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8 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 3248

12 DONALD PAUL KIME
13 1503 N. Lassen Avenue
Ontario, CA 91764

A C C U S A T I O N

14 Pharmacy Technician Reg. No. TCH 58195

15 Respondent.

16 Complainant alleges:

17 PARTIES

18 1. Virginia Herold (Complainant) brings this Accusation solely in her
19 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer
20 Affairs.

21 2. On or about September 21, 2004, the Board of Pharmacy issued Pharmacy
22 Technician Registration Number TCH 58195 to Donald Paul Kime (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, 2010, unless renewed.

25 JURISDICTION

26 3. This Accusation is brought before the Board of Pharmacy (Board),
27 Department of Consumer Affairs, under the authority of the following laws. All section
28 references are to the Business and Professions Code (Code) unless otherwise indicated.

1 4. Section 118, subdivision (b) of the Code provides that the suspension,
2 expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to
3 proceed with a disciplinary action during the period within which the license may be renewed,
4 restored, reissued or reinstated.

5 5. Section 490 of the Code provides, in pertinent part, that a board may
6 suspend or revoke a license on the ground that the licensee has been convicted of a crime
7 substantially related to the qualifications, functions, or duties of the business or profession for
8 which the license was issued..

9 6. Section 492 of the Code states:

10 Notwithstanding any other provision of law, successful completion of any
11 diversion program under the Penal Code, or successful completion of an alcohol
12 and drug problem assessment program under Article 5 (commencing with section
13 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit
14 any agency established under Division 2 ([Healing Arts] commencing with
15 Section 500) of this code, or any initiative act referred to in that division, from
16 taking disciplinary action against a licensee or from denying a license for
17 professional misconduct, notwithstanding that evidence of that misconduct may
18 be recorded in a record pertaining to an arrest.

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16 7. Section 493 of the Code states:

17 Notwithstanding any other provision of law, in a proceeding conducted by
18 a board within the department pursuant to law to deny an application for a license
19 or to suspend or revoke a license or otherwise take disciplinary action against a
20 person who holds a license, upon the ground that the applicant or the licensee has
21 been convicted of a crime substantially related to the qualifications, functions,
22 and duties of the licensee in question, the record of conviction of the crime shall
23 be conclusive evidence of the fact that the conviction occurred, but only of that
24 fact, and the board may inquire into the circumstances surrounding the
25 commission of the crime in order to fix the degree of discipline or to determine if
26 the conviction is substantially related to the qualifications, functions, and duties
27 of the licensee in question.

23 As used in this section, "license" includes "certificate," "permit,"
24 "authority," and "registration."

25 8. Section 4300 of the Code states:

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

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

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(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.

....

9. Section 4301 of the Code 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.

....

(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

1 sentence, irrespective of a subsequent order under Section 1203.4 of the Penal
2 Code allowing the person to withdraw his or her plea of guilty and to enter a plea
3 of not guilty, or setting aside the verdict of guilty, or dismissing the accusation,
4 information, or indictment.

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6 (p) Actions or conduct that would have warranted denial of a license.

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8 10. Section 4022 of the Code states

9 "Dangerous drug" or "dangerous device" means any drug or device
10 unsafe for self-use in humans or animals, and includes the following:

11 (a) Any drug that bears the legend: "Caution: federal law prohibits
12 dispensing without prescription," "Rx only," or words of similar import.

13 (b) Any device that bears the statement: "Caution: federal law restricts this
14 device to sale by or on the order of a _____," "Rx only," or words of similar
15 import, the blank to be filled in with the designation of the practitioner licensed to
16 use or order use of the device.

17 (c) Any other drug or device that by federal or state law can be lawfully
18 dispensed only on prescription or furnished pursuant to Section 4006.

19 11. Section 4060 of the Code states:

20 No person shall possess any controlled substance, except that furnished to
21 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
22 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
23 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
24 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant
25 pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or
26 a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause
27 (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.
28 This section shall not apply to the possession of any controlled substance by a
manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
practitioner, or physician assistant, when in stock in containers correctly labeled
with the name and address of the supplier or producer.

. . . .

12. 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.

1 13. California Code of Regulation, title 16, section 1769, states:

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3 (b) When considering the suspension or revocation of a facility or a
4 personal license on the ground that the licensee or the registrant has been
5 convicted of a crime, the board, in evaluating the rehabilitation of such person
6 and his present eligibility for a license will consider the following criteria:

7 (1) Nature and severity of the act(s) or offense(s).

8 (2) Total criminal record.

9 (3) The time that has elapsed since commission of the act(s) or offense(s).

10 (4) Whether the licensee has complied with all terms of parole, probation,
11 restitution or any other sanctions lawfully imposed against the licensee.

12 (5) Evidence, if any, of rehabilitation submitted by the licensee.

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

17 **DRUG**

18 15. Hydrocodone bitartate/acetaminophen, also known by the brand name
19 Vicodin, is a Schedule III controlled substance as designated by Health and Safety Code section
20 11056, subdivision (e)(4), and is a dangerous drug pursuant to Business and Professions Code
21 section 4022.

22 **FIRST CAUSE FOR DISCIPLINE**

23 **(September 29, 2005 Criminal Conviction for Possession
24 of Dangerous Weapons on July 21, 2005)**

25 16. Respondent has subjected his registration to discipline under sections 490
26 and 4301, subdivision (l) of the Code in that he was convicted of a crime that is substantially
27 related to the qualifications, duties, and functions of a pharmacy technician. The circumstances
28 are as follows:

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1 a. On or about September 29, 2005, in a criminal proceeding entitled
2 *People of the State of California v. Donald Paul Kime*, San Bernardino County Superior Court,
3 case number FWV035194, Respondent was convicted on his plea of guilty of violating Penal
4 Code section 12020, subdivision (a)(1), possession of dangerous weapons, a felony.

5 b. As a result of the conviction, on or about September 29, 2005,
6 Respondent was sentenced to serve 90 days in the county jail, three years supervised probation,
7 and payment of fees, fines, and restitution. Respondent was further ordered not to violate any
8 laws, not to possess weapons or drugs, and to submit to random drug screens. The court held
9 five subsequent probation revocation hearings and issued two bench warrants. At a probation
10 revocation hearing on or about June 5, 2008, Respondent's probation was extended until
11 December 8, 2009.

12 c. The facts that led to the conviction were that on or about the
13 evening of July 21, 2005, Respondent was ejected from a Rancho Cucamonga billiards tavern for
14 being intoxicated and creating a disturbance; Respondent was accused of stealing two pairs of
15 glasses from another patron. Respondent told the bouncer "That guy [patron] was lucky" and
16 "He'll be taken care of." The tavern's bouncer observed Respondent go to his van, enter and
17 exit the van several times, and hold an object at his waistband. After approximately 20 minutes,
18 the bouncer went to the van to check on Respondent's condition and saw Respondent sitting in
19 the van with a rifle in his lap. The bouncer called 9-1-1 and deputies from the San Bernardino
20 County Sheriff's Department responded. Respondent was removed from his vehicle at gunpoint.
21 Respondent's eyes were bloodshot, he smelled of alcohol, he was sweating profusely, and he
22 could not keep his balance. Respondent's vehicle was searched. In plain view between the
23 driver's seat and passenger seat was a rifle with two rounds chambered and a fully loaded
24 magazine inserted into the rifle. Also found on the passenger seat was a .9mm Luger semi-
25 automatic handgun, .9mm ammunition, and .22 caliber ammunition. In the backseat of
26 Respondent's vehicle was a holster containing a loaded .9mm magazine as well as additional
27 boxes of .9mm and .22 caliber ammunition.

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1 SECOND CAUSE FOR DISCIPLINE

2 (December 20, 2005 Criminal Conviction for DUI on October 21, 2005)

3 17. Respondent has subjected his registration to discipline under sections 490
4 and 4301, subdivision (l) of the Code in that he was convicted of a crime that is substantially
5 related to the qualifications, duties, and functions of a pharmacy technician. The circumstances
6 are as follows:

7 a. On or about December 20, 2005, in a criminal proceeding entitled
8 *People of the State of California v. Donald Paul Kime*, San Bernardino County Superior Court,
9 case number TWV049383, Respondent pled nolo contendere, and the court found Respondent
10 guilty of violating Vehicle Code sections 23152, subdivision (a), driving under the influence of
11 alcohol, and 23152, subdivision (b), driving under the influence with a blood alcohol content of
12 0.08 percent or higher, misdemeanors.

13 b. As a result of the conviction, on or about December 20, 2005,
14 Respondent was sentenced to three years summary probation, attend and complete a First
15 Offender Alcohol Program, payment of \$1,478.00 in fines, and restitution to the victim in the
16 amount of \$4,210.90. Respondent's driver's license was restricted for three months.
17 Respondent's probation was revoked at a hearing on July 30, 2008, and will expire on November
18 29, 2012.

19 c. The facts that led to the conviction were that on or about the
20 evening of October 21, 2005, the Ontario Police Department responded to a two-vehicle collision
21 at an intersection. The police officer interviewed Respondent, who was standing next to his van.
22 As Respondent explained how the collision happened, the officer detected a very strong odor of
23 an alcoholic beverage on Respondent's breath. Respondent's eyes were bloodshot and he could
24 barely keep his eyes open. Respondent's speech was slurred, deliberate, and hard to comprehend.
25 Respondent admitted that he consumed beer that evening. The officer demonstrated several field
26 sobriety tests, none of which Respondent completed satisfactorily. Respondent was arrested and
27 subsequently provided a blood sample for testing.

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1 THIRD CAUSE FOR DISCIPLINE

2 (May 15, 2008 Criminal Conviction for Driving Under the Influence on July 28, 2007)

3 18. Respondent has subjected his registration to discipline under sections 490
4 and 4301, subdivision (l) of the Code in that he was convicted of a crime that is substantially
5 related to the qualifications, duties, and functions of a pharmacy technician. The circumstances
6 are as follows:

7 a. On or about May 15, 2008, in a criminal proceeding entitled *People*
8 *of the State of California v. Donald Paul Kime*, San Bernardino County Superior Court, case
9 number TWV702176, Respondent pled nolo contendere, and the court found Respondent guilty
10 of violating Vehicle Code sections 23152, subdivision (a), driving under the influence of alcohol,
11 a misdemeanor.

12 b. As a result of the conviction, on or about May 15, 2008,
13 Respondent was sentenced to 45 days in the county jail, three years summary probation, and
14 attend and complete a Multiple Offender Alcohol Program.

15 c. The facts that led to the conviction were that on or about the
16 evening of July 28, 2007, a California Highway Patrol officer, who was traveling behind
17 Respondent's vehicle in the city of Ontario, observed Respondent make a turn at an intersection
18 before the light turned green. The CHP officer conducted a traffic stop. Upon contacting
19 Respondent, the officer noted a strong odor of alcohol emitting from the vehicle. Respondent's
20 eyes were glossy, red, and watery. Respondent told the officer that he consumed one-half of a
21 beer approximately 10 hours earlier. The officer had Respondent exit his vehicle to conduct a
22 series of pre-field sobriety test questions. The officer smelled the odor of alcohol on
23 Respondent's breath and on his person. Respondent was unsteady on his feet and had trouble
24 standing in one spot without losing his balance. Respondent was not able to successfully
25 complete any of the pre-explained and pre-demonstrated field sobriety tests. Based on
26 Respondent's objective symptoms of intoxication and his performance on the field sobriety tests,
27 Respondent was arrested for driving under the influence of alcohol. Respondent elected to submit
28 to a breath test, which resulted in BAC readings of .20%, .18%, and .20%.

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FOURTH CAUSE FOR DISCIPLINE

(May 15, 2008 Criminal Conviction for DUI on December 10, 2007)

19. Respondent has subjected his registration to discipline under sections 490 and 4301, subdivision (l) of the Code in that he was convicted of a crime that is substantially related to the qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

a. On or about May 15, 2008, in a criminal proceeding entitled *People of the State of California v. Donald Paul Kime*, San Bernardino County Superior Court, case number TWV800570, Respondent pled nolo contendere, and the court found Respondent guilty of violating Vehicle Code sections 23152, subdivision (a), driving under the influence of alcohol, a misdemeanor.

b. As a result of the conviction, on or about May 15, 2008, Respondent was sentenced to 180 days in the county jail, three years summary probation, attend and complete a Multiple Offender Alcohol Program, and payment of fines in the amount of \$1,545.

c. The facts that led to the conviction were that on or about the afternoon of December 10, 2007, a patrol officer from the Ontario Police Department observed Respondent pulling out from a liquor store. Respondent appeared nervous. The right rear taillight on Respondent's vehicle was broken, so the officer conducted a U-turn and followed until Respondent pulled into the driveway of his residence. The officer approached Respondent's vehicle and made contact. The officer noted a strong odor of an alcoholic beverage emitting from Respondent's mouth. Respondent's eyes were red and watery, and his speech was slurred. Respondent told the officer that he consumed one beer and admitted he was driving on a suspended driver's license. Respondent was directed to exit his vehicle; he had to hold onto the car to keep his balance. Respondent was not able to satisfactorily complete the field sobriety tests as demonstrated by the officer. Respondent submitted to a preliminary alcohol screening (PAS) test, the results of which were .261% and .254%.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Use of Alcoholic Beverages in a Manner Dangerous & Injurious to Oneself & the Public)**

3 20. Respondent has subjected his registration to disciplinary action under
4 section 4301, subdivision (h) of the Code in that on or about October 21, 2005, July 28, 2007, and
5 December 10, 2007, Respondent drove a vehicle while under the influence of an alcoholic
6 beverage, as detailed in paragraphs 17-19, above, which posed a serious risk of injury and/or
7 death to himself and to the public.

8 **SIXTH CAUSE FOR DISCIPLINE**

9 **(Multiple Convictions Involving the Use of Alcoholic Beverages)**

10 21. Respondent has subjected his registration to disciplinary action under
11 section 4301, subdivision (k) of the Code in that on or about December 20, 2005 and May 15,
12 2008, Respondent was convicted in three separate cases on charges of driving under the influence
13 of alcohol, as detailed in paragraphs 17-19, above.

14 **SEVENTH CAUSE FOR DISCIPLINE**

15 **(Unprofessional Conduct - Illegal Possession of Controlled Substances)**

16 22. Respondent has subjected his registration to disciplinary action under
17 sections 4301, subdivision (j) and 4060 of the Code in that on or about November 11, 2006,
18 Respondent possessed a controlled substance without a prescription. The circumstances are as
19 follows:

20 a. On or about November 11, 2006, an officer from the Upland
21 Police Department responded to the Upland City Yards on a report that a work release inmate had
22 reported to work intoxicated. The officer contacted Respondent who was sitting on the bumper of
23 a van. Respondent was unable to keep his head up or focus his eyes, and his speech was
24 extremely slurred. The officer requested that Respondent stand so that he could administer field
25 sobriety tests. When Respondent attempted to stand up, he started falling to his left and was
26 unable to stand on his own. The officer arrested Respondent for public intoxication.

27 b. In a search incident to Respondent's arrest, the officer located four
28 loose Vicodin pills in Respondent's front right pocket. The pills were not in a prescription bottle.

1 The officer also found approximately five, empty 24-ounce beer cans and three cold, unopened
2 24-ounce beers in Respondent's van. Following a *Miranda* admonishment, Respondent told the
3 officer that the pills were Vicodin and he did not have a prescription for them. Respondent stated
4 that he obtained the Vicodin from his mother to help alleviate back pain.

5 **EIGHTH CAUSE FOR DISCIPLINE**

6 **(Commission of Acts That Would Have Warranted the Denial of a License)**

7 23. Respondent is subject to disciplinary action under sections 4301,
8 subdivision (p) of the Code in that any one of Respondent's acts or conduct, as detailed in
9 paragraphs 16-22, above, would have warranted the denial of a pharmacy technician registration.

10 **PRAYER**

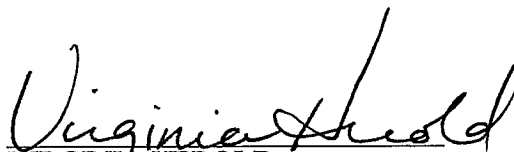
11 WHEREFORE, Complainant requests that a hearing be held on the matters herein
12 alleged, and that following the hearing, the Board of Pharmacy issue a decision:

13 1. Revoking or suspending Pharmacy Technician Registration Number
14 TCH 58195, issued to Donald Paul Kime;

15 2. Ordering Donald Paul Kime to pay the Board of Pharmacy the reasonable
16 costs of the investigation and enforcement of this case, pursuant to Business and Professions
17 Code section 125.3;

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

19
20 DATED: 1/16/09

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22 
23 VIRGINIA HEROLD
24 Executive Officer
25 Board of Pharmacy
26 Department of Consumer Affairs
27 State of California
28 Complainant