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

11 In the Matter of the Accusation Against:

Case No. 3548

12 **JASON P. GONZALES**

13 **1100 Industrial Blvd D27**
14 **Chula Vista, CA 95023**

A C C U S A T I O N

15 **Pharmacy Technician Registration No.**
16 **TCH 30137**

17 Respondent.

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20 Complainant alleges:

21 **PARTIES**

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

24 2. On or about July 30, 1999, the Board of Pharmacy issued Pharmacy Technician
25 Registration Number TCH 30137 to Jason P. Gonzales (Respondent). The Pharmacy Technician
26 Registration was in full force and effect at all times relevant to the charges brought herein and
27 will expire on April 30, 2010, unless renewed.

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1 **JURISDICTION**

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

5 4. Section 4300 (a) of the Code provides that every license issued by the Board may be
6 suspended or revoked.

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

11 **STATUTORY PROVISIONS**

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

16 7. Section 493 of the Code states:

17 Notwithstanding any other provision of law, in a proceeding conducted by a
18 board within the department pursuant to law to deny an application for a license or
19 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, and
22 duties of the licensee in question, the record of conviction of the crime shall be
23 conclusive evidence of the fact that the conviction occurred, but only of that fact,
24 and the board may inquire into the circumstances surrounding the commission of
25 the crime in order to fix the degree of discipline or to determine if the conviction is
26 substantially related to the qualifications, functions, and duties of the licensee in
27 question.

28 As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
'registration.'

8. 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:

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(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.

....

(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. . . . [T]he 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.

....

REGULATORY PROVISIONS

9. 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 10. California Code of Regulations, title 16, section 1769, states, in pertinent part:

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3 (b) When considering the suspension or revocation of a facility or a personal
4 license on the ground that the licensee or the registrant has been convicted of a
5 crime, the board, in evaluating the rehabilitation of such person and his present
6 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
10 offense(s).

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

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

15 **COSTS**

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

20 **FIRST CAUSE FOR DISCIPLINE**

21 **(January 28, 2004 Criminal Conviction for DUI on October 13, 2003)**

22 12. Respondent has subjected his license to disciplinary action under sections 490 and
23 4301, subdivision (l) of the Code, in that Respondent was convicted of a crime that is
24 substantially related to the qualifications, functions, and duties of a pharmacy technician. The
25 circumstances are as follows.

26 13. On or about January 28, 2004, in a criminal proceeding entitled *People of the State of*
27 *California v. Jason Patrick Gonzales*, in San Diego County Superior Court, case number
28 S181201, Respondent was convicted on his plea of guilty of violating Vehicle Code section
23152, subdivision (b), driving a vehicle while having a blood alcohol content in excess of .08

1 percent, a misdemeanor. Respondent's plea included an enhancement under Vehicle Code
2 section 23578 in that his blood alcohol content was in excess of .20 percent.

3 14. As a result of the conviction, on or about January 28, 2004, Respondent was
4 sentenced to five years summary probation, completion of a six month First Offender Alcohol
5 Program, 5 days in a Public Service Program and payment of fees and fines.

6 15. The facts that led to the conviction were that on or about October 13, 2003,
7 Respondent unlawfully drove a motor vehicle while having a blood alcohol content by weight in
8 excess of .08 percent, to wit, .27 percent.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct - Use of Alcohol in a Dangerous Manner)**

11 16. Respondent has subjected his license to disciplinary action under section 4301,
12 subdivision (h) of the Code in that on or about October 13, 2003, as described in the First Cause
13 for Discipline, above, Respondent used alcoholic beverages to an extent or in a manner that was
14 potentially dangerous or injurious to himself and to others in that he operated a motor vehicle
15 while impaired by alcohol. Such unprofessional conduct posed a significant threat to public
16 safety.

17 **THIRD CAUSE FOR DISCIPLINE**

18 **(Unprofessional Conduct - Conviction of Alcohol-Related Criminal Offense)**

19 17. Respondent has subjected his license to disciplinary action under section 4301,
20 subdivision (k) of the Code in that on or about October 13, 2003, as described in the First Cause
21 for Discipline, above, Respondent was convicted of a criminal offense involving the consumption
22 and/or self-administration of alcohol, which constitutes unprofessional conduct.

23 **FOURTH CAUSE FOR DISCIPLINE**

24 **(July 16, 2007 Criminal Conviction for DUI with Bodily Injury on June 7, 2007)**

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

1 SIXTH CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct - Conviction of Alcohol-Related Criminal Offense)

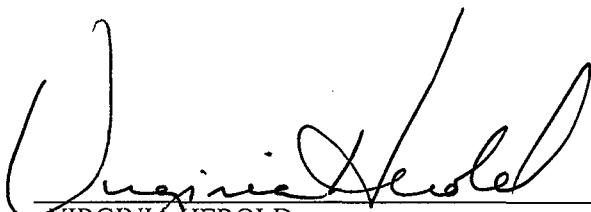
3 23. Respondent has subjected his license to disciplinary action under section 4301,
4 subdivision (k) of the Code in that on or about June 7, 2007, as described in the Fourth Cause for
5 Discipline, above, Respondent was convicted of a criminal offense involving the consumption
6 and/or self-administration of alcohol, which constitutes unprofessional conduct.

7 PRAYER

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

- 10 1. Revoking or suspending Pharmacy Technician Registration Number TCH 30137,
11 issued to Jason P. Gonzales.
- 12 2. Ordering Jason P. Gonzales to pay the Board of Pharmacy the reasonable costs of the
13 investigation and enforcement of this case, pursuant to Business and Professions Code section
14 125.3;
- 15 3. Taking such other and further action as deemed necessary and proper.

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18 DATED: 2/3/10

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20 VIRGINIA HEROLD
21 Executive Officer
22 Board of Pharmacy
23 Department of Consumer Affairs
24 State of California
25 Complainant

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