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

12 In the Matter of the Accusation Against:

Case No. 3550

13 **DAVID YOUNG KANG**
1607 Oak Tree Lane
Stockton, Ca 95209

ACCUSATION

14 Intern Pharmacist No. INT 19865

15 Respondent.

16
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, Department of Consumer Affairs.

21 2. On or about October 6, 2006, the Board of Pharmacy issued Intern Pharmacist
22 Registration Number INT 19865 to David Young Kang (Respondent). The Intern Pharmacist
23 Registration was in full force and effect at all times relevant to the charges brought herein and
24 will expire on October 31, 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 118, subdivision (b), of the Code provides that the expiration of a license
6 shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period
7 within which the license may be renewed, restored, reissued or reinstated.

8 **STATUTORY PROVISIONS**

9 5. Section 4300 of the Code states, in part:

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

11

12 (c) The board may refuse a license to any applicant guilty of unprofessional
13 conduct. . . .

14 6. Section 4001.1 of the Code states:

15 Protection of the public shall be the highest priority for the California State
16 Board of Pharmacy in exercising its licensing, regulatory, and disciplinary functions.
17 Whenever the protection of the public is inconsistent with other interests sought to be
18 promoted, the protection of the public shall be paramount.

19 7. California Code of Regulations, title 16, section 1770 states:

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

27 8. Section 4301 of the Code states:

28 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

1 dangerous drug or of alcoholic beverages to the extent or in a manner as to be
2 dangerous or injurious to oneself, to a person holding a license under this chapter, or
3 to any other person or to the public, or to the extent that the use impairs the ability of
4 the person to conduct with safety to the public the practice authorized by the license.

5

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

25 **COST RECOVERY**

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

FIRST CAUSE FOR DISCIPLINE

(Criminal Conviction)

10 10. Respondent is subject to disciplinary action under section 4300, subdivision (a) for
11 violating section 4301, subdivision (l) in that on or about March 18, 2008, in the case of *People of*
12 *the State of California v. David Young Kang*, (Yolo Sup. Ct. 2008), Respondent was convicted
13 on his plea of nolo contendere to violating Vehicle Code section 23152(b), (driving under the
14 influence). The circumstances are as follows:

15 11. On or about December 15, 2007 at 3:03 a.m., officers were dispatched to the scene of
16 a solo-vehicle accident. Respondent was found in the driver's seat along with a passenger.
17 Respondent was suspected of being under the influence, was asked to perform field sobriety tests,

1 on which he performed poorly, and was arrested for driving under the influence. Respondent's
2 blood alcohol level was 0.12.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Acts Constituting a Basis for Denial)**

5 12. Respondent is subject to disciplinary action under section 4300, subdivision (c) for
6 violating section 4301, subdivision (l) in that Respondent was convicted of crime substantially
7 related to the qualifications, functions, and duties of a licensee, as further set forth in paragraphs
8 10-11 above.

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Use of Alcohol in a Dangerous Manner)**

11 13. Respondent is subject to disciplinary action under section 4300, subdivision (a) for
12 violating section 4301, subdivision (h) in that on or about March 18, 2008, Respondent was
13 convicted on his plea of nolo contendere to violating Vehicle Code section 23152(b), (driving
14 under the influence), as more fully set forth in paragraphs 10-11, above.

15 **FOURTH CAUSE FOR DISCIPLINE**

16 **(Unprofessional Conduct)**

17 14. Respondent is subject to disciplinary action under section 4300, subdivision (a) for
18 violating section 4301, in that on or about January 20, 2009, Respondent was detained and
19 released by Stockton Police Department for suspicion of violation of Penal Code section 417,
20 subdivision (a)(2), exhibiting a firearm.

21 15. The circumstances are that, on January 20, 2009, the victim was driving on a road
22 when Respondent's car passed him at a high speed and turned into a residential neighborhood.
23 Since the victim lived in the area, he was concerned about Respondent's driving and followed
24 Respondent to his home. Once Respondent pulled into his garage, the victim parked his car and
25 approached Respondent about his speed and that he had observed Respondent nearly strike 5
26 children who were playing in the street. Respondent got out of his car, got his shot gun which
27 was in the garage, loaded one round and came out of the garage exhibiting the shot gun in order
28 to scare the victim. Such an act is substantially related to the qualifications, functions or duties of

1 a licensee as it evidences unfitness to carry out his duties in a manner consistent with public
2 health, safety or welfare.

3 **PRAYER**

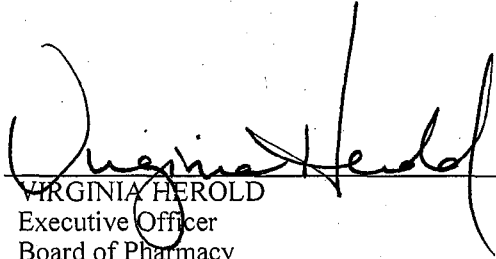
4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
5 and that following the hearing, the Board of Pharmacy issue a decision:

6 1. Revoking or suspending Intern Pharmacist Registration Number INT 19865, issued to
7 David Young Kang.

8 2. Ordering David Young Kang to pay the Board of Pharmacy the reasonable costs of
9 the investigation and enforcement of this case, pursuant to Business and Professions Code section
10 125.3;

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

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13
14 DATED: 1/26/10


15 VIRGINIA HEROLD
16 Executive Officer
17 Board of Pharmacy
18 Department of Consumer Affairs
19 State of California
20 Complainant

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