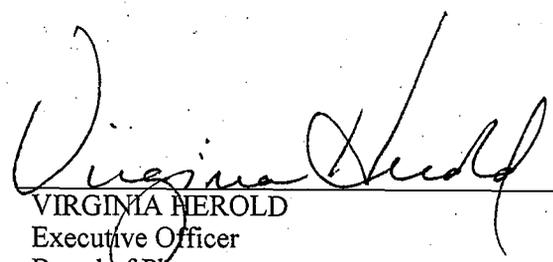
26 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
27 and that following the hearing, the Board of Pharmacy issue a decision:

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1. Revoking or suspending Pharmacy Technician Registration Number TCH 766, issued to Elizabeth A. Mendoza;
2. Ordering Elizabeth A. Mendoza 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.

DATED: 4/27/11


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

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