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

10  
11 In the Matter of the Accusation Against:

Case No. 3404

12 **JERRY B. KLEIN, a.k.a.,**  
13 **JERRY BRADLEY KLEIN, a.k.a.,**  
**BRAD KLEIN**  
14 **P.O. Box 568**  
**Story, WY 82842**

**ACCUSATION**

15 **Pharmacist License No. RPH 40966**

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia K. Herold, ("Complainant") brings this Accusation solely in her official  
21 capacity as the Executive Officer of the California State Board of Pharmacy, ("the Board").  
22 2. On or about August 16, 1979, the Board issued Pharmacist License No. RPH 40966  
23 to Jerry B. Klein, ("Respondent"). Respondent's license was in full force and effect at all times  
24 relevant to the charges brought herein and will expire on February 28, 2011.

25 **STATUTORY PROVISIONS**

- 26 3. This Accusation is brought before the Board, under the authority of the following  
27 laws. All section references are to the Business and Professions Code unless otherwise indicated.

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

2 "For the purpose of denial, suspension, or revocation of a personal or facility license  
3 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a  
4 crime or act shall be considered substantially related to the qualifications, functions or duties of a  
5 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a  
6 licensee or registrant to perform the functions authorized by his license or registration in a manner  
7 consistent with the public health, safety, or welfare."

8 5. Section 4301 of the Code states, in pertinent part:

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

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

17 . . . (l) The conviction of a crime substantially related to the qualifications, functions, and  
18 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
19 (commencing with Section 801) of Title 21 of the United States Code regulating controlled  
20 substances or of a violation of the statutes of this state regulating controlled substances or  
21 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the  
22 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.  
23 The board may inquire into the circumstances surrounding the commission of the crime, in order  
24 to fix the degree of discipline or, in the case of a conviction not involving controlled substances  
25 or dangerous drugs, to determine if the conviction is of an offense substantially related to the  
26 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or  
27 a conviction following a plea of *nolo contendere* is deemed to be a conviction within the meaning  
28 of this provision. The board may take action when the time for appeal has elapsed, or the

1 judgment of conviction has been affirmed on appeal or when an order granting probation is made  
2 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of  
3 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
4 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
5 indictment.

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

7 **FIRST CAUSE FOR DISCIPLINE**

8 **(Criminal Conviction for DUI)**

9 6. Respondent is subject to disciplinary action under Section 4301 of the Code and  
10 California Code of Regulations, title 16, section 1770, and, in that on or about September 11,  
11 2007, in the Superior Court of California, County of Mendocino, in *People of the State of*  
12 *California v. Jerry Bradley Klein*, (Case No. MCTM-MCTR-07-77890-01), Respondent was  
13 convicted on his plea of *nolo contendere* of violating Vehicle Code section 23152(a), (Driving  
14 while intoxicated), a misdemeanor. Such crime is substantially related to the qualifications,  
15 functions and duties of a licensed pharmacist.

16 7. The crime occurred on or about May 21, 2007 when Respondent was unable to  
17 maintain control over his pickup truck while driving south on SR-1 near Fort Bragg, left the  
18 roadway and traveled onto a grassy shoulder. For unknown reasons, a fire started in the engine  
19 compartment and Respondent was removed from the truck by a passerby. Respondent was then  
20 transported to Mendocino Coast Hospital where he was evaluated by a C.H.P. officer, admitted to  
21 intoxication, but refused a blood draw.

22 **COST RECOVERY**

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

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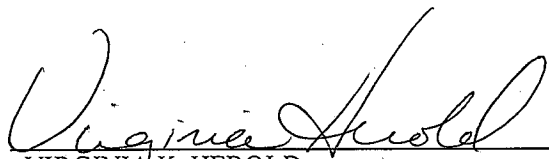
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PRAYER

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

1. Revoking or suspending Pharmacist Number RPH 40966, issued to Jerry B. Klein.
2. Ordering Jerry B. Klein to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: 10/7/09

  
VIRGINIA K. HEROLD  
Executive Officer  
Board of Pharmacy  
State of California  
*Complainant*

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