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

14 In the Matter of the Accusation and  
Petition to revoke probation Against:

Case No. 3198

15 ADAM DAVID PITTMAN  
16 P.O. Box 353  
Hemet, CA 92546

**ACCUSATION AND  
PETITION TO REVOKE  
PROBATION**

17 Pharmacist License Number  
18 RPH 51848

Respondent.

19  
20 Complainant alleges:

21 PARTIES

22 1. Virginia K. Herold (Complainant) brings this Accusation and Petition to  
23 Revoke Probation solely in her official capacity as the Executive Officer of the Board of  
24 Pharmacy.

25 2. On or about September 7, 2000, the Board of Pharmacy issued Pharmacist  
26 License No. RPH 51848 to Adam David Pittman (Respondent). Said license was suspended on  
27 April 4, 2007, as described below at paragraph 34. The license expired on August 31, 2008, and  
28 has not been renewed.

STATUTES

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3. This Accusation and Petition to Revoke Probation is brought before the Board of Pharmacy, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 4100 of the Code states:

(a) Within 30 days after changing his or her address of record with the board or after changing his or her name according to law, a pharmacist, intern pharmacist, technician, or designated representative shall notify the executive officer of the board of the change of address or change of name.

(b) This section shall become operative on January 1, 2006.

5. Section 4300 of the Code states:

(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.

....

(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary certificate of licensure for any violation of the terms and conditions of probation. Upon satisfactory completion of probation, the board shall convert the probationary certificate to a regular certificate, free of conditions.

6. 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 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,

1 or to any other person or to the public, or to the extent that the use impairs the  
2 ability of the person to conduct with safety to the public the practice authorized by  
the license.

3 . . . .

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

6 (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  
7 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  
8 statutes of this state regulating controlled substances or dangerous drugs shall be  
conclusive evidence of unprofessional conduct. In all other cases, the record of  
9 conviction shall be conclusive evidence only of the fact that the conviction  
occurred. The board may inquire into the circumstances surrounding the  
10 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  
11 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  
12 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  
13 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  
14 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  
15 of not guilty, or setting aside the verdict of guilty, or dismissing the accusation,  
information, or indictment.

16 . . . .

17 7. Section 482 of the Code states:

18 Each board under the provisions of this code shall develop criteria to  
19 evaluate the rehabilitation of a person when:

20 (a) Considering the denial of a license by the board under Section 480; or

21 (b) Considering suspension or revocation of a license under Section 490.

22 Each board shall take into account all competent evidence of rehabilitation  
furnished by the applicant or licensee.

23 8. Section 490 of the Code states:

24 (a) In addition to any other action that a board is permitted to take against  
25 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  
26 qualifications, functions, or duties of the business or profession for which the  
license was issued.

27 (b) Notwithstanding any other provision of law, a board may exercise any  
28 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

1 related to the qualifications, functions, or duties of the business or profession for  
2 which the licensee's license was issued.

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

10 (d) The Legislature hereby finds and declares that the application of this  
11 section has been made unclear by the holding in *Petropoulos v. Department of*  
12 *Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has  
13 placed a significant number of statutes and regulations in question, resulting in  
14 potential harm to the consumers of California from licensees who have been  
15 convicted of crimes. Therefore, the Legislature finds and declares that this section  
16 establishes an independent basis for a board to impose discipline upon a licensee,  
17 and that the amendments to this section made by Senate Bill 797 of the 2007-08  
18 Regular Session do not constitute a change to, but rather are declaratory of,  
19 existing law.

20 9. Section 492 of the Code states:

21 Notwithstanding any other provision of law, successful completion of any  
22 diversion program under the Penal Code, or successful completion of an alcohol  
23 and drug problem assessment program under Article 5 (commencing with section  
24 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit  
25 any agency established under Division 2 ([Healing Arts] commencing with  
26 Section 500) of this code, or any initiative act referred to in that division, from  
27 taking disciplinary action against a licensee or from denying a license for  
28 professional misconduct, notwithstanding that evidence of that misconduct may  
be recorded in a record pertaining to an arrest.

This section shall not be construed to apply to any drug diversion program  
operated by any agency established under Division 2 (commencing with Section  
500) of this code, or any initiative act referred to in that division.

10. Section 493 of the Code 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.'"



1 COST RECOVERY

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

6 FACTS

7 Re: PREVIOUS DISCIPLINE

8 16. In a disciplinary action entitled *In the Matter of the Accusation Against*  
9 *Adam David Pittman*, Accusation Case No. 2741, before the Board of Pharmacy, Respondent  
10 entered into a Stipulated Settlement whereby he admitted all allegations contained in Accusation  
11 No. 2741. Respondent agreed to comply with the Board's final decision in the matter. The  
12 Board's final decision adopted the Stipulated Settlement, effective May 31, 2006. Accordingly,  
13 Respondent's Pharmacist License was revoked. However, the revocation was stayed and  
14 Respondent was placed on probation for a period of five (5) years with certain terms and  
15 conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

16 17. On or about July 11, 2006, Respondent met with a Board representative  
17 and received a full explanation and opportunity to discuss all of the terms and conditions of his  
18 probation. Thereafter, on July 11, 2006, Respondent signed a declaration stating that he  
19 thoroughly understood the terms and conditions of his probation and that failure to comply may  
20 result in further disciplinary action.

21 18. Since the initiation of his probation, Respondent has failed to comply with  
22 several terms and conditions of his probation, as described below in detail.

23 Re: CRIMINAL CONVICTIONS

24 19. On or about on or about January 24, 2007, in a criminal proceeding  
25 entitled *People v. Adam David Pittman*, in Superior Court of Riverside County, Case No.  
26 SWM056598, Respondent was convicted by his plea of guilty of violating Vehicle Code section  
27 23152, subdivisions (a) and (b) (driving under the influence of alcohol - second offense ) and  
28 Vehicle Code section 4106.2, subdivision (a) (driving with suspended license).

1           a.       The facts and circumstances underlying Respondent's January 2007  
2 conviction are that on or about December 8, 2006, a Hemet Police Department (HPD) officer  
3 received a dispatch advisement of a suspected drunk driver. Soon thereafter, the officer saw that  
4 a California Highway Patrol (CHP) officer was in the process of making a traffic stop of  
5 Respondent's vehicle. The CHP officer initiated the traffic stop when he observed Respondent  
6 driving his car down the wrong side of the road i.e., traveling west-bound in the east-bound  
7 traffic lanes. The CHP officer had to swerve his patrol car in order to avoid being hit by  
8 Respondent's car. The HPD officer smelled a strong odor of alcohol coming from Respondent's  
9 person and observed Respondent's glassy, watery eyes. Respondent refused to perform a field  
10 sobriety test. The HPD officer then arrested Respondent and transported him to the HPD where  
11 Respondent submitted to a blood alcohol test.

12           b.       Respondent was sentenced to the following: four (4) years summary  
13 probation; fifteen (15) days in the custody of the Riverside County Jail to be served on  
14 consecutive weekends beginning February 7, 2007; install an Ignition Interlock Device on all  
15 vehicles owned or operated; complete Drinking Driver Program; submit to random fluid tests;  
16 and, fines in the amount of approximately \$1,500.00.

17           c.       On or about February 20, 2007, Respondent failed to appear for his  
18 probation review hearing regarding installation of an Interlock Ignition Device on his vehicle(s).

19           d.       On or about March 21, 2007, Respondent failed to appear for his probation  
20 review hearing regarding his failure to install an Interlock Ignition Device on his vehicle.  
21 Respondent's probation was immediately revoked and a bench warrant was issued for his arrest.

22           e.       On or about August 30, 2007, Respondent failed to appear for his  
23 probation review hearing regarding the following violation of his probation terms: Respondent  
24 violated his probation term No. 1 in that he failed to comply with the court-ordered terms of his  
25 probation; Respondent violated his probation term No. 2 in that he failed to report to the  
26 Riverside County Jail on February 7, 2007, or on any date thereafter, to begin weekend custody;  
27 Respondent violated his probation term No. 6 in that he failed to install an Interlock Ignition  
28 Device on his vehicle(s); and, Respondent violated his probation term No. 7 in that he failed to

1 enroll in the Drinking Driver Program. A new bench warrant was issued for Respondent's arrest,  
2 and bail on the warrant was increased from \$9,999.00 to \$15,000.00.

3 f. On or about June 27, 2008, Respondent admitted violating his probation  
4 terms as alleged. Respondent's sentence was modified to require that he re-enrol in the Drinking  
5 Driver Program and report to financial services within two (2) business days. All other terms of  
6 probation were reinstated and it is scheduled for completion on or about January 23, 2011.

7 20. On or about July 22, 2004, in a criminal proceeding entitled *People v.*  
8 *Adam David Pittman*, in Superior Court of Riverside County, Case No. SWM 026145,  
9 Respondent was convicted, by his plea of guilty, of violating Vehicle Code section 23152,  
10 subdivision (b) (driving under the influence of alcohol with a blood alcohol content greater  
11 than 0.08). Respondent was sentenced to the following: three (3) years summary probation;  
12 twenty five (25) days in the custody of the Riverside County Jail to be served on consecutive  
13 weekends; complete First Time Offender DUI program; submit to random fluid tests; and, fines  
14 in the amount of approximately \$1,400.00 (one thousand four hundred dollars).

15 a. On or about June 7, 2007, Respondent failed to appear for his hearing regarding  
16 his violation of probation terms four (4) and five (5), failure to pay ordered fines and restitution.  
17 Respondent's probation was revoked and a bench warrant was issued for his arrest, with bail set  
18 at \$5,000.00 (five thousand dollars).

19 b. On or about June 27, 2007, Respondent admitted the alleged probation  
20 violation. Respondent's probation was reinstated and his sentence was modified to require that  
21 he report to financial services within two (2) business days. All other terms of Respondent's  
22 probation were reinstated and were scheduled to expire on August 11, 2008.

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**PETITION TO REVOKE PROBATION**

**FIRST CAUSE TO REVOKE PROBATION**

(Failure to Comply with Terms and Conditions of Probation)

21. At all times after the effective date of Respondent's probation, Condition 1 stated:

**Obey All Laws.** Respondent shall obey all state and federal laws and regulations substantially related to or governing the practice of pharmacy.

Respondent shall report any of the following occurrences to the Board, in writing, within 72 hours of such occurrence:

- \* an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- \* a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
- \* a conviction of any crime
- \* discipline, citation, or other administrative action filed by any state and federal agency which involves Respondent's license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling or distribution or billing or charging for any drug, device or controlled substance.

22. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 1, referenced above, in that he failed to notify the Board of his arrest, plea of guilty, or conviction in 2007 for violation of Vehicle Code sections 23152, subdivisions (a) and (b), and section 14601.2, subdivision (a) (driving under the influence of alcohol), and subdivision (b) (driving with a blood alcohol content greater than 0.08), and, Vehicle Code section 4106.2, subdivision (a) (driving with suspended license). Further, Respondent failed to notify the Board of his criminal probation violations and re-sentencing, as described in detail above at paragraphs 19 and 20, which are incorporated herein by reference.

23. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 1, referenced above, in that he failed to notify the Board of his criminal probation violations and re-sentencing arising from his criminal conviction in

1 2004 for violation of Vehicle Code sections 23152, subdivision (b) (driving under the  
2 influence of alcohol with a blood content higher than .08%), as described in detail above at  
3 paragraph 21, which is incorporated herein by reference.

4 24. Respondent's probation is subject to revocation because he failed to  
5 comply with Probation Condition 1, referenced above, in that he failed to obey title 16,  
6 California Code of Regulations section 1704 and failed to notify the Board in writing within  
7 thirty (30) days of change in his residence address, as required by follows.

8 a. On or about April 9, 2007, the Board sent a notice of suspended license to  
9 Respondent's mailing address of record and to his residence address of record. The Board  
10 received the Domestic Return Receipt for delivery to Respondent's mailing address, indicating  
11 that the letter was received and signed for on April 16, 2007. The letter addressed to  
12 Respondent's residence address of record was returned to the Board and marked "Forwarding  
13 Order Expired-Return to Sender-Not Deliverable as Addressed" by the United States Postal  
14 Service.

#### 15 SECOND CAUSE TO REVOKE PROBATION

16 (Failure to Submit Quarterly Reports)

17 25. At all times after the effective date of Respondent's probation,  
18 Condition 2 stated:

19 **Reporting to the Board.** Respondent shall report to the Board quarterly. The  
20 report shall be made either in person or in writing, as directed. Respondent  
21 shall state under penalty of perjury whether there has been compliance with all  
22 the terms and conditions of probation. If the final probation report is not made  
as directed, probation shall be extended automatically until such time as the  
final report is made and accepted by the Board.

23 26. Respondent's probation is subject to revocation because he failed to  
24 comply with Probation Condition 2, referenced above, in that he has failed to submit any of  
25 approximately nine (9) required Quarterly Report(s) that were due on various dates of his  
26 probation, from May 31, 2006, to September 30, 2008, since the beginning of his probation  
27 and through the present date.

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THIRD CAUSE TO REVOKE PROBATION

(Failure to Submit Cost Recovery Payments)

27. At all times after the effective date of Respondent's probation,

Condition 8 stated:

**Reimbursement of Board Costs.** Respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$6,000.00. Respondent shall make quarterly payments over time to be worked out with the probation monitor and paid in full as a pre-condition of successful completion of probation.

28. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 8, referenced above, in that he failed to make any cost recovery payments. His current cost recovery balance remains at the original amount of \$6,000.00 (six thousand dollars).

FOURTH CAUSE TO REVOKE PROBATION

(Failure to Comply with Pharmacist Recovery Program)

29. At all times after the effective date of Respondent's probation,

Condition 13 stated:

**Psychotherapy.** Within 30 days of the effective date of this decision, Respondent shall submit to the Board, for its prior approval, the name and qualifications of a licensed mental health practitioner of Respondent's choice. Should Respondent, for any reason, cease treatment with the approved licensed mental health practitioner, Respondent shall notify the Board immediately and, within 30 days of ceasing treatment, submit the name of a replacement psychotherapist or licensed mental health practitioner of Respondent's choice to the Board for its prior approval.

Therapy shall be at least once a week unless otherwise determined by the Board. Respondent shall provide the therapist with a copy of the Board's accusation and decision no later than the first therapy session. Respondent shall take all necessary steps to ensure that the treating therapist submits written quarterly reports to the Board concerning Respondent's fitness to practice, progress in treatment, and to provide such other information as may be required by the Board. If the treating therapist finds that Respondent cannot practice safely or independently, the therapist shall notify the Board immediately by telephone and followed up by written letter within three working days.

Upon approval of the licensed mental health practitioner, Respondent shall undergo and continue treatment with that therapist and at Respondent's own expense, until the Board deems that no further psychotherapy is necessary. The Board may require Respondent to undergo a mental health evaluation(s) by a Board-appointed or Board-approved licensed mental health practitioner.



1                   33. Respondent's probation is subject to revocation because he failed to  
2 comply with his Probation Condition 14, referenced above, in that he failed to set up an  
3 account with Compass Vision Inc., as required by the terms of his participation contract, such  
4 that he failed to be available to complete required random body fluid testing. Respondent  
5 began his participation in the program on or about July 14, 2006. Respondent failed to  
6 comply with several of the terms of the program such that he was terminated from the  
7 program on or about August 22, 2006.

8                   34. Respondent's termination from the program resulted in the immediate  
9 suspension of his pharmacist license, pursuant to the above Condition 14 of his probation.

10  
11   **ACCUSATION**

12                   35. Paragraphs Nos. 1 through 36, above, are incorporated herein by this  
13 reference.

14   **FIRST CAUSE FOR DISCIPLINE**

15   (Unprofessional Conduct -  
16 Use of Alcohol in a Manner Dangerous to Self and Public)

17                   36. Respondent is subject to disciplinary action under Code sections 4301,  
18 subdivision (h), in that Respondent has used alcohol in a manner injurious to himself and  
19 others in that he has done each of the following acts: driven a motor vehicle while under the  
20 influence of alcohol on two separate occasions within less than three years, resulting in arrest;  
21 and, been convicted of several crimes involving his dangerous use of alcohol, as described in  
22 detail above at paragraphs 19 and 20, which are incorporated herein by reference.

23   **SECOND CAUSE FOR DISCIPLINE**

24   (Unprofessional Conduct -  
25 Multiple Convictions of Crimes Involving Use of Alcohol)

26                   37. Respondent is subject to disciplinary action under Code section 4301  
27 subdivisions (k), and (l) and Code section 490, in that Respondent has, on two separate  
28 occasions within less than three years, been convicted of crimes involving his use of alcohol,

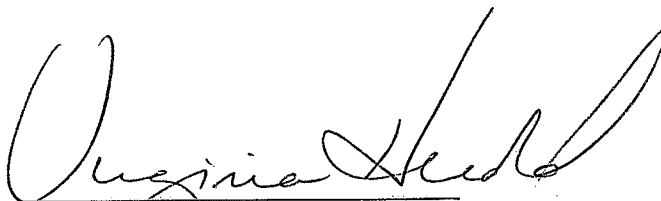
1 crimes that are substantially related to the qualifications, duties and functions of a licensed  
2 pharmacist, as described in detail above at paragraphs 19 and 20, which are incorporated  
3 herein by reference.

4 PRAYER

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

- 7 1. Revoking or suspending Original Pharmacist License Number  
8 RPH 51848, issued to Adam David Pittman.
- 9 2. Ordering Adam David Pittman to pay the Board of Pharmacy the  
10 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
11 Professions Code section 125.3;
- 12 3. Taking such other and further action as deemed necessary and proper.

13  
14 DATED: 12/29/08



15  
16  
17 VIRGINIA K. HEROLD  
18 Executive Officer  
19 Board of Pharmacy  
State of California  
Complainant

20 SD2008801760